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CH. 44
SENTENCING

§44-1
Construction and Validity of Statutes

§44-1(a)
Generally

United States Supreme Court

Barrett v. United States, 607 U.S. ___ (2026) Defendant was indicted for his role as a getaway driver in a series of robberies where an accomplice fatally shot a victim. He was convicted and sentenced under two sections of 18 U.S.C. § 924: Section 924(c), for using or carrying a firearm during a crime of violence; and Section 924(j), for causing a death with a firearm while violating Section 924(c). The circuit court upheld the two convictions and sentences, finding that while the provisions were part of the same offense, Congress clearly authorized "cumulative punishments" and therefore defeated the presumption of a single punishment.

The Supreme Court reversed. Under **Blockburger v. United States**, 284 U. S. 299, courts will presume that Congress did not intend cumulative convictions or punishments for the same acts absent an express desire to treat them as separate offenses. Whether Sections 924(c) and 924(j) are separate offenses is a question of statutory construction. Here, Congress did include express language in Section 924(c), which authorized convictions and sentences for both the subsection (c) violation and the predicate offense. It also mandated that any sentence imposed for a subsection (c) violation run consecutive to all other convictions. But, this language of subsection (c) "speaks past" the question of whether one act may result in two convictions. While it does authorize a conviction for both subsection (c) and the predicate, and consecutive sentences for other offenses, it does not expressly authorize a separate conviction under subsection (j). Nor does subsection (j) include any such language. Thus, the statute lacked the express language required by **Blockburger.**

The State attempted to point to factors other than the statutory language, but the court was not convinced. For example, the fact that subsection (j) lacks a mandatory minimum was not sufficient evidence that Congress intended to allow two convictions. Practically speaking, it's unrealistic that a sentence under subsection (j) would fall below the mandatory minimums set by subection (c). Moreover, if that possibility arose, the prosecution could insist on conviction under the lesser offense. Finally, the court was able to point to another subsection which did authorize multiple convictions, showing that Congress knows how to overcome the **Blockburger** presumption, and it chose not to do so when it passed subsection (j).

Witte v. U.S., 515 U.S. 389, 115 S.Ct. 2199, 132 L.Ed.2d 351 (1995) Although double jeopardy prohibits a defendant from being prosecuted or punished more than once for the same offense, a defendant is not "punished" when uncharged crimes are used to enhance the sentence on another offense, at least where the enhanced sentence is still within the range statutorily authorized for the offense. Double jeopardy did not prohibit prosecution of offenses that had previously been considered as aggravation at sentencing in an earlier prosecution for other crimes.

Wisconsin v. Mitchell, 508 U.S. 476, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993) State statute which increases a sentence for any crime in which the victim was intentionally selected based on "race, religion, color, disability, sexual orientation, national origin or ancestry" does not violate the First Amendment and is not overbroad. See also, **People v. Johnston**, 267 Ill.App.3d 526, 641 N.E.2d 898 (1st Dist. 1994) (Illinois ethnic intimidation statute does not violate federal or state constitutions).

Harmelin v. Michigan, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) The Eighth Amendment requirement of individualized sentencing applies only to capital cases; thus, a state law requiring a life sentence for possession of more than 650 grams of cocaine does not violate the Eighth Amendment although its mandatory nature deprives the sentencer of any opportunity to consider mitigating evidence.

McMillan v. Pennsylvania, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986) State statute, which subjected defendant convicted of certain felonies to a mandatory minimum sentence of five years if the sentencing judge found, by a preponderance of the evidence, that defendant visibly possessed a firearm during the offense, was upheld. The state legislature expressly provided that the visible possession of a firearm was a sentencing factor rather than an element of the offense. Thus, possession of a firearm does not alter the maximum sentence or create a separate offense; instead, it operates solely to limit the sentencing court's discretion in selecting a penalty within the range already available without the special finding. But see **Apprendi v. New Jersey**, 530 U.S. 466, 120 S.Ct. 2348 (2000) (limiting **McMillan** to cases that do not involve the imposition of a sentence more severe than the statutory maximum for the offense established by the jury's verdict).

Bifulco v. U.S., 447 U.S. 381, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980) Any doubt in the construction of a criminal statute must be resolved in favor of defendant. Defendant was convicted of conspiracy to manufacture or distribute a certain drug and was sentenced to a prison term, a fine, and a five-year special parole term. The imposition of the parole term was improper where, under the relevant statute, conspiracy is punishable by imprisonment or fine or both and imprisonment does not include parole. See also, **People v. Jordan**, 103 Ill.2d 192, 469 N.E.2d 569 (1984) (penal statutes are to be strictly construed in favor of the accused; however, the court must give effect to the legislative intent and must not read a statutory enactment to defeat that intent; in determining the legislature's intent, the statute must be read as a whole, and all relevant parts must be considered); **People v. Bratcher**, 63 Ill.2d 534, 349 N.E.2d 31 (1976) (discussing how to ascertain the legislature's intent and holding that defendant, who was convicted of aggravated battery under Ch. 38, §12-4(b)(6), was properly sentenced for a Class 3 felony (one to ten years) pursuant to §12-4, instead of from one to five years (as set out in §12-4(b)(9)); the retention of the penalty provision in §12-4(b)(9) was a legislative oversight).

Hicks v. Oklahoma, 447 U.S. 343, 100 S.Ct. 2227, 65 L.Ed.2d 175 (1980) A jury sentenced defendant under the habitual criminal statute before it was declared unconstitutional. Defendant was prejudiced -- had the jury been properly instructed, it could have imposed a lesser sentence. Defendant was denied due process of law.

Illinois Supreme Court

People v. Hoffman, 2025 IL 130344 Defendant pled guilty to drug-induced homicide and argued for sentencing under 730 ILCS 5/5-4-1(c-1.5), which permits a trial court to impose a sentence below the mandatory minimum if certain conditions are met. The trial court found that provision inapplicable to drug-induced homicide, however, and imposed a six-year sentence.

On appeal, defendant challenged the court's refusal to apply section 5-4-1(c-1.5). Defendant argued that the plain language of the statute applies to him. The statute explicitly states that, in imposing a sentence which requires a mandatory minimum term of imprisonment, the court may instead impose a sentence of probation, conditional discharge, or a lesser term of imprisonment if: (1) the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; (2) the court finds the defendant does not pose a risk to public safety; and (3) the interest of justice requires the lesser term.

The appellate court agreed that the provision applies to drug-induced homicide, because that offense "involves the use or possession of drugs" under the plain, unambiguous language of the statute. A four-justice majority of the supreme court reversed. It first found that the language of the statute was ambiguous. The statute can reasonably be interpreted in two ways: it could apply only to drug possession offenses, or it could apply to other offenses, such as delivery and drug-induced homicide, that entail drug possession plus other conduct.

To resolve this ambiguity, the court first looked to the legislative history, which it found to be inconclusive. It then asked if either reading could lead to absurd results, it found that the defendant's "expansive reading" could lead to absurd results, *i.e.*, a below-minimum sentence for serious crimes, such as a Class X delivery near a school with children present, a delivery classified as a forcible felony that forms the basis for a felony murder conviction, or a delivery that is an element of predatory criminal sexual assault of a child. The majority further pointed out that these latter crimes could be committed in ways that do not involve drugs, yet those crimes would not be eligible for a sentence below the mandatory minimum. It would be unreasonable for the legislature to draw such a distinction.

The majority rejected defendant's argument that these absurd results would not come to pass due to the second and third requirements of the statute (defendant must not pose a risk to safety, and the interests of justice must require a lesser term). These safeguards do not explain why the legislature would make sentencing relief available for the aforementioned offenses in the first instance. The majority also refused to apply the rule of lenity, because this rule applies only when other forms of statutory interpretation fail to resolve the ambiguity.

The three justices in dissent found nothing ambiguous about the phrase "involves the use or possession of drugs." If the legislature sought to limit the statute to specific crimes involving mere possession, it would not have included the words "involves" or "use," but would have instead defined the exact crimes it meant to include, as it routinely does in other statutes. In fact, it did so in this very same provision, limiting the statute's application to the crime of driving on a revoked license only in the case of unpaid financial obligations. Furthermore, the majority erred when it rejected the rule of lenity on the basis that it had resolved the ambiguity. The majority conceded both the text and the legislative history of the statute was ambiguous. Once that occurred, there was nothing left to analyze, and the rule of lenity should have applied. Instead, the majority embarked on a speculative "absurd results" analysis involving several crimes not before the court in the instant matter. The dissent did not agree the "absurd results test" was a traditional rule of statutory interpretation.

People v. Cervantes, 189 Ill.2d 80, 723 N.E.2d 265 (1999) Public Act 88-680, which enhanced sentences for several offenses, violated the single-subject rule. See also, **People v. Walls**, 323 Ill.App.3d 436, 752 N.E.2d 456 (1st Dist. 2001) (where at the time of the offense armed violence was subject to a minimum term of 15 years in prison, but the act creating the 15-year minimum was subsequently held unconstitutional in **People v. Cervantes**, a subsequent reenactment of the mandatory minimum could not apply retroactively to defendant's case).

People v. Wooters, 188 Ill.2d 500, 722 N.E.2d 1102 (1999) Public Act 89-203, which created a mandatory life term for certain offenses, violated the single-subject rule.

People v. Reedy, 186 Ill.2d 1, 708 N.E.2d 1114 (1999) Public Act 89-404, which enacted the "truth-in-sentencing" law effective August 1995, violated the "single-subject" rule of the Illinois Constitution. Although the legislature reenacted the truth-in-sentencing scheme in P.A. 90-592, the new statute applies only to offenses committed after June 19, 1998.

People v. Hickman, 163 Ill.2d 250, 644 N.E.2d 1147 (1994) The sentencing provision of the criminal drug conspiracy statute, which provides that a person convicted of criminal drug conspiracy "may be fined or imprisoned or both not to exceed the maximum provided for the offense which is the object of the conspiracy," is not unconstitutionally vague because it fails to provide a minimum sentence; the provision satisfies the fair-notice requirement and the fair-administration requirement.

Sayles v. Thompson, 99 Ill.2d 122, 457 N.E.2d 440 (1983) The transfer of inmates to an out-of-state prison does not violate the transportation clause of the Illinois Constitution.

People v. LaPointe, 88 Ill.2d 482, 431 N.E.2d 344 (1981) The Court rejected various constitutional challenges to the statute permitting the imposition of a sentence of natural life imprisonment where conduct is accompanied by exceptionally brutal or heinous behavior, indicative of wanton cruelty. See also, **People v. English**, 287 Ill.App.3d 1043, 679 N.E.2d 494 (3d Dist. 1997) (mandatory life for double murder not a violation of Illinois Constitution, even where defendant was convicted solely as an accomplice); **People v. Patrasso**, 271 Ill.App.3d 1087, 649 N.E.2d 428 (1st Dist. 1994) (the phrase "exceptionally brutal or heinous behavior indicative of wanton cruelty" is not unconstitutionally vague).

People v. Cox, 82 Ill.2d 268, 412 N.E.2d 541 (1980) Statute which purported to alter the standard for appellate review of sentences from "abuse of discretion" to "rebuttable presumption" is "null and void" because it "infringes upon the exclusive power of this court to regulate by rule matters of appellate practice and procedure."

People v. Moore, 69 Ill.2d 520, 372 N.E.2d 666 (1978) A statute providing that the sentence for attempt murder "shall not exceed the sentence for a Class 1 felony" merely imposes a limitation on the maximum sentence, and not on the minimum. Thus, the clear language of the provision does not make attempt murder a Class 1 felony, and the minimum sentence for attempt murder may be lower than the four-year minimum sentence authorized for Class 1 felonies. See also, **People v. Eddington**, 77 Ill.2d 41, 394 N.E.2d 1185 (1979) (solicitation).

People v. Williams, 66 Ill.2d 179, 361 N.E.2d 1110 (1977) Matters of parole, furlough, and work and day release fall within the legislature's power relating to prison government and discipline, and do not constitute an infringement upon judicial authority.

People v. Nicks, 62 Ill.2d 350, 342 N.E.2d 360 (1976) Provision in the Unified Code that limited the aggregate minimum for consecutive sentence, but applied only to persons sentenced after the effective date of the Unified Code, violated equal protection. The limit must be applied to all cases on direct appeal.

Illinois Appellate Court

People v. Hoffman, 2023 IL App (2d) 230067 Defendant pled guilty to drug-induced homicide and argued for sentencing under 730 ILCS 5/5-4-1(c-1.5), which permits a trial court to impose a sentence below the mandatory minimum if certain conditions are met. The trial court found that provision inapplicable to drug-induced homicide, however, and imposed a six-year sentence. Defendant appealed.

On appeal, defendant challenged the court's refusal to apply section 5-4-1(c-1.5). That statute provides, in relevant part, that, in imposing a sentence which requires a mandatory minimum term of imprisonment, the court may instead impose a sentence of probation, conditional discharge, or a lesser term of imprisonment if (1) the offense involved the use or possession of drugs, (2) the court finds the defendant does not pose a risk to public safety, and (3) the interest of justice requires the lesser term.

Drug induced homicide is an offense requiring a mandatory minimum sentence of imprisonment because it is a Class X felony, which requires a prison sentence between six and 30 years. Accordingly, six years is the mandatory minimum. And, it is one of the enumerated offenses in that it involves the use or possession of drugs. Specifically, defendant's charged conduct included unlawfully delivering heroin, containing fentanyl, to another. Delivering a controlled substance for purposes of drug-induced homicide "involves" the use or possession of drugs because the substance could not be delivered without possessing it. The State argued that the legislature's failure to include "delivery" within the language of the statute meant that delivery offenses were not meant to be included. But Section 5-4-1(c-1.5) is not limited only to use or possession offenses; it specifically includes those offenses which "involve" the use or possession of drugs. Accordingly, the trial court erred in finding that the statute did not apply. The appellate court remanded for a new sentencing hearing where the trial court should consider whether defendant can satisfy the other requirements of section 5-4-1(c-1.5) and whether to impose a lesser sentence thereunder.

People v. Crawford, 2023 IL App (4th) 210503 As in **People v. Johnson**, 2013 IL App (1st) 120413, the court found an inadvertent omission from 730 ILCS 5/5-5-3.2(b)(7) after considering the doctrine of constitutional avoidance and other principles of statutory construction. Under section 5-5-3.2(b)(7), a defendant is eligible for an extended term based on a prior juvenile adjudication that would be a Class X or Class 1 felony if committed as an adult. The provision is not limited to those prior juvenile adjudications that, if committed by an adult, would be the same or greater class as the current conviction – a limitation that does apply in the provision pertaining to prior adult convictions.

Here, defendant was convicted of a Class X, but was deemed extendable under section 5-5-3.2(b)(7) for a prior juvenile adjudication that would be a Class 1 if committed as an adult. As in **Johnson,** the court read into the provision the "same or greater class" language that

would resolve this potentially unconstitutional anomaly. Applying this language, defendant was not extended-term eligible.

No remand for re-sentencing was necessary, however, because defendant did not receive an extended term, and because the circuit court's misapprehension of the law did not influence the sentence. When a trial court misunderstands the sentencing range, a new sentencing hearing is necessary only if the mistaken belief arguably influenced the sentencing decision. In making this determination, courts of review pay particular attention to what the sentencing court says. In this case, neither the parties nor the court noted defendant's eligibility for an extended-term at the sentencing hearing, and the court imposed a sentence in the lower-middle of the 6 to 30 range, consistent with its finding of two factors each in aggravation and mitigation.

People v. Phagan, 2019 IL App (1st) 153031 The trial court improperly applied both an extended Class X term of 30 years, and a firearm enhancement of 20 years, in sentencing defendant to 50 years for attempt murder of a peace officer. The firearm enhancements of section 8-4(c)(1)(B), (C), and (D) do not apply when the court imposes the extended class X term of 20 to 80 years under section 8-4(c)(1)(A). Agreeing with **People v. Douglas**, 371 Ill. App. 3d 21, 26 (1st Dist. 2007), and disagreeing with **People v. Jackson**, 2018 IL App (1st) 150487, the court held that the various subsections to section 8-4(c)(1) must be read in the disjunctive so that multiple enhancements aren't applied to the same sentence. The court affirmed the 30-year sentence under (c)(1)(A), and vacated the 20-year firearm enhancement under (c)(1)(C).

People v. Taylor, 2016 IL App (1st) 141251 Attempt murder is generally subject to a Class X sentence. However, 720 ILCS 5/8-4(c)(1)(E) provides that if a person convicted of attempt murder:

> proves by a preponderance of the evidence . . . that, at the time of the attempted murder, he or she was acting under a sudden and intense passion resulting from serious provocation by the individual whom the defendant endeavored to kill, or another, and, had the individual the defendant endeavored to kill died, the defendant would have negligently or accidentally caused that death, then the sentence for the attempted murder is the sentence for a Class 1 felony.

This section is intended to apply where the defendant attempts to kill a person who has provoked him but negligently or accidentally kills a third person (i.e., "transferred intent"). The court rejected the trial court's finding that the statute applies only where the defendant unsuccessfully attempts to kill his provoker, but had he succeeded the killing would have been negligent or accidental. Under the trial judge's interpretation it would be impossible for a defendant convicted of attempt murder to obtain a reduction classification based upon provocation, because specific intent to kill is required for attempt murder but is fundamentally incompatible with the requirement that had the provoker died the death would have been negligent or accidental.

People v. Crutchfield, 2015 IL App (5th) 120371 A statute that has been declared unconstitutional because it was adopted in violation of the single subject rule is void in its entirety, and the legislature may revive the statute only by reenacting the same provision.

Defendant was sentenced to life imprisonment pursuant to 730 ILCS 5/5-8-

1(a)(1)(c)(ii), which mandates a sentence of life imprisonment when a person over the age of 17 murders a person under the age of 12. The Appellate Court vacated defendant's sentence since the public act which enacted this sentencing provision (Public Act 89-203) had been declared unconstitutional in violation of the single subject rule (**People v. Wooters**, 188 Ill. 2d 500 (1999)), and the legislature had never reenacted the sentencing provision.

The legislature had not cured the single subject violation by enacting Public Act 89-462 which "recodified" the sentencing provisions. The Court stated that it found "no indication that Public Act 89-462 addressed the single subject rule violation in Public Act 89-203." Instead it "merely reenacted the change from discretionary to mandatory natural life sentences for certain offenses," and hence did not cure the infirmity of Public Act 89-203.

The Court remanded defendant's case for resentencing without applying the mandatory life sentence provision of section 5-8-1(a)(1)(c)(ii).

People v. Mischke, 2014 IL App (2d) 130318 Under 625 ILCS 5/11-501(d)(2)(A), a person convicted of aggravated driving while under the influence (DUI) is guilty of a Class 4 felony. But under subsection (d)(2)(B), a third violation of "this Section" is a Class 2 felony. The trial court sentenced defendant for aggravated DUI as a Class 2 felony. Defendant argued on appeal that he should have been sentenced as a Class 4 felony since he had two prior convictions for non-aggravated DUI, and the statute requires two prior convictions for aggravated DUI.

The language of subsection (d)(2)(B), "this Section," refers to all of section 11-501, not simply to subsection (d)(2)(B). Section 11-501 includes non-aggravated as well as aggravated DUI, while subsection (d)(2)(B) only includes aggravated DUI. The enhancement to a Class 2 felony thus occurs whenever a defendant has two prior convictions for any form of DUI, not just aggravated DUI. The trial court therefore properly sentenced defendant to a Class 2 felony.

People v. Pohl, 2012 IL App (2d) 100629 The Unified Code of Corrections provides that "[i]n addition to any other penalty imposed, a fine of $200 shall be imposed upon any person who . . .is convicted of . . . domestic battery." 730 ILCS 5/5-9-1.5.

The Appellate Court found this statute ambiguous with respect to whether defendant should be liable for a single fine or multiple fines upon conviction of multiple counts of domestic battery. In **People v. Elliott**, 272 Ill. 592, 112 N.E. 300 (1916**)**, the court upheld imposition of multiple sentences of fines for multiple convictions of unlawfully selling intoxicating liquor because defendants were knowing and willful violators of the law and therefore there was no reason whatsoever for leniency. Like **Elliott**, the court saw no reason why defendant should escape liability for three separate domestic violence fines where he was convicted of three counts of domestic battery. To hold that only one fine should be imposed would result in the unjust consequence that a defendant who battered several people would be punished no differently than a defendant who battered one person.

People v. Gay, 2011 IL App (4th) 100009 Punishing mentally-ill prisoners by sentencing them to natural life without parole is not categorically cruel and unusual. There is no consensus against punishment of mentally-ill offenders. Unlike persons with abnormally-diminished intellectual functioning, offenders whose mental illness falls short of criminal insanity are not less culpable than other offenders generally. The penological ends of retribution and incapacitation are also met by allowing courts to sentence mentally-ill persons as severely as others.

People v. Winningham, 391 Ill.App.3d 476, 909 N.E.2d 363 (4th Dist. 2009) 625 ILCS 5/11-501(d)(2), which requires a sentence of 3 to 14 years imprisonment for aggravated driving under the influence which results in death unless the court determines that "extraordinary circumstances exist and require probation," is neither unconstitutionally vague on its face nor unconstitutionally vague because it is susceptible to arbitrary and discriminatory application.

People v. Smith, 307 Ill.App.3d 414, 718 N.E.2d 640 (1st Dist. 1999) The legislature's oversight in failing to provide a penalty for indecent solicitation predicated on predatory criminal sexual assault of a child "does not in any way negate the clear legislative intent to prevent" the conduct in question. See also, **People v. Tellez**, 295 Ill.App.3d 639, 693 N.E.2d 516 (2d Dist. 1998) (although no penalty is provided for criminal neglect of a disabled person under 720 ILCS 5/12-21(a)(2), the legislature intended to impose the same Class 3 penalty provided for neglect of an elderly person).

People v. Moss, 274 Ill.App.3d 77, 654 N.E.2d 248 (5th Dist. 1995) A person on electronic home detention through the Department of Corrections is "committed" to DOC for purposes of the Criminal Code. Although defendant was not physically "held" by DOC while he was on electronic home detention, he was properly convicted of unlawful possession of cocaine in a penal institution where he brought cocaine from his house to sell in a neighbor's driveway.

People v. Belton, 184 Ill.App.3d 1001, 540 N.E.2d 990 (1st Dist 1989) Statute requiring a consecutive sentence for a felony committed while on pretrial release for another felony charge was upheld. See also, **People v. Allen**, 202 Ill.App.3d 487, 559 N.E.2d 1145 (1st Dist. 1990).

§44-1(b)
Due Process, Separation of Powers, and Proportionality

§44-1(b)(1)
Due Process and Separation of Powers Generally

United States Supreme Court

Williams v. Oklahoma, 358 U.S. 576, 79 S.Ct. 421, 3 L.Ed.2d 516 (1959) Due process does not require a state to fix or impose any particular penalty for any crime it may define, or to impose the same or proportionate sentences for separate and independent crimes.

Illinois Supreme Court

People v. McChriston, 2014 IL 115310 The trial court's failure to mention a term of mandatory supervised release (MSR) in its oral and written sentencing orders did not mean that the Department of Corrections (DOC) impermissibly added MSR to defendant's sentence in violation of the separation of powers clause of the Illinois Constitution or the federal constitutional right to due process.

The plain language of the statute provides that the sentence shall include a period of MSR as if it were written within the sentence. The sentencing order issued by the trial court thus included a term of MSR even if the court did not mention MSR at sentencing or in the

sentencing order.

The trial court's failure to mention MSR in its oral and written sentencing orders did not mean that the DOC impermissibly imposed MSR in violation of defendant's federal due process rights.

In re Derrico G., 2014 IL 114463 Under §5-615 of the Juvenile Court Act, the State may object to the entry of an order of continuance under supervision in a juvenile case. 705 ILCS 405/5-615. This statute is neither facially unconstitutional nor as applied to defendant.

Prosecutorial discretion is firmly entrenched in American law. If prosecutors have discretion to seek the death penalty, then they clearly have discretion to object to supervision. And, on the facts of this case, it was "quite frankly inconceivable that anyone could find" the State's exercise of discretion in this case to be arbitrary and a violation of due process.

The separation of powers clause of the Illinois Constitution provides that none of the three branches of government "shall exercise powers properly belonging to another." Ill. Const. 1970 art. II, §1. The purpose of this provision is to ensure that the whole power of more than one branch does not reside in the same hands. But, the separation of powers clause was not designed to effect a complete divorce between the branches.

The prosecution's discretion to object to supervision did not infringe on the circuit court's sentencing authority. The Supreme Court noted that it had previously decided that a statute which allowed prosecutors to decide when a juvenile would be subjected to prosecution as an adult did not violate separation of powers. The discretionary authority afforded the prosecution by §5-615 "pales by comparison."

And, the court may only continue the case under supervision before proceeding to adjudication. Thus, the State's objection must also occur before adjudication. Since defendant had not been adjudicated when the State objected and sentencing was not an issue, the State did not infringe on the court's right to impose sentence.

The equal protection clause requires the government to treat similarly situated individuals in a similar fashion unless it can demonstrate an appropriate reason to treat them differently. Equal protection was not violated by the State's right to object to juvenile supervision but not adult supervision. Defendant could not show that he was similarly situated to the adult offenders he compared himself to. Defendant entered into a fully negotiated guilty plea and could not repudiate the very sentence he agreed to on the basis that it violated equal protection. And, minors in delinquency proceedings are not comparable to adult offenders because they are generally not subject to the same deprivation of liberty.

People v. Sharpe, 216 Ill.2d 481, 839 N.E.2d 492 (2005) The 25-year to life sentence enhancement applicable to first degree murder when committed with the use of a firearm does not violate due process.

People v. Hill, 199 Ill.2d 440, 771 N.E.2d 374 (2002) The 15-year "add-on" provision for home invasion, under which a mandatory term is added to the sentence where the intruder was armed with a firearm and used force or threatened the imminent use of force against a person within a dwelling place, does not violate the separation of powers doctrine.

People v. Lombardi, 184 Ill.2d 462, 705 N.E.2d 91 (1998) The penalty of 15 to 30 years' imprisonment for armed violence does not violate due process.

People v. Dunigan, 165 Ill.2d 235, 650 N.E.2d 1026 (1995) The Habitual Criminal Act does

not violate due process or the separation of powers doctrine (by giving the prosecutor authority to request a particular sanction).

People v. Farmer, 165 Ill.2d 194, 650 N.E.2d 1006 (1995) The felony sentencing provisions for possession of contraband in a penal institution do not violate due process (because there is a rational relationship between the statute and a legitimate state goal).

People v. Hickman, 163 Ill.2d 250, 644 N.E.2d 1147 (1994) 720 ILCS 570/405.1(c), which provides that a person convicted of criminal drug conspiracy "may be fined or imprisoned or both not to exceed the maximum provided for the offense which is the object of the conspiracy," does not violate due process. Due process requires only that citizens have fair notice of sentencing provisions, and not that every crime necessarily includes a minimum sentence.

People v. Bainter, 126 Ill.2d 292, 533 N.E.2d 1066 (1989) Ch. 38, §§1005-8-1(f) and 1005-8-4(a) of the Unified Code of Corrections do not violate the separation of powers doctrine. (Section 1005-8-1(f) allowed an Illinois court to order that any time served by a defendant on a subsequently imposed sentence in another jurisdiction be credited on defendant's previously imposed Illinois sentence, and §1005-8-4(a) allowed an Illinois court to order that a previously imposed Illinois sentence run concurrent with a subsequent sentence in another jurisdiction.)

People ex rel. Scott v. Israel, 66 Ill.2d 190, 361 N.E.2d 1108 (1977) The mandatory parole provision of the Unified Code of Corrections does not violate either due process or the separation of powers clause of the Illinois Constitution.

People ex rel. Scott v. Israel, 66 Ill.2d 190, 361 N.E.2d 1108 (1977) The mandatory parole provision of the Unified Code of Corrections does not violate either due process or the separation of powers clause of the Illinois Constitution.

Illinois Appellate Court

People v. Hill, 2026 IL App (1st) 242184 Defendant was convicted of two counts of attempted first degree murder and other charges for the shooting of two teenagers. He was originally sentenced to an aggregate term of 75 years. After multiple appeals and postconviction proceedings, defendant successfully claimed that trial counsel was ineffective for misadvising him as to the maximum sentence, which led him to reject a 20-year plea offer. The appellate court vacated and after the sentencing court imposed a 37-year sentence, it vacated again, and remanded with specific instructions to impose a sentence "not exceeding thirty years," because that was the maximum defendant had been told he faced during plea negotiations.

At a status hearing before the second re-sentencing, the trial judge remarked that he was "not going to go below 30" but would figure out a sentence that aligned with the mandate. At the subsequent hearing, the court reviewed the prior sentencing transcripts, the PSI, and a new victim impact statement. Defense counsel argued for a sentence below 30 years based on defendant's rehabilitation and model behavior during his 24 years of incarceration. The court acknowledged defendant was a changed man but emphasized the "brutal" nature of the offense, which left one victim paralyzed and the other with lifelong injuries. The court imposed the 30-year maximum.

On appeal, defendant argued that the trial court violated due process and abused its discretion by predetermining the 30-year sentence before considering the evidence. The appellate court affirmed, finding that while the judge expressed an intent not to go below 30 years, the record as a whole showed the court followed proper procedures, held a full hearing, and considered both the mitigating evidence of rehabilitation and the seriousness of the crime. Unlike cases where a judge applies a personal policy or refuses to consider a statutory range, here the court exercised its discretion within the specific parameters of the appellate mandate. Because the 30-year sentence was within the appropriate range and the hearing was not merely perfunctory, there was no error.

In re A.C., 2016 IL App (1st) 153047 The combination of the Sex Offender Registration Act (730 ILCS 150/1) and the Sex Offender Community Notification Law (730 ILCS 152/101) (SORA) as applied to juveniles does not violate due process or the eighth amendment/proportionate penalties clauses of the federal and Illinois constitutions. SORA does not violate substantive due process since it does not affect fundamental rights and there is a rational relationship between SORA's restrictions and the State's legitimate interests. SORA does not violate procedural due process since SORA only applies after a criminal conviction and there is no need for further hearings. And SORA does not violate the eighth amendment/proportionate penalties clause since it does not involve punishment.

People v. Lewis, 2016 IL App (4th) 140852 Defendant was convicted under section 120(a) of the Methamphetamine Control and Community Protection Act (MCCPA) which prohibits a person with a prior conviction under the MCCPA from purchasing or possessing a methamphetamine (meth) precursor (such as pseudoephedrine) without a prescription. Defendant argued that the MCCPA violates due process, equal protection, and the proportionate penalties clause because a violation of the MCCPA is a felony, while a violation of the Methamphetamine Precursor Act (MPA) which involves similar or less culpable conduct is only a misdemeanor.

A statute may violate the proportionate penalties clause (Ill. Const. 1970, art. I, §11), where it contains a penalty greater that the penalty imposed for an offense with identical elements. Violation of the MCCPA is a Class 4 felony, while violation of the MPA is a Class A misdemeanor. But the MCCPA and the MPA do not have identical elements.

The MCCPA also does not violate due process by punishing less culpable conduct more seriously than the MPA. It is within the legislature's purview to determine the seriousness of the crime and it has properly determined that violating the MCCPA involves more serious conduct than violating the MPA. For similar reasons, the MCCPA does not violate equal protection. The existence of different punishments for different offenses does not offend equal protection.

People v. Pollard, 2016 IL App (5th) 130514 The Sex Offender Registration Act (730 ILCS 150/1) and its attendant statutory restrictions (SORA) do not violate due process or the Eighth Amendment/proportionate penalties clauses of the federal and Illinois constitutions. SORA does not violate substantive due process since it does not affect fundamental rights and there is a rational relationship between the SORA restrictions and the State's legitimate interests. SORA does not violate procedural due process since SORA only applies after a criminal conviction which provides all the procedural protections required by due process. And SORA does not violate the Eighth Amendment/Proportionate Penalties Clause since it does not involve punishment.

People v. Guyton, 2014 IL App (1st) 110450 The State charged defendant with first degree murder of one man and attempt first degree murder of another. At trial, defendant argued that he acted in self-defense, and he was found guilty of second degree murder (based on imperfect self defense) as to the first man and attempt first degree murder of the second. Defendant was sentenced to 18 years' imprisonment for second degree murder and 36 years' imprisonment (including a mandatory 20-year add-on for personal discharge of a firearm) for attempt first degree murder.

On appeal, defendant argued that his 36-year sentence for attempt first degree murder violated due process and equal protection since it "shocks the conscience" to punish an attempt to kill more severely than the completed offense of murder.

The Illinois Supreme Court has already held that because Illinois does not recognize the crime of attempt second degree murder, it does not violate the first test of the proportionate penalties clause to sentence a defendant to a longer term for attempt first degree murder than for the completed offense of second degree murder. **People v. Lopez**, 166 Ill. 2d 441 (1995). Accordingly, the sentence disparity between the two offenses in this case did not violate due process.

To raise an equal protection argument, a defendant must allege that there are others similarly situated to him, that they are treated differently, and that there is no valid basis for this disparate treatment. Here, defendant failed to show that he was similarly situated to any comparison group. He only alleged that a person who commits attempt first degree murder receives a harsher sentence than one who commits second degree murder. But defendant "failed to identify a suspect class or identify others convicted of attempt first degree murder that have been treated unequally under the law."

People v. Larue, 2014 IL App (4th) 120595 Defendant argued that his sentence of 10 years imprisonment for unlawful possession of a weapon by a felon (UPWF) violated the proportionate penalties clause because it is a lesser-included offense of aggravated unlawful use of a weapon (AUUW), but carries a greater penalty. (AUUW is a Class 2 felony with a sentencing range of three to seven years imprisonment; UPWF is a Class 3 felony with a range of two to 10 years imprisonment.)

The legislature possesses wide discretion in prescribing penalties for offenses, but its power is limited by the due process clause, which requires that a penalty must be reasonably designed to remedy the particular evil being targeted. Courts will not invalidate a statute unless the penalty "is clearly in excess of the very broad and general constitutional limitations applicable.

In **People v. Bradley**, 79 Ill. 2d 410 (1980), the Supreme Court found that the penalty for possession of a controlled substance (one to 10 years imprisonment) violated due process since the penalty for delivery of the same substance had a lesser sentence (one to three years). In reaching its decision, the Supreme Court observed that the Illinois Controlled Substances Act expressly stated that the legislature intended the heaviest penalties to apply to drug traffickers. Therefore punishing possession offenses more harshly than delivery offenses contravened the express intent of the legislature and violated due process.

Here, defendant failed to show that the sentence for UPWF is contrary to the legislature's intent, and has thus failed to show that the sentence is not reasonably designed to remedy the particular evil being targeted.

Defendant also argued that his 10-year sentence for UPWF violated the equal protection clauses of the United States and Illinois Constitutions (U.S. Const., amend XIV,

§1; Ill. Const. 1970, art. I, §2), because the different sentencing ranges for AUUW and UPWF treated those who committed similar offenses in a different manner.

Defendant's argument failed because he could not show that he was similarly situated to someone who was convicted of AUUW. By the very definition of offenses, individuals convicted of different offenses are dissimilarly situated from each other.

People v. McGee, 341 Ill.App.3d 1029, 794 N.E.2d 855 (1st Dist. 2003) The court rejected defendant's argument that the aggravated UUW statute violated due violate process for lacking a culpable mental state and for punishing potentially innocent conduct. See also, **People v. Grant**, 339 Ill. App. 3d 792, 791 N.E.2d 100 (1st Dist. 2003).

People v. Marsh, 329 Ill.App.3d 639, 768 N.E.2d 108 (1st Dist. 2002) The Class 4 felony penalty provision for failure to register as a sex offender does not violate due process (or double jeopardy).

People v. Braman, 327 Ill.App.3d 1091, 765 N.E.2d 500 (3rd Dist. 2002) Extended-term sentence based on defendant's prior DUI convictions did not violate defendant's due process rights.

People v. Beltran, 327 Ill.App.3d 685, 765 N.E.2d 1071 (2d Dist. 2002) Presumptive transfer to adult court of 15-year-old accused of Class X offenses or certain firearm, gang, or drug-related offenses does not violate due process.

People v. Marsh, 329 Ill.App.3d 639, 768 N.E.2d 108 (1st Dist. 2002) The Class 4 felony penalty for failure to register as a sex offender does not violate due process, double jeopardy, or the proportionate penalties clause.

People v. Cooks, 271 Ill.App.3d 25, 648 N.E.2d 190 (1st Dist. 1995) The statute authorizing mandatory natural life sentences (730 ILCS 5/5-8-1(a)(1)(c)(ii)) does not violate due process or the Eighth Amendment.

§44-1(b)(2)
Eighth Amendment and Proportionate Penalties

United States Supreme Court
Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) The Supreme Court concluded that the "cruel and unusual punishment" clause of the 8th Amendment prohibits a sentence of life imprisonment without parole for a juvenile offender who is convicted of an offense other than homicide.

Ewing v. California, 538 U.S. 11, 123 S.Ct. 1179, 155 L.Ed.2d 108 (2003) The Eighth Amendment includes a "narrow proportionality principle" applicable to non-capital sentences. Whether a sentence is so disproportionate as to violate the Eighth Amendment depends on: (1) the gravity of the offense and harshness of the penalty, (2) the sentences imposed on other criminals in the same jurisdiction, and (3) the sentences imposed for commission of the same crime in other jurisdictions. California's "three-strike" law, under which a felon who has been previously convicted of one or more felonies may receive an enhanced sentence of 25 years to life, did not violate the Eighth Amendment, although the

crime for which defendant was sentenced involved the theft of $1,200 worth of golf clubs and could have been charged as a misdemeanor. See also, **Lockyer v. Andrade**, 538 U.S. 63, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003).

Harmelin v. Michigan, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) A mandatory life sentence for possessing more than 650 grams of cocaine is not unconstitutionally disparate to the offense.

Illinois Supreme Court

People v. White, 2025 IL 129767 Defendant entered an open guilty plea to one count of first degree murder and received a 40-year sentence. More than 20 years later, he filed a *pro se* 2-1401 petition alleging his sentence violated the eighth amendment, and the proportionate penalties clause of the Illinois Constitution. The State did not file a response and the circuit court denied the petition. Defendant raised the proportionate penalties claim on appeal, arguing defendant was a 20-year-old emerging adult at the time of the crime, and that the sentencing court did not consider his youth at sentencing. The appellate court affirmed, holding petitioner's guilty plea waived his sentencing claim.

The supreme court accepted the State's concession that an open guilty plea did not waive the proportionate penalties claim. Prior cases, such as **People v. Jones**, 2021 IL 126432, that have found a guilty plea waived a constitutional challenge to a sentence, did so because the defendant entered in to a fully negotiated plea, which is essentially a contract. While a defendant cannot unilaterally alter a fully negotiated plea without violating contract principles, these principles don't apply to open pleas. This distinction is further evidenced by Rule 604(d), which allows a defendant to file a motion to reconsider the sentence imposed following an open plea. Here, the State did dismiss charges pursuant to the defendant's agreement to enter in to the plea, but he received no assurances as to the sentence. Thus, he did not waive his right to challenge the sentence.

Defendant asked the court to remand to the appellate court so that it could reach the merits. The State asked the court to affirm based on the fact that a 2-1401 petition is not a proper vehicle for a proportionate penalties claim, the claim is meritless, and defendant did not show due diligence.

The supreme court held that the State forfeited its procedural challenge because it failed to respond to the petition in the circuit court. As for the merits, rather than remand to the appellate court, the supreme court chose to decide the issue in the interest of judicial economy.

The supreme court first held that, although defendant did not receive a *de facto* life sentence, he could still raise an as-applied proportionate penalties claim. However, his could not show a 40-year sentence was disproportionate in this case. Defendant argued that a near *de facto* life sentence was disproportionate given his youth and rehabilitative potential, which, he contended, the sentencing court did not adequately consider. The supreme court disagreed. Defendant was not a juvenile, but 20, when he fatally shot an unarmed victim at close range because he would not comply with defendant's demand to tell him the location of another man defendant was chasing. The sentencing court properly reviewed the PSI and heard testimony from defendant's grandmother as well as defendant's statement in allocution. Given the serious offense, the court held a 40-year sentence was not disproportionate.

People v. Rothe, 2024 IL 129906 Defendant was convicted of armed robbery with a dangerous weapon other than a firearm, a Class X offense, based on demanding money from another man and striking him in the face with a pipe wrench during the offense. Because this was defendant's third Class X conviction, he was sentenced to life imprisonment under the habitual offender statute

In a petition for relief from judgment, defendant alleged that armed robbery with a weapon other than a firearm and armed violence with a Category III weapon contain identical elements but not identical penalties, thus violating the proportionate penalties clause. Armed violence with a Category III weapon is a Class 2 felony. The court disagreed.

The proportionate penalties clause is violated where the penalty for one offense is greater than another with identical elements. The identical elements test is an objective one, comparing only the statutory elements; it does not take into account how the offenses are applied to an individual defendant or set of circumstances.

Applying that test here, the two offenses are not identical. Armed robbery with a dangerous weapon other than a firearm is committed when a person commits robbery and carries or is otherwise armed with a dangerous weapon other than a firearm. The statute does not define "dangerous weapon," so courts have looked to the common law to ascertain what constitutes a dangerous weapon for purposes of armed robbery. Under the common law, a dangerous weapon is any object sufficiently susceptible to use in a manner likely to cause serious injury. This definition encompasses both per se weapons as well as objects that may become weapons when used in a dangerous manner.

Armed violence with a Category III weapon is committed when a person commits any felony and carries or is armed with a Category III weapon. A Category III weapon is defined in the statute as "a bludgeon, black-jack, slungshot, sand-bag, sand-club, metal knuckles, billy, or other dangerous weapon of like character." This definition is limited only to the weapons specifically listed in the statute.

Defendant argued that the pipe wrench he used was "of like character" to a bludgeon and thus fit within the definition of a Category III weapon for purposes of armed violence. But, the armed violence statute does not include *any item* that can be used as a bludgeon. It is specifically limited to *per se* weapons that are "of like character" to the weapons listed. Despite its ability to be used in a dangerous manner, as it was here, a pipe wrench is not a *per se* weapon. In reaching this conclusion, the court overruled several appellate court cases that had held that an everyday object that could be used as a bludgeon constituted a Category III weapon.

Because the two offenses do not contain the same definition of "dangerous weapon," they are not identical. While defendant argued that there was an inherent unfairness in that, had he committed the offense with an actual bludgeon instead of a pipe wrench, he would have been convicted of armed violence and sentenced to between three and seven years instead of life in prison, "the responsibility for the justice or wisdom of legislation rests upon the legislature."

People v. Johanson, 2024 IL 129425 Defendant was convicted of predatory criminal sexual assault of a child based on an allegation of contact between defendant's penis and the minor's hand. At issue before the Supreme Court was whether section (a)(1) of the predatory criminal sexual assault statute and section (c)(1) of the aggravated criminal sexual abuse statute have identical elements but are subject to different penalties such that a proportionate penalties clause violation must be found.

Under 720 ILCS 5/11-1.40(a)(1), a person commits predatory criminal sexual assault of a child if that person is at least 17 years old and "commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration" and the victim is less than 13 years old. Predatory criminal sexual assault of a child under section (a)(1) is a Class X felony.

Under 720 ILCS 5/11-1.60(c)(1)(i), a person commits aggravated criminal sexual abuse if that person is at least 17 years old and commits an act of sexual conduct with a victim who less than 13 years old. "Sexual conduct" is defined as:

> any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.

720 ILCS 5/11-0.1. Aggravated criminal sexual abuse under section (c)(1) is a Class 2 felony.

Pursuant to the proportionate penalties clause of the Illinois constitution (Ill. Const., art. I, §11), where different offenses contain identical elements but different penalties, the penalties are unconstitutionally disproportionate. Determining whether different offenses have identical elements is an objective test and is not concerned with the offenses as applied to an individual defendant.

Employing that objective test here, the Court found a clear difference between the statutory elements. Specifically, predatory criminal sexual assault of a child requires contact with the sex organ or anus of either the defendant or victim, while aggravated criminal sexual abuse may be committed by "any touching or fondling," including over the clothing and including any part of the body of a victim under 13, for purposes of sexual gratification or arousal. Because the legislature could have reasonably believed that sex organ/anus contact required a more severe penalty than any touching or fondling, the more severe penalty for predatory criminal sexual assault was not constitutionally disproportionate.

The Court rejected defendant's argument that there was a proportionate penalties violation here because his alleged conduct satisfied the elements of both offenses. Citing **People v. Williams**, 2015 IL 117470, the Court reaffirmed that an as-applied challenge cannot be brought under the identical elements test because that test simply compares the statutory elements of two offenses and does not consider the specific acts at issue. That is, while defendant's conduct may have satisfied both statutes, the statutory elements of "contact" for predatory criminal sexual assault and "sexual conduct" for aggravated criminal sexual abuse, are not themselves identical.

People v. Coty, 2020 IL 123972 A mandatory life sentence imposed on an intellectually disabled adult is constitutionally permissible under the Eighth Amendment and the proportionate penalties clause. The life sentence at issue here was mandated because defendant was convicted of predatory criminal sexual assault of a child after previously having been convicted of aggravated criminal sexual assault. Relying on **People v. Huddleston**, 212 Ill. 2d 107 (2004), which did not involve an individual with intellectual disability, the Court held that the legislature has the power to determine punishment and could reasonably conclude that a life sentence is appropriate for individuals who repeatedly commit sex offenses against children.

While the legislature has recognized intellectual disability as a statutory mitigating factor, it can also indicate a probability of future dangerousness where the evidence supports

such consideration. Here, the Court found such evidence existed because this was defendant's second conviction of a sex offense against a child. Thus, the factors identified in **Atkins v. Virginia**, 536 U.S. 304 (2002), as suggesting reduced culpability for an intellectually disabled individual – specifically, a diminished capacity to (1) understand and process information, (2) communicate, (3) learn from experiences, (4) engage in logical reasoning, and (5) control impulses – were the same things which suggested defendant's continuing danger to re-offend here.

The Court also rejected the argument that diminished mental capacity was indicative of a greater rehabilitative potential similar to youth and its attendant characteristics as identified in **Miller v. Alabama**, 567 U.S. 460 (2012). Unlike youth, intellectual disability is a relatively static condition, and is not the sort of transient characteristic suggesting potential for rehabilitation that lies at the heart of the **Miller** cases. The Court declined to extend the protections of **Miller**, to an intellectually disabled adult.

People v. Holman, 2017 IL 120655 In Illinois any life sentence imposed on a juvenile, whether mandatory or discretionary, violates the Eighth Amendment unless the trial court considered youth and its attendant characteristics. Thus, an Illinois court may sentence a juvenile defendant to life without parole only if the minor's conduct shows irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation.

In making this determination, the trial court must consider: (1) defendant's youth and attendant circumstances including chronological age, any evidence of particular immaturity, impetuosity, and failure to appreciate risks and consequences, (2) defendant's family and home environment, (3) the degree of defendant's participation in the offense and any evidence of familial or peer pressures that may have affected him, (4) defendant's incompetence, including his inability to deal with police officers or prosecutors or his own attorneys, and (5) defendant's prospects for rehabilitation.

Where before **Miller** was decided defendant received a discretionary life sentence without the possibility of parole, whether a **Miller** violation occurred depends on whether the trial court considered evidence of defendant's youth at the original sentencing hearing. Where the trial court stated that it had considered the evidence at trial and the presentence report, it was aware of defendant's age, and it heard some evidence concerning defendant's mental problems and family background, the trial court sufficiently considered defendant's youth-related characteristics to comply with **Miller**.

People v. Blair, 2013 IL 114122 In **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), the court held that the sentence for armed robbery while armed with a firearm, which included a 15-year mandatory enhancement, violated the proportionate penalties clause because it was more severe than the penalty for the identical offense of armed violence based on robbery with a category I or II weapon. The legislature's subsequent enactment of P.A. 95-688 (eff. 10/23/07) to amend the armed violence statute to eliminate robbery as a predicate offense remedied the disproportionality and revived the sentencing enhancement for armed robbery.

People v. Clemons, 2012 IL 107821 **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), held that the sentence for armed robbery while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution because the sentence for that offense is more severe than the penalty for the identical offense of armed violence predicated

on robbery with a category I or II weapon. The Illinois Supreme Court declined to overrule **Hauschild** or abandon the identical-elements test.

The identical-elements test is supported by the constitutional text of the Illinois Constitution of 1970, which provides that "[a]ll penalties shall be determined [] according to the seriousness of the offense." The test provides a method for determining whether the legislature satisfied that constitutional requirement. If the legislature determines that the exact same elements merit two different penalties, then one of these penalties has not been set in accordance with the seriousness of the offense because the legislature has made two different judgments about the seriousness of one offense.

The Illinois proportionate-penalties clause is not synonymous with the cruel-and-unusual-punishments clause of the eighth amendment as it contains a requirement that all penalties be set with the objective of restoring the offender to useful citizenship. The United States Supreme Court has never addressed the question whether the eighth amendment permits different penalties for identical offenses.

When an amended sentencing statute has been found to violate the proportionate penalties clause, the proper remedy is to remand for resentencing in accordance with the statute as it existed prior to the amendment.

While armed violence based on robbery with a category I or II weapon has the identical elements as armed robbery with a firearm, the court rejected the State's request that it remand for resentencing under the armed violence statute. Defendant was not charged and convicted under the armed violence statute. The State cited no authority for the proposition that the charging instrument may be modified on appeal. The State elected to prosecute defendant under the armed robbery statute, and having been convicted of that offense, defendant must be sentenced pursuant to that statute.

People v. Harris, 2018 IL 121932 Defendant challenged, under the proportionate penalties clause of the Illinois constitution, his 76-year sentence, which was comprised of consecutive terms of 45 years for first degree murder and 31 years for attempt murder. Defendant was 18 years old at the time of the offenses. Relying on **People v. Thompson**, 2015 IL 119151, the Court concluded that because defendant had not raised this unconstitutional-as-applied claim in the trial court, the record was inadequate to consider it. The record contained basic information about defendant, most of which came from the PSI, but nothing about "how the evolving science on juvenile maturity and brain development that helped form the basis for the **Miller** decision applies to defendant's specific facts and circumstances." The Court also declined to remand for an evidentiary hearing on this issue, stating that the claim would be more appropriately raised in a collateral proceeding.

The Court did reach defendant's facial constitutional challenge to his sentence and concluded that the 76-year aggregate term was not facially unconstitutional under the Eighth Amendment because an 18-year-old defendant is an "adult" not subject to **Miller**'s protections.

People ex rel. Hartrich v. 2010 Harley-Davidson, 2018 IL 121636 Illinois' civil forfeiture statute [720 ILCS 5/36-1] allows the State to seize any vehicle used in the commission of certain offenses. Here, the claimant's motorcycle, which she purchased for $35,000 in 2010, was forfeited because her husband drove it while committing aggravated DUI. The claimant raised an as-applied challenge to the forfeiture statute based on the excessive fines clause of the Eighth Amendment to the U.S. Constitution.

The Supreme Court applied the three-part test it adopted in **People ex rel. Waller**

v. 1989 Ford F350 Truck, 162 Ill. 2d 78 (1994) to evaluate whether the forfeiture state was unconstitutional as applied to these facts under the excessive fines clause. That test requires courts to weigh (1) the gravity of the offense compared to the harshness of the penalty, (2) how integral the property was in the commission of the offense, and (3) whether the criminal conduct involving the property was extensive.

Here, after asserting an "innocent owner" defense below, the claimant conceded in the Supreme Court that she had allowed her husband to drive the motorcycle knowing he was intoxicated. The Court concluded that the claimant bore "more than marginal culpability" for her husband's DUI and the inherent danger to the public from that offense. The Court could not weigh that factor against the harshness of the forfeiture, however, because the claimant had not presented any evidence as to the value of the motorcycle at the time of the offense or at the time of the forfeiture. The only evidence of value was that the claimant had paid $35,000 for the motorcycle in 2010, four years before its seizure. In light of the Court's duty to construe the statute as constitutional whenever possible, the claimant's as-applied challenge was rejected.

In dissent, Chief Justice Karmeier criticized the majority as wrong on the facts, wrong in its interpretation of the relevant statutes, and wrong in its construction and application of Eighth Amendment law. Specifically, he found that the evidence failed to show the claimant's knowledge of the significance of her husband's prior DUI and license revocation. He also concluded that the evidence did establish that the claimant had acquiesced in her husband's operation of the motorcycle, without any real choice in the matter, but had not consented to it. Chief Justice Karmeier construed the forfeiture statute as applying only when it is the vehicle's owner who uses the vehicle to commit an offense. He also concluded that if it applied here, the forfeiture statute was unconstitutional as applied under the excessive fines clause of the Eighth Amendment.

In a separate dissent, Justice Burke concluded that the claimant had not consented to her husband's driving the motorcycle. She also disagreed with the majority's rejection of the Eighth Amendment claim on the merits and would have remanded to the trial court to hold a hearing on the as-applied challenge in order to develop a factual record for review.

People v. Reyes, 2016 IL 119271 Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant's sentence was a *de facto* mandatory life sentence that was unconstitutional under **Miller v. Alabama**, 567 U.S. 470, 132 S.Ct. 2455 (2012). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. **Miller** held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

Here defendant was 16 when he committed the offense and since he must serve 89 years, he will remain in prison until he is 105. Defendant's sentence is therefore a mandatory *de facto* life sentence.

The court vacated defendant's sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant's minimum aggregate sentence would be 32 years, a term that is not a *de facto* life sentence.

People v. Ligon, 2016 IL 118023 Defendant was convicted of aggravated vehicular hijacking with a dangerous weapon other than a firearm (AVH/DW). Defendant was armed with a BB gun and the State charged this as "a dangerous weapon, to wit: a bludgeon." Since this was his third Class X felony conviction, the trial court adjudged him a habitual criminal and sentenced him to natural life imprisonment.

Defendant eventually filed a 2-1401 petition arguing that his sentence violated the proportionate penalties clause because AVH/DW had the identical elements as armed violence with a category III weapon but was punished as a Class X felony with a minimum of seven years imprisonment, while armed violence with a category III weapon was only punished as a Class 1 felony.

An identical elements test may be conducted where a defendant is ultimately sentenced as a habitual criminal. The Habitual Criminal Act (Act) mandates the imposition of a natural life sentence on defendants convicted of three Class X felonies within a 20-year period. 720 ILCS 5/33B-1(a). The act does not create an independent offense, but simply prescribes the circumstances where a defendant may be more severely punished because of his prior convictions.

The court thus overruled **People v. Cummings**, 375 Ill. App. 3d 513 (1st Dist., 2007), and held that a defendant's sentence as an habitual criminal has no effect on a court's determination of whether a qualifying offense violates the identical elements test.

But the court found that the offense of AVH/DW as charged in this case did not have the identical elements as armed violence with a category III weapon. Defendant's conviction and sentence were affirmed.

People v. Rizzo, 2016 IL 118599 A proportionate penalties challenge under the Illinois constitution can be based on either of two theories. First, the defendant can argue that the penalty for an offense is harsher than the penalty for a different offense which contains identical elements. Second, the defendant can argue that the penalty for a particular offense is so disproportionate that it shocks the moral sense of the community or is cruel and degrading.

Here, the trial court concluded that the prohibition of supervision for aggravated speeding (i.e., more than 40 mph in excess of the speed limit (625 ILCS 5/11-601.5(b)) was cruel and degrading. In making the finding, the trial court compared aggravating speeding to other misdemeanors for which supervision is also precluded, and concluded that aggravated speeding is a less serious offense because it does not involve bodily injury or physical harm.

The Supreme Court rejected the trial court's finding, concluding that the lower court had in effect revived the discredited cross-comparison test for evaluating proportionate penalties claims. The court concluded that even assuming that supervision, which is a statutory deferral of prosecution, constitutes a "penalty," the prohibition of supervision is not in any sense so shocking or degrading as to violate the proportionate penalties clause.

People v. Schweihs, 2015 IL 117789 The court held that under its recent decision in **People v. Williams**, 2015 IL 117470, the offense of aggravated unlawful use of a weapon (AUUW) under 720 ILCS 5/24-1.6(a)(1),(a)(3)(C) did not have the identical elements as the offense of violation of the Firearm Owners Identification Card Act (FOID Card Act) under 430 ILCS 65/2. Thus the penalty for AUUW, a Class 4 felony, was not disproportionate to the penalty for violating the FOID Card Act, a Class A misdemeanor.

The court reversed the judgment of the circuit court declaring this section of the AUUW statute unconstitutional.

People v. Taylor, 2015 IL 117267 Under 720 ILCS 5/18-2(a)(2), a 15-year term is added to the sentence for armed robbery where the perpetrator was armed with a firearm. In **People v. Hauschild**, 226 Ill.2d 63, 871 N.E.2d 1 (2007), the court concluded that the sentencing add-on violated the proportionate penalties clause of the Illinois constitution. The General Assembly then cured the proportionate penalties violation by enacting P.A. 95-688 (eff. 10/23/07).

Where defendant's offense and sentencing occurred after **Hauschild** but before the legislature enacted P.A. 95-688, the 15-year enhancement could not be imposed. Because the sentence enhancement was unconstitutional, defendant's sentence was void. The cause was remanded for re-sentencing without the sentencing enhancement.

People v. Williams, 2015 IL 117470 Under the identical elements test of the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), when different offenses contain identical elements but different sentences, the penalties are unconstitutionally disproportionate and the offense with the greater penalty cannot stand.

The court held that the offense of aggravated unlawful use of a weapon (AUUW) under 720 ILCS 5/24-1.6(a)(1),(a)(3)(C) and (a)(2), (a)(3)(C) did not have the identical elements as the offense of violation of the Firearm Owners Identification Card Act (FOID Card Act) under 430 ILCS 65/2(a)(1). Thus the penalty for AUUW, a Class 4 felony, was not disproportionate to the penalty for violating the FOID Card Act, a Class A misdemeanor.

A defendant violates section 2(a)(1) of the FOID Card Act by possessing a firearm without having a FOID card in his possession. A defendant violates section 24-1.6(a)(1), (a)(3)(C) of the AUUW statute by carrying a firearm outside the home without a valid FOID card. A defendant violates section 24-1.6(a)(2), (a)(3)(C) of the AUUW statute by carrying or possessing a firearm on any public way without a valid FOID card. The State must prove the additional location element to establish the offense of AUUW.

The court reversed the judgment of the circuit court declaring these sections of the AUUW statute unconstitutional and remanded the cause with directions to reinstate the charges against defendant

People v. Klepper, 234 Ill.2d 337, 917 N.E.2d 381 (2009) 720 ILCS 5/26-1(a)(4), which provides a Class 4 felony for the offense of disorderly conduct for knowingly making a false complaint to a police officer or public employee, and 720 ILCS 5/26-1(a)(12), which provides a Class A misdemeanor penalty for filing a false 911 complaint, are not composed of identical elements. Therefore, the trial court erred by finding that imposition of a Class IV felony sentence violated the proportionate penalties clause.

People v. Hauschild, 226 Ill.2d 63, 871 N.E.2d 1 (2007) **Sharpe** applies retroactively to cases which were on direct appeal at the time **Sharpe** was decided; although the trial court's

sentence complied with relevant caselaw at the time of sentencing, **Sharpe** revived the mandatory 15-year-enhancement for attempt murder while armed with a firearm.

Under the "identical elements" test, the 15-year-enhancement for armed robbery while armed with a firearm is unconstitutionally disproportionate to the sentence for the equivalent offense of armed violence predicated on robbery. See also, **People v. Harvey**, 366 Ill.App.3d 119, 851 N.E.2d 182 (1st Dist. 2006) (the 15-year-enhancement for armed robbery while possessing a firearm and the 25-year-enhancement for armed robbery while discharging a firearm and causing great bodily harm violate the identical elements test of proportionate penalties analysis because both offenses contain the same elements as armed violence predicated on robbery, but have greater sentences). (Note: 720 ILCS 5/33A-2(a), as enacted by Public Act 95-688, §4, eff. 10-23-07, removes robbery as a possible predicate offense for armed violence.)

When an amended sentencing statute results in a violation of the proportionate penalties clause, the proper remedy is to remand for resentencing in accordance with the law as it existed prior to the amendment.

People v. Sharpe, 216 Ill.2d 481, 839 N.E.2d 492 (2005) Overruling numerous cases, the Court abolished the cross-comparison test for proportionate penalties analysis (thus, the proportionate penalties clause of the state constitution cannot be used to judge a penalty in relation to the penalty for an offense with different elements). See also, **People v. Klepper**, 234 Ill.2d 337, 917 N.E.2d 381 (2009)

But, proportionate penalties challenges may still be raised where the penalty for a particular offense is "cruel" or "degrading," or where a penalty is harsher than the sentence for a different offense which has identical elements. Also, a defendant may challenge a penalty under the due process clause by showing that the sentence is not reasonably designed to remedy the particular evil that the legislature was targeting.

The "15-20-25-year to life" sentencing enhancements are not so cruel and degrading as to violate the proportionate penalties clause when applied to first degree murder. Also as applied to first degree murder, the 25-year to life enhancement does not violate the "identical elements" test of proportionate penalties analysis. See also, **People v. Sawczenko-Dub**, 345 Ill.App.3d 522, 803 N.E.2d 62 (1st Dist. 2003) (the 25-year to life component of the "15-20-25 to life" provision as applied to first degree does not violate the proportionate penalties clause (not cruel or degrading), the separate of powers doctrine, double jeopardy, or the rule against double enhancement).

People v. Huddleston, 212 Ill.2d 107, 816 N.E.2d 322 (2004) Mandatory life sentence upon conviction of predatory criminal sexual assault of a child against two or more persons is not cruel, degrading, and shocking to the moral sense of the community and, thus, does not violate the proportionate penalties clause.

People v. Graves, 207 Ill.2d 478, 800 N.E.2d 790 (2003) Unauthorized theft of more than $10,000 from a person who is over the age of 60, which carries an extended-term sentence of 7 to 14 years in prison, is not identical to theft by deception of $20,000 from a victim over the age of 60, which carries a prison term of 3 to 7 years, because one offense requires proof that control of property was unauthorized, while the other requires proof that control was obtained by deception. Thus, no proportionate penalties violation occurred.

People v. Hill, 199 Ill.2d 440, 771 N.E.2d 374 (2002) The 15-year "add-on" provision for

home invasion, under which a mandatory term is added to the sentence where the intruder was armed with a firearm and used force or threatened the imminent use of force against a person within a dwelling place, does not violate the proportionate penalties clause (because the penalty is not cruel, degrading, and shocking to the moral conscience).

People v. Miller, 202 Ill.2d 328, 781 N.E.2d 300 (2002) The proportionate penalties clause was violated by the operation of three statutes, which mandated a life sentence for a 15-year-old who was convicted of first degree murder as an accomplice, but who had only a moment to contemplate whether to participate in the offense and who acted only as a lookout. See also, **People v. McCoy**, 337 Ill.App.3d 518, 786 N.E.2d 1052 (2d Dist. 2003) (distinguishing **Miller** and holding that the mandatory natural life term for multiple murder does not violate the proportionate penalties clause of the Illinois Constitution, even where defendant was convicted only on the basis of accountability).

People v. Fuller, 187 Ill.2d 1, 714 N.E.2d 501 (1999) The Class 2 felony for falsely reporting a vehicle theft is not so cruel or degrading as to violate the proportionate penalties clause.

People v. Espinoza, 184 Ill.2d 252, 702 N.E.2d 1275 (1998) In determining whether the proportionate penalties clause is violated because offenses consisting of identical elements are punished differently, the focus is on the statutorily-defined elements of the offenses, not on defendant's actual conduct as alleged in the charging instrument. Here, the proportionate sentencing clause was not implicated because the factual allegations of the armed violence and aggravated battery charges were not identical.

People v. Koppa, 184 Ill.2d 159, 703 N.E.2d 91 (1998) Armed violence charges – one predicated on aggravated criminal sexual abuse (based on bodily harm) and the other predicated on aggravated kidnaping (based on concealment of identity) did not have elements identical to the aggravated criminal sexual abuse charges or the aggravated kidnaping charges; therefore, the different penalties for the offenses did not violate the proportionate penalties clause under the identical elements test.

People v. Lewis, 175 Ill.2d 412, 677 N.E.2d 830 (1996) Because armed violence with a Category I weapon involves the same elements as armed robbery, but carries a 15- to 30-year sentence while armed robbery carries a sentence of 6 to 30 years, the legislature has created "two substantially identical offenses which, illogically, are punished with disparate penalties." **Note:** Armed violence statute now specifically excludes "any offense that makes the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range."

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) The stalking and aggravated stalking statutes do not violate the proportionate penalties clause of the state constitution. Assault, disorderly conduct, and stalking do not contain identical elements and do not protect the same interests. Also, there was a rational basis for the legislature to conclude that stalking is a more serious offense than disorderly conduct and assault, and therefore requires a more serious sentence. See also, **People v. McGee**, 341 Ill.App.3d 1029, 794 N.E.2d 855 (1st Dist. 2003) (penalty for aggravated unlawful use of a weapon (UUW) is not unconstitutionally disproportionate under the identical elements test of the proportionate

penalties clause, when compared with misdemeanor UUW, because aggravated UUW and misdemeanor UUW are not the same offenses).

People v. Farmer, 165 Ill.2d 194, 650 N.E.2d 1006 (1995) The felony sentencing provisions for possession of contraband in a penal institution do not violate the proportionate penalties clause (because felony sentencing for the offense could not be said to be so cruel, degrading, or disproportionate to the offense as to shock the moral sense of the community).

People v. Lopez, 166 Ill.2d 441, 655 N.E.2d 864 (1995) The offense of attempt second degree murder does not exist under Illinois law. See also, **People v. Reagan**, 99 Ill.2d 238, 457 N.E.2d 1260 (1983) (there is no offense of attempt voluntary manslaughter; "it is impossible to intend an unreasonable belief"). Although a defendant convicted of attempt first degree murder could receive a greater sentence than if the victim had died (and defendant was convicted of second degree murder), any disparity in the authorized sentencing range for murder is not so "cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community." Therefore, the proportionality requirement is not violated.

People v. Lee, 167 Ill.2d 140, 656 N.E.2d 1065 (1995) The legislature "acted well within its broad discretion when it determined that the offense of aggravated battery with a firearm is more serious than" battery not involving use of a firearm.

People v. Dunigan, 165 Ill.2d 235, 650 N.E.2d 1026 (1995) The Habitual Criminal Act does not violate the proportionate penalties clause (the proportionate penalties clause does not prevent the legislature from enacting a mandatory minimum sentence where, in view of the seriousness of the offense, no lesser sentence would be appropriate).

People v. Hickman, 163 Ill.2d 250, 644 N.E.2d 1147 (1994) The sentencing provision of the criminal drug conspiracy statute violates neither the due process clause nor the proportionate penalties clause, though defendant claimed that one convicted of criminal drug conspiracy could receive a sentence greater than if convicted of a more serious offense of calculated criminal drug conspiracy, depending on the amount of drugs that is the subject of the conspiracy. Both offenses of criminal drug conspiracy and calculated criminal drug conspiracy are serious, the plain language of the Controlled Substances Act expresses different reasons for punishing each offense severely, and the penalty that the sentencing provision of criminal drug conspiracy imposes is not cruel or degrading.

People v. Christy, 139 Ill.2d 172, 564 N.E.2d 770 (1990) Penalties for aggravating kidnaping and armed violence were unconstitutionally disproportionate under the identical elements test. See also, **People v. Baker**, 341 Ill.App.3d 1083, 794 N.E.2d 353 (4th Dist. 2003) (the penalty for aggravated kidnaping (while armed with a firearm) is greater than that for armed violence predicated on kidnaping while carrying a Category I weapon, an identical offense, and thus, violates the proportionate penalties clause).

People v. Wade, 131 Ill.2d 370, 546 N.E.2d 553 (1989) The availability of different punishments for separate offenses based on the same acts does not result in an unconstitutionally disproportionate sentencing scheme so as to violate due process and the proportionate penalties clause.

Illinois Appellate Court

People v. Smallwood, 2024 IL App (5th) 210407 In a petition for relief from judgment, defendant argued that, as applied to him, his mandatory life sentence pursuant to 730 ILCS 5/5-4.5-95(a), violated the proportionate penalties clause of the Illinois Constitution and the eighth amendment of the United States Constitution. Defendant, who committed attempt murder at age 54, argued that he was mentally ill and intellectually disabled now, and even more so when his two prior Class X felonies occurred when he was 19 years old. The appellate court affirmed the dismissal of his petition.

The appellate court first held that the circuit court erred in finding the claim was not cognizable in a petition for relief from judgment under 735 ILCS 5/2-1401. The appellate court held that the petition could be used to advance a claim of voidness due to the unconstitutionality of a statute.

The court further held that the holding of **People v. Stewart**, 2022 IL 126116, invalidating a Class X sentence under 730 ILCS 5/5-4.5-95(b), was inapplicable, because it addressed the mandatory Class X sentencing scheme, which has different language than section 5-4.5-95(a), at issue here. And while **People v. Durant**, 2024 IL App (1st) 211190-B, held that amendments to section 5-4.5-95(a), making only those convictions committed at age 21 or greater eligible, required the court to follow **Stewart**, this holding did not withstand scrutiny. Defendant was properly convicted under the pre-amended version requiring he be at least 18 at the time of the third offense.

Defendant's petition did not plead a meritorious proportionate penalties claim. While defendant cited **Miller** in support of his argument that the mandatory nature of the habitual criminal statute rendered it unconstitutional as applied to him, **Miller** applies only to juveniles. And although the Illinois Supreme Court has suggested that **Miller** may form the basis for an "emerging adult" claim, defendant's petition focused on his mental health and intellectual disabilities, not his age. This type of claim is governed by **People v. Coty,** 2020 IL 123972. Under **Coty**, a defendant must explain how his specific circumstances excuse culpability and, more importantly, how the circumstances are transient and could be remedied over time. Here, defendant's petition alleged he suffered from schizoaffective disorder, but offered no specific allegations to support the conclusion this illness made him less culpable. Nor did his petition explain or establish that his schizoaffective disorder was treatable.

People v. Melvin, 2023 IL App (4th) 220385 Defendant argued that one of his convictions and sentences for Class X predatory criminal sexual assault of a child violated the proportionate penalties clause because, as charged, it had the same elements as aggravated criminal sexual abuse, a Class 2 felony. In raising this argument, defendant focused on the specific allegations that served as the basis for the predatory criminal sexual assault conviction in question.

An identical elements challenge under the proportionate penalties clause can only be brought as a facial challenge, not as an as-applied challenge. The identical elements test is wholly objective, meant to compare the offenses as defined by the legislature. It does not consider the offenses as charged against an individual defendant. Thus, the court declined to address defendant's fact-specific challenge as it was legally unavailable.

People v. Hill, 2022 IL App (1st) 171739-B After challenging his natural life sentence under **Miller**, defendant, who was 15 years old at the time of his crimes, was sentenced to terms of

imprisonment totaling 60 years, eligible for day-for-day credit. Initially, the appellate court found that his 60-year sentence exceeded the *de facto* life threshold established in **Buffer**, despite the availability of good-time credit. The court was directed to reconsider its decision, however, after the Illinois Supreme Court issued its opinion in **People v. Dorsey**, 2021 IL 123010, which held that courts must consider the possibility of early release in determining whether a sentence is a *de facto* life term. The appellate court then concluded that defendant's 60-year term, subject to good-time credit, was not a *de facto* life sentence which violated **Miller**.

But, the appellate court went on to apply traditional sentencing review and held that the trial court abused its discretion at sentencing. Specifically, the trial court minimized the "veritable mountain" of evidence as to defendant's youth and its attendant characteristics. The appellate court noted that at resentencing, the court heard expert testimony explaining defendant's particular diminished culpability and rehabilitative potential. The expert concluded that defendant's juvenile behavior had virtually no predictive value on his likelihood to re-offend and instead noted that defendant's present-day behavior, which was "exemplary," was far more indicative of his current character.

The appellate court also concluded that deterrence was an inapt consideration where expert testimony demonstrated that defendant's criminal behavior, at the age of 15, was based primarily on the impetuousness of youth, as opposed to considered adult decision-making. Accordingly, a lengthy prison sentence was unlikely to deter other juveniles with the same degree of impetuosity and equally unlikely to deter adults capable of making reasoned decisions about their behavior.

While defendant's offense was serious – he personally shot and killed two individuals – courts must consider both the seriousness of the offense and the objective of restoring the offender the useful citizenship in fashioning an appropriate sentence. Here, the trial court abused its discretion in minimizing the effects of youth on defendant's commission of the offense, as well as his demonstrated ability as an adult to conform his conduct to the requirements of the law. Thus, the matter was remanded for resentencing.

People v. Hearring, 2022 IL App (1st) 192064 The Appellate Court vacated defendant's 18-year sentence for aggravated battery for spitting on a corrections officer, where the sentencing court relied on two void convictions in aggravation, and misstated defendant's criminal history. The Appellate Court further found the sentence violated the proportionate penalties clause of the Illinois Constitution.

When the trial court relies on a void conviction when imposing sentence, the sentence may be affirmed only if the record clearly establishes that defendant's void conviction did not affect the trial court's sentencing decision. "[I]t is more prudent to remand for resentencing" than to guess at a conviction's impact. **People v. Bridges**, 2020 IL App (1st) 170129, ¶38.

Here, the sentencing court specifically cited the two voided convictions in detailing defendant's criminal history as part of its justification for the sentence. Following the State's assertion that defendant had nine prior convictions, the sentencing court cited this inflated number despite the fact that defendant had only five valid prior convictions. The State's repeated comments about defendant's "history" and the court's emphasis on defendant's alleged "nine felony convictions" and "two pages" of criminal history, which included void convictions and misdemeanors, left the Appellate Court with no choice but to vacate the sentence.

Although defendant did not object to these errors, the Appellate Court agreed with defendant that the issue constituted second-prong plain error. Alternatively, counsel was

ineffective for failing to correct the inaccuracies in the PSI, as well as the State's and sentencing court's misstatements.

Finally, the sentence was disproportionate to the offense. An 18-year sentence for spitting is an oppressive penalty. Given that the proportionate penalties clause offers broader protections than the eighth amendment, the Appellate Court found defendant made a persuasive claim. While the State argued that the bulk of the sentence increase over the six-year minimum could be attributed to a pending (but later dismissed) attempt murder charge, about which the State presented significant evidence in aggravation, the Appellate Court rejected this argument. To excuse a disproportionate sentence by citing uncharged conduct "would effectively eliminate all the guarantees that our constitution provides criminal defendants, such as trial by jury, innocent until proven guilty, and proof beyond a reasonable doubt." It "would allow a prosecutor to proceed on the easiest charge and then ask the trial court to sentence the defendant for all the offenses that the State otherwise could not prove."

People v. Risper, 2020 IL App (1st) 160707 Mandatory life imprisonment for predatory criminal sexual assault under 720 ILCS 5/11-1.40(b)(2) is not facially unconstitutional simply because life imprisonment is the harshest available punishment in Illinois now that the death penalty has been abolished. There is no constitutional requirement that a sentencing court take into account an adult defendant's individual characteristics before imposing a life sentence. And, a life sentence for an offense other than murder does not violate the proportionate penalties clause or the Eighth Amendment, following **People v. Rhodes**, 2018 IL App (4th) 160457.

People v. Lopez, 2019 IL App (3d) 170798 The trial court properly denied defendant's post-conviction petition at the third stage because defendant's **Miller** claim lacked merit. Defendant received a 50-year sentence at the age of 16, but with day-for-day credit, he is scheduled to be released at age 41, well below the threshold for a *de facto* life sentence established in several previous cases. Regardless, the court's extensive findings at the sentencing hearing showed sufficient consideration of defendant's youth and rehabilitative potential.

People v. Robinson, 2018 IL App (3d) 170287 For purposes of a **Miller** claim at the first stage of post-conviction proceedings, it is at least arguable that a 50-year sentence imposed on a 15 year-old defendant, amounts to a *de facto* life sentence.

People v. Landerman, 2018 IL App (3d) 150684 The trial court failed to comply with Supreme Court Rule 605(a) when, after sentencing defendant to a mandatory term of natural life imprisonment for first degree murder, the court told defendant, "You can file a motion to reconsider even though I can't reconsider this sentence." Despite the error, defendant did not show prejudice. Although defendant failed to file a motion to reconsider before taking an appeal, he did not seek a remand to file such a motion.

And, although the appellate court refused to consider defendant's argument raised for the first time on appeal that his mandatory life sentence was unconstitutional as applied, defendant could have raised that issue at the original sentencing hearing, not just in a motion to reconsider sentence. Because defendant did not raise it below, the record was insufficient to assess the as-applied challenge.

People v. Rhoades, 2018 IL App (4th) 160457 720 ILCS 5/11-1.40(b)(2), which mandates

a natural life sentence where defendant is convicted of predatory criminal sexual assault of a child and has previously been convicted of the same offense, does not violate the Eighth Amendment's ban on cruel and unusual punishment or the proportionate penalties clause of the Illinois constitution.

Discussing **Harmelin v. Michigan**, 501 U.S. 957 (1991), and **People v. Huddleston**, 212 Ill. 2d 107 (2004), the Appellate Court noted that proportionality analysis, under both the federal and Illinois constitutions, does not require the court to look at how other jurisdictions punish the same conduct or how Illinois punishes other crimes. Instead, the court looks to whether the punishment is grossly disproportionate to the offense. While mandatory natural life is the harshest penalty in Illinois since the death penalty was abolished, it is not grossly disproportionate to a second conviction of predatory criminal sexual assault of a child.

People v. Jones, 2018 IL App (1st) 151307 An Eighth Amendment and proportionate penalties challenge to the predatory-sexual-assault statutory scheme was rejected. While the 17-year-old defendant's conduct would have been a Class A misdemeanor rather than a Class X felony had it been committed either two months earlier (before he turned 17) or two months later (after the victim turned 13), the legislature must draw the line somewhere and there will always be individuals close to the line. Defendant's reliance on **People v. Miller**, 202 Ill. 2d 328 (2002), and **People v. Gipson**, 2015 IL App (1st) 122451, was rejected because those defendants were each only 15 years old, they had received mandatory sentences of life or near life, and there were mental health issues at play in **Gipson**, as well. Defendant's 10-year sentence was close to the 6-year minimum and was not an abuse of discretion.

People v. Thomas, 2017 IL App (1st) 142557 Defendant, who was 18 years old at the time of the offense, was convicted of first degree murder of one victim, attempt first degree murder of another, and attempt armed robbery. Defendant used a firearm that proximately caused the death of the murder victim and proximately caused great bodily harm to the attempt victim. The court sentenced defendant to the minimum sentence of 45 years for murder (20 years plus a 25-year firearm enhancement), a minimum consecutive term of 31 years for attempt murder (six year plus a 25-year firearm enhancement), and a minimum consecutive term of four years for attempt armed robbery, for a total of 80 years. The parties agreed that defendant would have to serve at least 73 years of imprisonment.

The court, with one dissenting justice, held that defendant's sentence did not violate the eighth amendment or the proportionate penalties clause (the dissenting justice would have found that it violated the proportionate penalties clause). The court first held that cases involving an adult defendant are not comparable to cases involving juveniles, and thus even a lengthy "sentence that approaches the span of a defendant's lifetime," does not violate the eighth amendment when it is imposed on an adult.

The court also held that defendant's sentence did not violate the proportionate penalties clause. The two mandatory firearm enhancements in this case totaled 50 years, more than half of defendant's sentence, and the Illinois Supreme Court has upheld the constitutionality of mandatory firearm enhancements under the proportionate penalties clause. In enacting those mandatory enhancements, the legislature properly considered both the seriousness of the use of firearms and the rehabilitative potential when the enhancements are applied. In this case, where defendant was the active shooter and was not convicted based on accountability, his sentence was proper.

People v. Lewis, 2016 IL App (4th) 140852 Defendant was convicted under section 120(a) of the Methamphetamine Control and Community Protection Act (MCCPA) which prohibits a person with a prior conviction under the MCCPA from purchasing or possessing a methamphetamine (meth) precursor (such as pseudoephedrine) without a prescription. Defendant argued that the MCCPA violates due process, equal protection, and the proportionate penalties clause because a violation of the MCCPA is a felony, while a violation of the Methamphetamine Precursor Act (MPA) which involves similar or less culpable conduct is only a misdemeanor.

A statute may violate the proportionate penalties clause (Ill. Const. 1970, art. I, §11), where it contains a penalty greater that the penalty imposed for an offense with identical elements. Violation of the MCCPA is a Class 4 felony, while violation of the MPA is a Class A misdemeanor. But the MCCPA and the MPA do not have identical elements.

People v. Aikens, 2016 IL App (1st) 133578 The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

An "as applied" constitutional challenge requires defendant to show that the statute at issue violates the Constitution as applied to his or her particular case. A challenge under the proportionate penalties clause contends that the penalty in question was not determined according to the seriousness of the offense. A violation may be shown where the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

The Illinois Supreme Court has not defined what kind of punishment is cruel, degrading, or wholly disproportionate to the offense, because concepts of elemental decency and fairness evolve as society evolves. Thus, to determine whether a penalty shocks the moral sense of the community, courts must consider objective evidence as well as the community's changing standards of moral decency.

Noting that no one was injured in the offense, the court concluded that as applied to defendant the sentencing scheme violated the proportionate penalties clause because defendant had no prior criminal history, was described by the mitigation specialist as full of potential and able to fully rehabilitate as a contributing member of society, and was sentenced to the statutory minimum by the trial court who noted that defendant was young, had no criminal history, and had a "quite troubling" background. The court stressed that recent changes to the Juvenile Court Act, while inapplicable to this case, illustrate a "changing moral compass in our society when it comes to trying and sentencing juveniles as adults."

Defendant's sentence was reversed and the cause remanded for resentencing.

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of

attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

The trial court found that the 20-year enhancement applied to both of defendant's convictions under 720 ILCS 5/8-4(c)(1)(C), requiring that 20 years be added to the sentence where the defendant "personally discharged a firearm" during the commission of the offense. The court imposed the minimum sentence of 26 years (including the 20-year firearm enhancement) for both convictions, to be served consecutively for a total of 52 years.

The statutory scheme was unconstitutional as applied to defendant under the proportionate penalties clause of the Illinois Constitution. Defendant's penalty shocked the moral sense of the community. Although this was a serious offense, and one of the victims suffered severe injuries, there were numerous factors that diminished "the justification for a 52-year prison term." The incident was not planned long before it occurred, but was instead the result of rash decision making. Defendant was a mentally ill juvenile who was prone to impulsive behavior, and wanted to impress his older co-defendant. And defendant did not personally inflict serious harm, even though that was primarily the result of bad aim.

As a remedy, the court ordered the trial court on remand to impose any appropriate Class X sentence without the mandatory firearm enhancement.

People v. Davis, 2015 IL App (1st) 121867 Defendant argued that his convictions and sentences for armed robbery in 1985 violated the proportionate penalties clause since, based on the facts of his case, armed robbery had the identical elements as armed violence with a category II weapon, but armed robbery was a Class X felony, while category II armed violence was a Class 2 felony.

In 1985, the Class X offense of armed robbery was defined as committing robbery while armed with a dangerous weapon. Ill. Rev. Stat. 1985, ch. 38, ¶18-2(a), (b). Armed violence was defined as committing any felony while armed with a dangerous weapon. Ill. Rev. Stat. 1985, ch. 38, ¶ 33A-2. If the dangerous weapon was a category I weapon, including firearms, the offense was a Class X felony. Ill. Rev. Stat. 1985, ch. 38, ¶¶33A-1(b), 33A-3(a). If, however, the dangerous weapon was a category II weapon, such as a bludgeon, the offense was a Class 2 felony. Ill. Rev. Stat. 1985, ch. 38, ¶¶33A-1(c), 33A-3(b).

Defendant argued that the juries in his cases were never asked to identify the dangerous weapons used during the offenses and there was no evidence the weapons met the statutory definition of a firearm. Accordingly, the dangerous weapons used in his cases were category II weapons, such as bludgeons. And if this were the case, his sentences for armed robbery violated the identical elements test.

The court rejected this argument. The trial records showed that the main issue in each case was whether the weapon was a real or toy gun. Defendant argued that the weapons were toy guns, not dangerous weapons. The court concluded that by finding defendant guilty, the juries rejected defendant's arguments that he was only armed with toy guns and thereby implicitly found that the weapons were real guns. Defendant's armed robbery convictions thus may not be properly compared to armed violence with a category II weapon. The sentences did not violate the identical elements test.

People v. Larue, 2014 IL App (4th) 120595 A statute violates the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11) if it contains the same elements as another offense but carries a greater penalty. Defendant argued that his sentence of 10

years imprisonment for unlawful possession of a weapon by a felon (UPWF) violated the proportionate penalties clause because it is a lesser-included offense of aggravated unlawful use of a weapon (AUUW), but carries a greater penalty. (AUUW is a Class 2 felony with a sentencing range of three to seven years imprisonment; UPWF is a Class 3 felony with a range of two to 10 years imprisonment.)

Defendant conceded that the two offenses are not truly identical, since AUUW contains an additional element (that the firearm be uncased, immediately accessible, and loaded) not in the UPWF statute, but argued that treating the two offenses as identical is consistent with the purpose of the proportionate penalties clause.

The court rejected this argument, holding that the proportionate penalties clause only applies to statutes that have truly identical elements. Any expansion of the clause to lesser-included offenses would run afoul of the Illinois Supreme Court's directive in **People v. Sharpe**, 216 Ill.2d 481 (2005) to abandon the cross-comparison analysis of the proportionate penalties clause.

People v. Fernandez, 2014 IL App (1st) 120508 Defendant was convicted of selling more than 1000 grams of cocaine in 2010, and based on his guilty pleas to drug offenses in 1992 and 1999 was sentenced as a habitual criminal to a natural life sentence. 730 ILCS 5/5-4.5-95(a) defines a habitual criminal as a person who has been twice convicted in state or federal court of an offense that contains the same elements as an offense which is now classified as a Class X felony in Illinois, and who thereafter is convicted of a Class X felony which is committed after the two prior convictions were entered.

The court found, as a matter of first impression, that a natural life sentence under the Habitual Criminal Act does not violate the proportionate penalties clause of the Illinois Constitution even where the defendant has been convicted only of non-violent offenses. Although a mandatory life sentence for three nonviolent offenses is a harsh sentence, defendant was not a juvenile, had been convicted of the first offense when he was 36 years old and the third when he was 55, and was convicted as a principal. Furthermore, defendant's sale of cocaine was not a spontaneous decision, but resulted from careful planning and the recruitment of an accomplice.

Noting that the legislature limited the Habitual Criminal Act to Class X offenses and to persons who have exhibited recidivist tendencies, the court concluded that three convictions for distributing large quantities of narcotics constitutes serious criminal conduct for which a natural life sentence can be deemed proportionate. Defendant's natural life sentence was affirmed.

People v. Toy, 2013 IL App (1st) 120580 In **People v. Hauschild**, 226 IL 2d 63, 871 N.E.2d 1 (2007), the sentence for armed robbery while armed with a firearm violated the proportionate penalties clause because it was more severe than the sentence for armed violence predicated on robbery with a firearm. Although at the time the armed violence statute excluded armed robbery as a predicate for armed violence, robbery was not similarly excluded. In **Hauschild**, the Supreme Court concluded that because every armed violence predicated on robbery also constituted an armed robbery, and armed robbery carried a more severe sentence than armed violence predicated on robbery, the proportionate penalties clause was violated.

In response to **Hauschild**, the legislature enacted P.A. 95-688, which modified the armed violence statute to remove certain offenses from serving as predicates for armed violence. However, for cases which arose prior to the enactment of P.A. 95-688, **Hauschild**

remains the applicable law. (See **People v. Clemons**, 2012 IL 107821.)

On appeal from the denial of his post-conviction petition, defendant argued for the first time that the proportionate penalties clause was violated by his sentences for aggravated criminal sexual assault with a 15-year-firearm enhancement, because armed violence based on sexual assault contains identical elements but a lesser penalty. Because defendant was sentenced prior to the effective date of P.A. 95-688, the **Hauschild** rule and preamended version of the armed violence statute applied. That version of the statute excluded aggravated criminal sexual assault as the predicate for armed violence, but permitted the use of criminal sexual assault as a predicate.

Under the prior version of the statute, armed violence predicated on criminal sexual assault had identical elements to aggravated criminal sexual assault based on committing criminal sexual assault while armed with a firearm (720 ILCS 5/12-14(a)(8)). However, the former offense had an authorized sentencing range of 15 to 30 years, while the latter had a sentencing range of six to 30 years plus a mandatory 15-year-enhancement. Thus, under **Hauschild**, a proportionate penalties violation occurred.

People v. Harris, 2012 IL App (1st) 092251 The proportionate penalties clause is violated where two offenses have identical elements but carry different authorized sentences. Because armed robbery while armed with a firearm and aggravated kidnaping while armed with a firearm consist of the same elements as armed violence predicated on robbery and kidnaping, but the former offenses carry more severe sentences when the mandatory 15-year enhancement for being armed with a firearm is added, the proportionate penalties clause was violated.

The court rejected defendant's argument that the convictions should be reduced to simple robbery and simple kidnaping and the cause remanded for sentencing on those offenses. In **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), the Supreme Court held that the proper remedy in this situation is to remand the cause for resentencing in accordance with the relevant statute as it existed before the enactment of Public Act 91-404, which added the 15-year enhancement.

Defendant did not waive the proportionate penalties arguments because he failed to present them on direct appeal and raised them for the first time in a post-conviction petition. Whether a statute is unconstitutional may be raised at any time.

People v. Brown, 2012 IL App (5th) 100452 In **People v. Hauschild**, 226 Ill.2d 63, 871 N.E.2d 1 (2007), the court held that the 15-year enhancement for armed robbery while armed with a firearm was unconstitutionally disproportionate to the sentence for the offense of armed violence predicated on robbery with a category I or II weapon, as the elements of the offenses were identical but the penalty for armed robbery was more severe than the penalty for armed violence.

Thereafter, the legislature amended the armed violence statute by Public Act 95-688, effective October 23, 2007, to except from its application "any offense that makes the possession or use of a dangerous weapon either an element of the base offense, an aggravated of enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range." Public Act 95-866 cured the proportionate-penalties violation by making it impossible to generate an armed-violence conviction predicated on robbery, even though the amendment did not alter the 15-year enhancement for armed robbery committed with a firearm.

Because the armed robbery for which defendant was convicted was committed on May

26, 2009, defendant could not rely on **Hauschild** to claim his 15-year sentencing enhancement was unconstitutional. The court rejected defendant's argument that the armed-robbery statute was void *ab initio* as an unconstitutional law. Public Act 95-866 revived the sentencing scheme in the armed-robbery statute by fixing the proportionate-penalties violation.

People v. Malone, 2012 IL App (1st) 110517 In **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), the Illinois Supreme Court held that the penalty for armed robbery while armed with a firearm violated the proportionate-penalties clause because it was more severe than the penalty for the identical offense of armed violence predicated on robbery with a category I or II weapon. Armed robbery with a firearm was a Class X offense punishable by a term of 6 to 30 years' imprisonment with a mandatory 15-year add-on, for a total of 21 to 45 years, while armed violence carried a penalty of only 15 to 30 years' imprisonment.

P.A. 95-688 subsequently amended the armed violence statute so as to make it impossible to base an armed violence conviction on robbery. The amendment did not alter the 15-year enhancement for armed robbery committed with a firearm that had been found unconstitutional in **Hauschild**.

Agreeing with the conclusion reached by the court in **People v. Brown**, 2012 IL App (5th) 100452, and disagreeing with the decision in **People v. Gillespie**, 2012 IL App (4th) 100126, the Appellate Court concluded that P.A. 95-688 revived the 15-year enhancement. P.A. 95-688 was enacted in response to the decision in **Hauschild.** By eliminating the offense of armed violence predicated on robbery with a category I or II weapon, P.A. 95-866, the legislature intended to cure the proportionate-penalties violation found in **Hauschild**.

People v. Herron, 2012 IL App (1st) 090663 The State conceded that the 15-year sentence enhancement for aggravated kidnaping while armed with a firearm (720 ILCS 5/10-2(a)(6)) violates the proportionate penalties clause because aggravated kidnaping with the 15-year enhancement carries a sentence of 21 to 45 years, while armed violence predicated on kidnaping, which consists of the same elements, carries a sentence of 15 to 30 years. The parties disagreed on the appropriate remedy, however. Defendant argued that the improper sentence should be vacated and his concurrent sentences of five years for intimidation, nine years for home invasion, nine years for armed robbery, and nine years for aggravated kidnaping left intact. The State argued that because the trial court was unaware of the invalidity of the 15-year enhancement and did not state that it would have imposed a nine-year-sentence had it known that the 15-year-enhancement was invalid, the cause should be remanded to allow the trial court to impose an appropriate sentence.

The Appellate Court agreed with the State, stressing that trial court did not indicate whether its sentence for the remaining charges had been affected by its belief that defendant would serve an additional 15 years under §10-2(a)(6). The cause was remanded for resentencing.

People v. Gay, 2011 IL App (4th) 100009 Punishing mentally-ill prisoners by sentencing them to natural life without parole is not categorically cruel and unusual. There is no consensus against punishment of mentally-ill offenders. Unlike persons with abnormally-diminished intellectual functioning, offenders whose mental illness falls short of criminal insanity are not less culpable than other offenders generally. The penological ends of retribution and incapacitation are also met by allowing courts to sentence mentally-ill persons as severely as others.

People v. Span, 2011 IL App (1st) 083037 The proportionate penalties clause of the Illinois Constitution is violated where offenses with identical elements carry different penalties.

The proportionate penalties clause was violated by a 25-year sentence for attempt armed robbery committed with a bludgeon, because that offense has the same elements but a more severe sentence than attempt armed violence with a category III weapon (which includes bludgeons). The court rejected the State's argument that attempt armed violence predicated on robbery can be committed only if the defendant completes the predicate offense of robbery, and that the offenses therefore have different elements. The court noted that the offense of attempt armed violence predicated on robbery can be committed by attempting to secure a dangerous weapon or by attempting to complete the predicate while armed with a dangerous weapon.

Here, defendant committed a substantial step toward attempt armed violence by attempting to commit a robbery with a bludgeon. This offense contained the same elements as attempt armed robbery committed with a bludgeon.

Because attempt armed robbery committed with a bludgeon is a Class 1 felony with a sentencing range of four to 15 years and an extended term sentence of 15 to 30 years, while attempt armed violence while armed with a bludgeon is a Class 3 felony with a normal sentencing range of two to five years and an extended term range of five to 10 years, different penalties are imposed for offenses carrying the same elements. Thus, the penalties for attempt armed robbery violate the proportionate penalties clause.

The defendant's conviction and sentence for attempt armed robbery were vacated and the case was remanded for sentencing on the Class 3 felony of attempt armed violence.

People v. Yoselowitz, 2011 IL App (4th) 100764 Neither the proportionate penalties clause of the Illinois Constitution nor equal protection principles were violated by 720 ILCS 550/5(g), which provides a Class X sentence for the manufacture, delivery, or possession of more than 5000 grams of cannabis with intent to deliver or manufacture.

The court acknowledged recent studies showing that cannabis is neither addictive nor likely to lead to great bodily harm, but found that the legislature imposed the Class X sentencing provision to combat illegal drug use by directing law enforcement efforts to commercial traffickers and large scale purveyors of illegal substances. The court found that such legislative intent constituted a rational basis for the Class X sentencing scheme, and that imposing a Class X sentence on purveyors of large quantities of marijuana was not shocking to the moral sense of the community. The court also noted that defendant's arguments concerning the effects of marijuana use should be addressed to the legislature rather than the courts.

People v. Hawkins, 409 Ill.App.3d 564, 948 N.E.2d 676 (1st Dist. 2011) The court rejected the argument that defendant's sentence for aggravated criminal sexual assault violated the proportionate penalties clause because the elements of that offense are identical to the elements of aggravated kidnapping, yet the sentences are different because aggravated criminal sexual assault is subject to mandatory consecutive sentencing.

The elements of aggravated criminal sexual assault and aggravated kidnapping were not identical as charged. And, even assuming that the elements of the offenses were identical, the court found no violation of the proportionate penalties clause. The offenses of aggravated criminal sexual assault and aggravated kidnapping have the exact same sentencing range as both are classified as Class X felonies. The mandatory consecutive sentencing structure for

aggravated criminal sexual assault, 730 ILCS 5/5-8-4(a)(ii), affects only the manner by which the sentence is carried out and not the punishment itself. Therefore, the provision creates no proportionate penalties violation.

People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 (2d Dist. 2010) The proportionate penalties clause of the Illinois Constitution requires that all penalties be determined according to the seriousness of the offense and the objective of restoring the offender to useful citizenship. The proportionate penalties clause is violated if the sentence for an offense is greater than the sentence for an offense composed of identical elements. The court accepted the State's concession that the proportionate penalties clause was violated by the 15-year enhancement for being armed with a firearm while committing aggravating kidnapping, which resulted in a sentencing range of 21 to 45 years, because armed violence predicated on kidnapping is comprised of identical elements but is punishable by a prison term of only 15 to 30 years.

The court rejected defendant's argument that the appropriate remedy was to strike the enhancement and leave intact the 12-year unenhanced sentence. The proper remedy for a proportionate penalties violation is to remand for resentencing to allow the trial court to re-evaluate defendant's sentence in light of the available sentencing options once the unconstitutional provision is omitted. The court noted that at sentencing the trial court did not state that it would have sentenced defendant to 12 years even if the 15-year enhancement was unavailable.

People v. Pelo, 404 Ill.App.3d 839, 942 N.E.2d 463 (4th Dist. 2010) The proportionate penalties clause of the Illinois Constitution is violated where offenses consisting of identical elements are punished differently.

The penalty for aggravated criminal sexual assault with a firearm (720 ILCS 5/12-14(a)(8)) violates the proportionate penalties clause because it is punished more harshly that an offense with the identical elements – armed violence based on criminal sexual assault with a firearm (720 ILCS 5/33A-2(a)). Both offenses require that the offender commit criminal sexual assault while armed with a firearm. The penalty for aggravated criminal sexual assault with a knife (720 ILCS 5/12-14(a)(1)) does not violate the proportionate penalties clause when compared with armed violence based on criminal sexual assault with a knife because aggravated criminal sexual assault only requires that the offender threaten to use a knife, while armed violence requires that the offender be actually armed with a knife.

People v. Andrews, 364 Ill.App.3d 253, 845 N.E.2d 974 (2d Dist. 2006) Penalty for aggravated vehicular hijacking while carrying a firearm is harsher than the penalty for armed violence with a Category I weapon predicated on vehicular hijacking, a greater offense, and, thus, violates the proportionate penalties clause. The unconstitutional 15-year enhancement could not be severed from the substantive offense of aggravated vehicular hijacking while carrying a firearm.

A proportionate penalties challenge based on the identical elements test is not limited to comparing offenses with which defendant is charged.

People v. Myers, 359 Ill.App.3d 341, 833 N.E.2d 421 (4th Dist. 2005) The four-year-mandatory minimum sentence for child pornography was not so grossly disproportionate to the circumstances of the case as to shock the moral sense of the community and violate the proportionate penalties clause. Also, offense of child pornography does not violate the

proportionate penalties clause when compared to the offense of sexual exploitation of a child under the identical elements test because the two offenses do not contain identical elements.

People v. Ruiz, 342 Ill.App.3d 750, 795 N.E.2d 912 (1st Dist. 2003) The Truth-In-Sentencing Act, which requires defendant to serve 100% of his sentence for first degree murder, does not violate the proportionate penalties clause of the Illinois Constitution or the Illinois constitutional objective of restoring offenders to useful citizenship. See also, **People v. Gorgis**, 337 Ill.App.3d 960, 787 N.E.2d 329 (1st Dist. 2003).

People v. Marsh, 329 Ill.App.3d 639, 768 N.E.2d 108 (1st Dist. 2002) The Class 4 felony penalty provision for failure to register as a sex offender does not violate the proportionate penalties clause (the penalty is not cruel, degrading, or shocking to the moral sense).

People v. Garza, 298 Ill.App.3d 452, 699 N.E.2d 181 (2d Dist. 1998) Armed violence based on aggravated battery in a public place is not identical to aggravated battery with a firearm or aggravated discharge of a firearm. The latter two offenses do not require a showing that the offense occurred on or about a public place, but do require the discharge of a firearm, which is not required for armed violence.

People v. Beard, 287 Ill.App.3d 935, 679 N.E.2d 456 (1st Dist. 1997) The sentences for armed violence based on aggravated vehicular hijacking and armed robbery were unconstitutionally disproportionate to the sentences for the predicate felonies. The elements of the armed violence and predicate offenses are identical, but armed violence carries a much higher sentence.

§44-1(b)(3)
Apprendi

United States Supreme Court
Erlinger v. United States, 602 U.S. ___, ___ S. Ct. ___ (No. 23-370) Under the Armed Career Criminal Act (ACCA), a defendant may be subject to a more severe sentence for a firearm offense if he has three prior convictions for either violent felonies or serious drug offenses that were committed on separate occasions. The question before the court was whether the judge may decide that the past offenses were committed on separate occasions under a preponderance standard or whether the question must be submitted to the jury for a unanimous finding beyond a reasonable doubt. The court held that the fifth and sixth amendments require the latter.

Here, the State pursued an ACCA sentence against defendant, relying on burglaries he had committed when he was 18. In the district court, the State pointed to evidence that defendant burglarized a pizza shop, sporting goods store, and two restaurants within a span of days, and argued that each occurred on a different occasion and thus satisfied the ACCA. Defendant, on the other hand, argued that the burglaries had occurred during a single criminal episode and thus were not committed on separate occasions. And, defendant argued that a jury should make the ultimate determination on that issue. The district court rejected that request, however, and went on to find that each of his burglaries occurred on a separate occasion, thus qualifying him for a lengthier sentence under the ACCA. And, the Seventh Circuit affirmed, despite the government's confession of error in that court.

Given the government's concession the Supreme Court appointed an *amicus* to defend the judgment below. Ultimately, the court agreed with defendant that the "occasions" determination must be made by a jury and requires proof beyond a reasonable doubt, relying heavily on its prior decisions in **Apprendi v. New Jersey**, 530 U.S. 466 (2000) and **Alleyne v. United States**, 570 U.S. 99 (2013). In reaching this conclusion, the court rejected the *amicus*'s argument that the occasions inquiry is merely a fact related to past offenses and thus appropriate for a judicial determination under **Almendarez-Torres v. United States**, 523 U.S. 224 (1998). The occasions inquiry will often be more complicated than the narrow determination of whether defendant was previously convicted and of what offense; it can involve questions of timing and location, as well as "a qualitative assessment about 'the character and relationship' of the offenses."

Justice Kavanaugh authored a dissent, joined by Justices Alito and Jackson, on the basis that **Almendarez-Torres** should permit the judge to make the occasions finding under the ACCA. Justice Jackson separately dissented on the basis that **Apprendi** was wrongly decided because juries are ill equipped to "deal with the fine-grained, nuanced determinations" required to adjudicate complex factual questions such as the occasions-inquiry here.

United States v. Haymond, ____ U.S. ____, 2019 WL 2605552 (2019) Under federal law governing supervised release ("SR"), a violation can be found by the judge upon a preponderance of evidence, and a typical violation results in the defendant's return to prison for a period of time no greater than the original term of SR. However, if a judge finds by a preponderance of the evidence that a defendant on SR committed one of several enumerated offenses, including the possession of child pornography, the judge must impose an additional prison term of at least five years and up to life without regard to the length of the prison term authorized for the defendant's initial conviction.

According to four justices, this statutory scheme violated the Fifth and Sixth Amendments because, as in **Apprendi**, it authorized a judge to increase a sentence beyond the statutory maximum without requiring a jury finding of proof beyond a reasonable doubt. And as in **Alleyne**, it authorized a higher minimum based solely on a judicial finding of facts by a preponderance of the evidence. A fifth justice, Justice Breyer, generally agreed, viewing the provision as a new criminal proceeding to which the jury right attaches rather than a typical SR revocation proceeding. But Justice Breyer would not apply **Apprendi** principles to SR revocation in other contexts – only in those cases where the proceeding is more like a new criminal proceeding rather than a straightforward revocation.

Although the dissent suggested this ruling could effectively end the SR system by requiring many more juries than the system can handle, the plurality pointed out that a new sentence following a revocation hearing will only violate the defendant's due process and jury trial rights in small number of cases where the original sentence is at or near the maximum (and if Justice Breyer's concurrence is considered the narrowest, official holding, only in a subset of those cases where the proceeding more closely resembles a new criminal proceeding rather than a revocation proceeding.)

The Court remanded to determine whether the appropriate remedy is to strike the whole provision as unenforceable, or, as the government argued, to keep the provision in tact while adding a jury right.

Alleyne v. United States, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013) Any facts that increase the prescribed range of penalties to which a criminal defendant is exposed are

elements of the crime. The Sixth Amendment guarantees defendants the right to have a jury find those facts beyond a reasonable doubt. **Apprendi v. New Jersey**, 530 U.S. 466 (2000).

These principles apply to facts that increase the mandatory minimum sentence to which the defendant is subject. A fact triggering a mandatory minimum alters the prescribed range of sentences to which the defendant is exposed. The core crime and the fact triggering the mandatory minimum sentence together constitute a new aggravated crime, each element of which must be submitted to the jury.

There being no basis in principle or logic to distinguish facts that increase the maximum from those that increase the minimum, the Court overruled **Harris v. United States**, 536 U.S. 545 (2002), which held that **Apprendi** did not apply to mandatory minimum sentences.

In the case before it, defendant received a mandatory minimum sentence of seven years based on the judge's finding by a preponderance of the evidence that a firearm was "brandished." The Court vacated the sentence and remanded for resentencing consistent with the jury's verdict.

Descamps v. United States, 570 U.S. 254, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013) Where a statute provides that a prior conviction qualifies a defendant for an enhanced penalty, the fact of the prior conviction can enhance defendant's penalty without the need for judicial fact finding in two circumstances: (1) where the prior conviction is for violation of a statute whose elements are the same as, or narrower than, those of the qualifying offense (the "categorical approach") or (2) where the prior conviction is for violation of a "divisible" statute involving alternative elements, some of which may match the elements of the generic offense, but others of which may not (the "modified categorical approach"). Under the modified categorical approach, a court may consult a limited class of documents, such as the charging instrument or jury instructions, to determine which of the statute's alternative elements formed the basis for the defendant's conviction. **Shepard v. United States**, 544 U.S. 13 (2005). Both of these approaches focus on the elements, rather than the facts, of a crime and thereby avoid judicial fact finding that would violate the Sixth Amendment.

A prior conviction cannot qualify a defendant for an enhanced penalty without the need for judicial fact finding where the conviction is based on violation of a statute that is "indivisible," in that it does not contain alternative elements but criminalizes conduct that is broader than the qualifying offense. In that circumstance, a court must examine the case's underlying facts to determine whether defendant committed a qualifying offense. This kind of evidence-based inquiry that evaluates the facts that the judge or jury found violates the Sixth Amendment, which does not allow a sentencing court to make findings about non-elemental facts to increase a defendant's sentence.

Defendant was previously convicted under an indivisible statute whose elements were broader than the elements of the qualifying offense. The district court violated the Sixth Amendment when it enhanced defendant's penalty by looking behind the conviction to search for record evidence that defendant actually committed the qualifying offense.

Southern Union Co. v. United States, 567 U.S. 343, 132 S. Ct. 2344, 183 L.Ed.2d 318 (2012) No principled basis exists under **Apprendi** for treating criminal fines differently from sentences of imprisonment or a death sentence. So far as **Apprendi** is concerned, the relevant question is not whether a fine is insubstantial as compared to imprisonment or a death sentence. The question is whether the fine at issue is substantial enough to trigger the Sixth Amendment right to trial by jury. Where a fine is so insubstantial that the underlying

offense is considered petty, the right of jury trial is not triggered and no **Apprendi** issue arises. Where a fine is substantial enough to trigger the Sixth Amendment's jury-trial guarantee, **Apprendi** applies in full.

The statute at issue subjected Southern Union to a maximum fine of $50,000 for each day of a violation. In light of the seriousness of that penalty, the company was properly accorded a jury trial. Judicial factfinding that enlarged the maximum punishment beyond what the jury's verdict allowed therefore violated **Apprendi**.

Oregon v. Ice, 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517 (2009) (No. 07-901) Where a state elects to make concurrent sentencing the norm, and authorizes consecutive sentencing only upon the finding of certain additional facts, **Apprendi** does not require that the additional facts be proven to the jury. The Sixth Amendment does not require additional findings before consecutive sentences may be imposed; a state is free to make consecutive sentencing the norm and authorize concurrent sentencing only if additional mitigating factors are found. Applying **Apprendi** to predicate facts for consecutive sentencing would likely require bifurcated or trifurcated trials in order to avoid substantially prejudicing defendant at the guilt phase of a trial.

Cunningham v. California, 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856 (2007) California's determinate sentencing law, which authorized the trial judge (not jury) to find by a preponderance of the evidence facts exposing defendant to elevated upper term sentence, violated defendant's right to trial by jury under **Apprendi**. The Court rejected the contention that California's determinate sentencing law is equivalent to the post-**Booker** federal system, under which the federal sentencing guidelines are merely advisory. Under the post-**Booker** federal system, the judge has discretion to pose any sentence within the authorized range. In California, by contrast, only three fixed sentences are authorized, and the trial judge lacks discretion to select any other sentence. Also, the Court rejected the argument that determinate sentencing law satisfies **Apprendi** so long as the finding of an aggravating mitigating factor is reasonable.

Washington v. Recuenco, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006) An **Apprendi** error is not "structural," and therefore is subject to harmless error analysis. See also, **People v. Thurow**, 203 Ill.2d 352, 786 N.E.2d 1019 (2003) (**Apprendi** violations are subject to harmless error analysis); **People v. Jones**, 219 Ill.2d 1, 845 N.E.2d 598 (2006) (rejecting argument that under **Blakely v. Washington**, an **Apprendi** error cannot be harmless); **People v. Davis**, 217 Ill.2d 472, 841 N.E.2d 884 (2005) (defendant, who was charged with first degree murder but convicted of the lesser-included offense of involuntary manslaughter and sentenced to a Class 2 sentence based on the trial court's holding that the victim was a "family or household member," was unable to show prejudice from the indictment's failure to allege that the victim had been a household member); **People v. Peacock**, 324 Ill.App.3d 749, 756 N.E.2d 261 (1st Dist. 2001) (failure to allege victim's age in charge and submit question to jury was harmless error where parties "basically stipulated" to age at trial and jury would have found victim was over 60); **People v. Black**, 327 Ill.App.3d 662, 765 N.E.2d 1046 (2d Dist. 2002) (error was not harmless where the State failed to present any evidence of the victims' ages at plea hearing).

U.S. v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005) The Sixth Amendment right to a jury trial, as construed in **Apprendi** and **Blakely v. Washington**, applies to the

federal sentencing guidelines, and the federal sentencing guideline procedure violates the Sixth Amendment. The remedy for the constitutional violation is to sever 18 U.S.C.A. §3553(b)(1), which makes the guidelines mandatory, so the guidelines are "effectively advisory." Thus, the sentencing court must consider the ranges authorized by the federal sentencing guidelines, but is free to modify the sentence in light of other appropriate concerns. Also, sentencing decisions are to be reviewed for unreasonableness. See also, **Rita v. U.S.**, 551 U.S. 338, 127 S.Ct. 2456, 168 L.Ed.2d 203 (2007) (the court of appeals may apply a presumption of reasonableness to a sentence that is within the sentencing guidelines; the presumption is not binding, and does not reflect "strong judicial deference" such as that which applies to a lower court's findings of fact).

Schrioro v. Summerlin, 542 U.S. 348, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004) **Ring v. Arizona** created a "procedural" rule that is not fundamental to an accurate verdict; thus, **Ring** does not apply retroactively to cases that were final before **Ring** was decided. See also, **People v. De La Paz**, 204 Ill.2d 426, 791 N.E.2d 489 (2003) (**Apprendi** does not apply retroactively to cases in which direct appeals were exhausted before **Apprendi** was decided); **People v. Lee**, 207 Ill.2d 1, 796 N.E.2d 1021 (2003); **Lucien v. Briley**, 213 Ill.2d 340, 821 N.E.2d 1148 (2004) (a criminal defendant may not bring an **Apprendi**-based state *habeas corpus* challenge once his direct appeal has been completed); **People v. Kelley**, 366 Ill.App.3d 676, 852 N.E.2d 324 (1st Dist. 2006) (**De La Paz** was not limited to an interpretation of the second **Teague** exception (for constitutional "bedrock" rules"), and retroactive application was not required by **Schrioro**).

Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) The Court applied **Apprendi** to a state sentencing scheme which authorized a maximum sentence of 10 years for second degree kidnapping but limited the "standard range" for the offense to between 49 and 53 months, and held defendant was entitled to have a jury decide whether the prosecution had proven factors which authorized a sentence greater than the standard range.

Also, under **Apprendi**, the "statutory maximum" sentence is the maximum sentence authorized under the facts found by the jury or admitted by defendant in a guilty plea. See also, **Cunningham v. California**, 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856 (2007) (the "statutory maximum" is the maximum sentence which the judge may impose solely on the basis of facts reflected in the jury verdict or admitted by defendant; in other words, the statutory maximum is the maximum which may be imposed without any additional findings by the judge).

Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002) **Apprendi** applies to a death penalty statute that authorizes a death sentence only if trial court finds that certain factors are present.

United States v. Cotton, 535 U.S. 625 (2002) An **Apprendi** error did not require reversal under the federal plain error rule in light of the overwhelming evidence against defendant. See also, **People v. Crespo**, 203 Ill.2d 335, 788 N.E.2d 1117 (2003) (a 75-year extended term based on the "exceptionally brutal and heinous" extended-term factor did not constitute plain error where there was no basis to conclude that the **Apprendi** violation "seriously affected the fairness, integrity or public reputation of judicial proceedings"); **People v. Kaczmarek**, 207 Ill.2d 288, 798 N.E.2d 713 (2003) (**Apprendi** violation did not constitute plain error

where there was overwhelming evidence that the offense was exceptionally brutal and heinous); **People v. Nitz**, 219 Ill.2d 400, 848 N.E.2d 982 (2006) (defendant could not show that the **Apprendi** violation amounted to plain error). But see, **People v. Alvarez**, 344 Ill.App.3d 179, 799 N.E.2d 694 (1st Dist. 2003) (plain error occurred where the evidence was not overwhelming and a properly instructed jury might have concluded that the offense was not brutal and heinous); **People v. Golden**, 342 Ill.App.3d 820, 795 N.E.2d 1011 (1st Dist. 2003) (**Apprendi** error constituted plain error where the jury might have found that the crimes were not brutal and heinous; further, the State failed to prove beyond a reasonable doubt that the error was harmless).

Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) Due process and the right to a jury trial require that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." For a sentence to be imposed under New Jersey's "hate crime" law, which authorized an extended term where the offense was committed with the "purpose to intimidate" a person due to "race, color, gender, handicap, religion, sexual orientation or ethnicity," the "hate crime" factor must be determined by the jury instead of the sentencing court. See also, **Almendarez-Torres v. U.S.**, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998) (there is no constitutional requirement that recidivism be treated as an element of an offense, which must be pleaded in the charging instrument, rather than as a factor authorizing an enhanced sentence).

Illinois Supreme Court

People v. Jones, 2016 IL 119391 In response to **Apprendi**, the Illinois legislature passed 725 ILCS 5/111-3(c-5), which provides that if an alleged fact other than a prior conviction is not an element of the offense but is to be used to increase the range of penalties beyond the statutory maximum, the alleged fact must be included in the charging instrument or otherwise provided to the defendant through a written notification before trial, submitted to the trier of fact as an aggravating factor, and proven beyond a reasonable doubt.

Defendant was convicted as an adult of aggravated robbery and sentenced to an extended term of 24 years based on a prior juvenile adjudication for residential burglary. Noting a conflict in national authority, the court held that as a matter of first impression in Illinois, a prior juvenile adjudication which qualifies an adult defendant for an extended term sentence falls within both **Apprendi's** prior conviction exception and the same exception in section 111-3(c-5). Proceedings which result in a juvenile adjudication contain the same constitutional procedural safeguards as proceedings which result in a prior conviction except, in most cases, the right to a jury trial. Because there is no constitutional right to a jury trial in juvenile proceedings, however, (**McKeiver v. Pennsylvania**, 403 U.S. 528 (1971) (plurality opinion)), both juvenile adjudications and prior convictions result from proceedings in which the minor or defendant received constitutionally sufficient procedural safeguards. Thus, a juvenile adjudication is a no less valid or reliable means of judging recidivism than is a prior conviction.

Because a juvenile adjudication is not subject to **Apprendi** or §111-3(c-5), the trial court did not err by relying on the pre-sentence report in deciding to impose an extended term.

In a dissenting opinion, Justices Burke, Garman, and Kilbride found that under Illinois statutory law, a juvenile adjudication delinquency is not equivalent to an adult conviction and therefore does not qualify for the statutory exception in §111-3(c-5).

In re M.I., 2013 IL 113776 The Extended Juvenile Jurisdiction (EJJ) statute does not violate **Apprend**i. An EJJ hearing does not adjudicate guilt or determine a specific sentence. The trial court only makes a procedural determination whether a juvenile should receive an adult sentence that is stayed pending successful completion of a juvenile sentence. The stayed sentence is based on the criminal offense for which the juvenile was convicted by the finder of fact and does not exceed the maximum for the offense provided by the Code of Corrections. As the Juvenile Court Act is a purely statutory creature, for purposes of **Apprend**i, the statutory maximum is the maximum sentence allowed for the offense by the Code of Corrections, not the juvenile sentence allowed by the Juvenile Court Act.

People v. Rivera, 227 Ill.2d 1, 879 N.E.2d 876 (2007) The court rejected the argument that the Illinois Constitution contains a broader right to have the jury decide extended term factors than does **Apprendi**.

People v. Green, 225 Ill.2d 612, 870 N.E.2d 394 (2007) **Apprendi** was not violated where the verdict form for robbery of a person over the age of 60 omitted the victim's age. **Apprendi** does not hold that a verdict form must include all elements of the offense - it merely requires that any "fact" which increases the penalty for a crime beyond the prescribed statutory maximum, other than a prior conviction, must be submitted to the jury and proven beyond a reasonable doubt. See also, **People v. Jones**, 219 Ill.2d 1, 845 N.E.2d 598 (2006).

People v. Mata, 217 Ill.2d 535, 842 N.E.2d 686 (2005) The governor's commutation of defendant's death sentence does not preclude or render moot her attack to the sufficiency of the proof of the element that triggered the death sentence because it is the functional equivalent of an element of the offense.

People v. Thurow, 203 Ill.2d 352, 786 N.E.2d 1019 (2003) **Apprendi** does not require that enhancing factors be alleged in charging instrument. See also, **People v. Jackson**, 199 Ill.2d 286, 789 N.E.2d 21 (2002). Statute which authorized sentence enhancement when victim of involuntary manslaughter was a member of defendant's family or household was not facially unconstitutional for failure to give notice of the sentence-enhancing facts.

People v. Swift, 202 Ill.2d 378, 781 N.E.2d 292 (2002) The Illinois extended term statute, which at the time of defendant's sentence allowed a sentence in excess of 60 years based on the trial court's finding that the offense was accompanied by "exceptionally brutal or heinous" conduct, violated **Apprendi**. The extended-term statute was not unconstitutional on its face.

Hill v. Cowan, 202 Ill.2d 151, 781 N.E.2d 1065 (2002) **Apprendi** challenges may not be raised where the underlying conviction was entered pursuant to a guilty plea. Defendant, who raised an **Apprendi** challenge in a state *habeas corpus* petition, waived the issue by pleading guilty despite the lack of notice in the charge or the guilty plea admonitions that he could be sentenced to an extended term based on the "exceptionally brutal or heinous" factor. The sentencing statute is not void *ab initio*, for the "void *ab initio*" doctrine applies only to statutes that are unconstitutional on their face. See also, **People v. Jackson**, 199 Ill.2d 286, 769 N.E.2d 21 (2002) (defendant waived **Apprendi** argument by pleading guilty); **People v. Townsell**, 209 Ill.2d 543, 809 N.E.2d 103 (2004) (**Apprendi** claim that is waived pursuant to a guilty plea may not be considered on appeal under the plain-error rule); **People v.**

Beronich, 334 Ill.App.3d 536, 778 N.E.2d 385 (2d Dist. 2002) (defendant who pleaded guilty before **Apprendi** was decided was not entitled to withdraw his plea because, in light of **Apprendi**, the trial court's admonishments of the possible maximum penalties were inaccurate, or because the trial court failed to advise him that he had the right to have a jury decide extended term factors).

People v. Hopkins, 201 Ill.2d 26, 773 N.E.2d 633 (2002) Where at least one extended term eligibility factor is valid under **Apprendi**, an extended term is not precluded because other extended term factors are not presented to the jury and proven beyond a reasonable doubt. Where the age of the victim was an element of one of the offenses for which defendant was convicted, and was therefore found by the jury to have been proven beyond a reasonable doubt, reversal was not required because the trial court also found two extended-term factors that were not proven beyond a reasonable doubt.

People v. Ford, 198 Ill.2d 68, 761 N.E.2d 735 (2001) There was no due process violation where defendant was found death-eligible but was sentenced to 100-year extended term; once death-eligibility finding was made, maximum authorized sentence was death even where extended term was based on factor that had not been an issue at death hearing. See also, **People v. Ballard**, 206 Ill.2d 151, 794 N.E.2d 788 (2002) (the State is not required under **Apprendi** and **Ring** to prove beyond a reasonable doubt, at the second stage of a death hearing, that there are no mitigating factors sufficient to preclude a death sentence; **Ring** referred only to aggravating factors); **People v. Thompson**, 222 Ill.2d 1, 853 N.E.2d 378 (2006) (same).

People v. Wagener, 196 Ill.2d 269, 752 N.E.2d 430 (2001) **Apprendi** applies where the case was on direct appeal when **Apprendi** was decided. See also, **People v. Ford**, 198 Ill.2d 68, 761 N.E.2d 735 (2001). Defendant did not forfeit **Apprendi** argument by not raising it at trial where **Apprendi** was not decided until two years after defendant's trial.

People v. Carney, 196 Ill.2d 518, 752 N.E.2d 1137 (2001) **Apprendi** does not apply to consecutive sentencing. See also, **People v. Wagener**, 196 Ill.2d 269, 752 N.E.2d 430 (2001).

Illinois Appellate Court

People v. Polk, 2024 IL App (1st) 181933 Pursuant to **Apprendi v. New Jersey**, 530 U.S. 466 (2000), any fact, other than a prior conviction, that increases the penalty for an offense beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. Here, the offense of conspiring to possess heroin with the intent to deliver is a Class 2 felony, carrying a sentencing range of 3-to-7 years. It becomes punishable by up to 40 years if the object of the conspiracy is to possession between 100 and 400 grams of heroin. Under **Apprendi**, the amount of drugs is a fact that must be presented to the jury and proved beyond a reasonable doubt.

Here, the jury did not decide that defendant agreed to the possession of any particular amount of drugs. The jury was only asked to determine whether he agreed to the possession of drugs, generally. The jury's finding that a specific quantity of drugs were possessed by certain members of the drug conspiracy was not a finding that this defendant *agreed* to possession of that quantity of drugs. Thus, there was an **Apprendi** violation.

Defendant did not object to the violation, however. Accordingly, the appellate court went on to review the matter for plain error. On that question, the court found that while the

evidence was overwhelming that defendant "was an active participant in an elaborate drug trafficking conspiracy," the evidence was closely balanced as to whether defendant agreed to the possession of the specific quantity of drugs in question. Accordingly, the matter was remanded for resentencing within the range applicable to the lesser quantity of drugs for which the evidence of agreement was not closely balanced.

People v. Spears, 2024 IL App (1st) 181491 Pursuant to **Apprendi v. New Jersey**, 530 U.S. 466 (2000), any fact, other than a prior conviction, that increases the penalty for an offense beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. Here, the offense of conspiring to possess heroin with the intent to deliver is a Class 2 felony, carrying a sentencing range of 3-to-7 years. It becomes punishable by up to 40 years if the object of the conspiracy is to possession between 100 and 400 grams of heroin. Under **Apprendi**, the amount of drugs is a fact that must be presented to the jury and proved beyond a reasonable doubt.

Here, the jury did not decide that the defendants agreed to the possession of any particular amount of drugs. The jury was only asked to determine whether they agreed to the possession of drugs, generally. The jury's finding that a specific quantity of drugs were possessed by certain members of the drug conspiracy was not a finding that the defendants *agreed* to possession of that quantity of drugs. Thus, there was an **Apprendi** violation.

None of the defendants objected to the violation, however. Accordingly, the appellate court went on to review the matter for plain error. On that question, the court found that while the evidence was overwhelming that the defendants engaged in a far-reaching drug conspiracy, the evidence was closely balanced as to whether they agreed to the possession of the specific quantity of drugs in question. Accordingly, the matter was remanded for resentencing within the range applicable to the lesser quantity of drugs for which the evidence of agreement was not closely balanced.

People v. Ransom, 2024 IL App (4th) 230506 After finding defendant's offense brutal and heinous, the trial court imposed a 35-year extended-term sentence for attempted murder. Defendant also received 20 years for armed robbery (to be served at 85% due to infliction of great bodily harm), and 15 years for home invasion. He filed a post-conviction petition alleging ineffective assistance of appellate counsel for failing to raise a claim under **Apprendi v. New Jersey**, 530 U.S. 466 (2000), as his extended-term and 85% sentences were the result of factual findings made by a judge rather than a jury.

The appellate court affirmed the circuit court's second-stage dismissal of the petition. **Apprendi** was decided during defendant's direct appeal and therefore applies to his case, but **Apprendi** violations are subject to forfeiture as well as harmless error review. **People v. Crespo**, 203 Ill. 2d 335 (2001). Here, had appellate counsel raised an **Apprendi** challenge, it would have been reviewed for plain error. Given the overwhelming nature of the evidence – the defendant severely beat the victim in the head with a hammer leaving a crime scene with, according to a responding paramedic, "very, very, vast, very copious amounts of blood" – appellate counsel would not have been able to establish clear error. Rather, any error would be harmless because a jury would have reached the same conclusion on the question of whether the crime was brutal and heinous.

Defendant countered that his appeal would have been decided before **Crespo**, meaning his claim would have won reversal rather than be reviewed for plain or harmless error. The appellate court pointed out that under **People v. Bew**, 228 Ill. 2d 122 (2008), it must conduct the **Strickland** prejudice analysis using the law in existence at the time of

review. Thus, **Crespo** is applicable to the current analysis, and any **Apprendi** violation would be considered harmless.

Nor was appellate counsel ineffective for challenging the finding of great bodily harm and the resulting 85% credit calculation. Defendant argued that the finding of great bodily harm existed only on the trial court's written order, but was not made orally. The appellate court disagreed that this was a "conflict" which triggers the rule that an oral pronouncement controls over a written order. The court did orally state that the home invasion resulted in great bodily harm and there was no evidence that the court's silence as to the armed robbery charge signaled an intent to find that it did *not* result in great bodily harm. Moreover, the evidence overwhelmingly established great bodily harm.

Finally, the court noted that defendant had filed his petition in 2002, and post-conviction proceedings took 20 years. The court stated this was borderline unconscionable and urged trial courts to ensure post-conviction petitions are timely heard and resolved.

People v. Jackson, 2018 IL App (1st) 150487 The firearm enhancements apply to attempt murder of a peace officer. 720 ILCS 5/8-4(c)(1) defines attempt murder as a Class X felony, and section 8-4(c)(1)(A) sets out an enhanced range for attempt murder of a peace officer, 20-80 years. The appellate court concluded that the firearm enhancements contained in sub-sections (B) through (D), were intended to apply not just to the Class X range set out in sub-section (c)(1), but also the enhanced range in (c)(1)(A), because this is "the most natural reading" of the text, breaking with **People v. Douglas**, 371 Ill. App. 3d 21 (1st Dist. 2007). Moreover, imposition of the firearm enhancement did not violate **Apprendi**. Although the attempt murder charge did not contain the firearm enhancement, it included the phrase "shot at." Also, the remaining counts, as well as the evidence at trial, made clear that the State was alleging defendant used a firearm, such that in finding him guilty, the jury would have necessarily found defendant eligible for the enhancement.

People v. Barnes, 2017 IL App (1st) 143902 Section 3-6-3(a)(2)(iii), which states that if the sentencing court finds certain crimes, including home invasion, result in "great bodily harm," a defendant must serve 85% rather than 50% of the sentence, does not violate **Apprendi**. A change in the amount of good-conduct credit a defendant is awarded is not a change in the prescribed maximum penalty of the underlying offense. Good-time credit is not definite, immediate, or automatic, and despite its impact on the actual jail time defendant might serve, its reduction does not increase the sentence imposed.

People v. Owens, 2016 IL App (4th) 140090 Defendant was convicted of driving with a revoked license, which is ordinarily a Class A misdemeanor. 625 ILCS 5/6-303(a). But when a defendant has been previously convicted of driving with a revoked license and the original revocation was for driving under the influence, it is a Class 4 felony. 625 ILCS 5/6-303(d). Defendant conceded that the existence of the prior revocation was a prior conviction not covered by **Apprendi**, but argued that the reason for the revocation was more than the mere fact of a prior conviction and thus under **Apprendi** had to be proved to a jury beyond a reasonable doubt.

The court rejected defendant's argument. It held that the difference between a prior conviction and the reason for the prior conviction was "a distinction without a difference," and thus **Apprendi** did not apply.

People v. Messenger, 2015 IL App (3d) 130581 Taking judicial notice of an element of a

crime does not violate **Apprendi** so long as the jury has the option to accept or reject the fact concerning which judicial notice was taken. An IPI instruction (Criminal 4th No. 1.01) informs the jury that it need not accept as conclusive any fact that has been judicially noticed.

In an aggravated battery case in which the trial court took judicial notice that the jail was owned by the county, the trial court failed to give IPI Criminal 4th No. 1.01. Instead, the court gave a non-IPI instruction stating that the "entire county jail is public property." The Appellate Court found that the failure to give the IPI instruction constituted error, but that error was harmless in light of the overwhelming evidence of guilt, the trial court's oral admonishment to the jury during trial that the court had taken judicial notice that the jail was public property but that judicially noticed facts are not conclusive, and the inability of the defense to produce any evidence to rebut the fact that the jail was public property.

People v. Wade, 2015 IL App (3d) 130780 Defendants were tried in a joint trial under charges of: (1) attempt murder alleging that defendants performed a substantial step toward the commission of attempt murder when they "shot [the victim] about the body with a handgun," and (2) aggravated battery with a firearm alleging that in the course of committing a battery, defendants knowingly and without legal justification caused an injury "by means of discharging a firearm, in that [they] shot [the complainant] about the body with a handgun." The jury was instructed that if it convicted of attempt murder it was required to also determine whether the defendants personally discharged a firearm and proximately caused great bodily harm, permanent disability, or permanent disfigurement. 725 ILCS 5/8-4(c)(1)(D) provides a 25-year sentencing enhancement where the defendant "personally discharged a firearm that proximately caused" great bodily harm, permanent disability, permanent disfigurement, or death.

On appeal, defendants argued that the trial court committed plain error by instructing the jury concerning the enhancement where the indictments did not make the same allegations.

In response to **Apprendi**, the Illinois General Assembly adopted 725 ILCS 5/111-3(c-5), which states that when an alleged fact other than a prior conviction is not an element of the offense but is sought to be used to increase the range of penalties beyond the statutory maximum that could otherwise be imposed, the alleged fact "must be included in the charging instrument or otherwise provided to the defendant through a written notification before trial, submitted to a trier of fact as an aggravating factor, and proved beyond a reasonable doubt."

The Appellate Court found that defendants were placed on notice that the State would seek the enhanced sentence. Although the indictments were inartfully drafted, the allegations that defendants shot the victim "about the body with a handgun" alleged that defendants personally discharged a weapon. In addition, the indictments for aggravated battery with a firearm stated that defendants caused injury to the victim "by means of the discharging of a firearm." All counts of a multiple count indictment are to be read as a whole, and elements missing from one count of an indictment may be supplied by another count.

The court also held that defendants were placed on notice of the "proximate cause" factor where the indictments for aggravated battery with a firearm stated that defendants caused the victim's injuries. Although the phrase "proximately caused" was not used, it was reasonable for the defendants to infer that the jury would consider whether defendants caused bodily harm. The court also noted that at the arraignment, the trial judge discussed the possible sentencing ranges and mentioned that there would be a 25-year enhancement if the evidence showed that gunshot wounds caused great bodily harm. Under these circumstances, defendants could not claim that they were unaware that the State would seek

the enhancement.

The court also noted that the State's discovery disclosed that it would call an expert to testify about the victim's injuries and that the State presented overwhelming evidence that the gunshot wounds caused great bodily harm. Because defendants had ample notice that the State would seek the enhancement based on the injuries which the gunshots caused, the trial court's instructions did not constitute error.

People v. Daniel, 2014 IL App (1st) 121171 The State charged defendant with armed robbery while armed with a firearm, but the jury was incorrectly instructed that the charge was armed robbery while armed with a dangerous weapon. Defendant argued that due to this instructional error a fact used to enhance his sentence (that he was armed with a firearm) was not properly submitted to the jury as required by **Apprendi v. New Jersey**, 530 U.S. 466 (2000).

An **Apprendi** violation occurred here because the fact of being armed with a firearm (which increased defendant's sentence by 15 years) was never submitted to the jury since the instructions erroneously referred to being armed with a dangerous weapon, not a firearm. This error, however, failed to satisfy either prong of the plain-error test. There was overwhelming evidence that defendant was armed with a firearm, and indeed it was undisputed at trial that he carried a firearm. And the Illinois Supreme Court has specifically held that **Apprendi** errors do not fall within the narrow category of structural errors that qualify for the second prong of plain error. **People v. Crespo**, 203 Ill.2d 335 (2003).

People v. Fernandez, 2014 IL App (1st) 120508 Defendant argued that under **Taylor v. United States**, 495 U.S. 575 (1990) and **Descamps v. United States**, 570 U.S. 254, 133 S. Ct. 2276, 186 L.Ed.2d 438 (2013), when determining whether there is a prior conviction for purposes of the Habitual Criminal Act the sentencing court may look only to the elements of the prior conviction and not to the conduct underlying the conviction. Defendant contended that his Sixth Amendment right to a jury trial was violated because the sentencing court looked beyond the elements of the federal conviction and examined the conduct involved in that conviction.

The court concluded that defendant's argument carried "some persuasive force" and that a constitutional issue could arise if the sentencing court considered facts which had not been proven beyond a reasonable doubt before a jury. However, the court concluded that the issue was forfeited in this case because defendant stipulated to testimony at the sentencing hearing concerning the facts underlying the prior offense and failed to object when the State used his federal guilty plea to establish the quantity of drugs in question.

People v. Nowells, 2013 IL App (1st) 113209 725 ILCS 5/111-3(c) provides that where the State seeks an enhanced sentence based on a prior conviction, the charge must give notice of the intent to seek an enhanced sentence and allege the prior conviction. "However, the fact of such prior conviction and the State's intention to seek an enhanced sentence are not elements of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial."

The court concluded that under the plain language of §111-3(c), the charge is only required to give notice of the intent to seek an enhanced sentence if the prior conviction is not an element of the offense. Where defendant was charged with unlawful use of a weapon by a felon, which includes as an element a prior felony conviction, §111-3(c) was inapplicable although UUW by a felon is a Class 2 felony which carries a special sentencing range of three

to 14 years. The State was not seeking an enhanced sentence, but was merely seeking a conviction which would be subject to the only authorized sentence for the offense.

People v. Crawford, 2011 IL App (2d) 100533 Except for the fact of a prior conviction, any fact that increases the penalty beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. **Apprendi v. New Jersey**, 530 U.S. 466 (2000). Every fact affecting the defendant's sentence is not an element of the offense, even though it may have a substantial impact.

Defendant was charged with a Class 3 felony, which is punishable by a period of probation, a term of periodic imprisonment, a term of conditional discharge, or a term of imprisonment of not less than two years and not more than five years. The Code of Corrections also contains a provision that the court "shall impose a sentence of probation" unless it makes one of the enumerated findings. 730 ILCS 5/5-6-1(a).

This provision did not convert the maximum sentence to which defendant could be sentenced without an additional finding from five years' imprisonment to probation. The enumerated findings that the court was required to make before imposing a sentence other than probation were mere sentencing factors that guided the court's discretion in imposing a sentence at or below the statutory maximum.

People v. Johnson, 372 Ill.App.3d 772, 867 N.E.2d 49 (1st Dist. 2007) The trial court's use of a presentence investigation report to determine the existence of a prior conviction (to impose an extended-term sentence) does not violate **Apprendi** or **Shepard v. U.S.**, 544 U.S. 13 (2005).

People v. Norwood, 362 Ill.App.3d 1121, 841 N.E.2d 514 (1st Dist. 2005) Illinois statutes passed in response to **Apprendi** do not give defendant the right to a bifurcated hearing at which different finders of fact determine issues of guilt and extended term eligibility. (Note: effective July 1, 2006, Supreme Court Rule 451 authorizes trial judges to order bifurcated trials in enhanced sentencing cases).

People v. Matthews, 362 Ill.App.3d 953, 842 N.E.2d 750 (1st Dist. 2005) **Shepard v. U.S.**, 544, U.S. 13 (2005), did not extend **Apprendi** to facts other than the mere conviction, such as defendant's age at the time of the prior conviction and the dates on which the prior offenses occurred. Factors, such as the sequence of prior convictions and defendant's age at the time of those convictions, concern facts "of" a prior conviction, and therefore may be determined by the sentencing judge.

Defendant failed to show that the presentence report was unreliable (to establish eligibility for a Class X sentence). Accord, **People v. Rivera**, 362 Ill.App.3d 815, 841 N.E.2d 532 (1st Dist. 2005); **People v. Yancy**, 368 Ill.App.3d 381, 858 N.E.2d 454 (1st Dist. 2005).

People v. Fikara, 345 Ill.App.3d 144, 802 N.E.2d 260 (2d Dist. 2003) Statute requiring a new trial when a sentence is vacated on collateral attack due to an **Apprendi** violation does not require a new trial when the State seeks an extended sentence based solely on defendant's prior convictions.

People v. Fikara, 345 Ill.App.3d 144, 802 N.E.2d 260 (2d Dist. 2003) Statute requiring a new trial when a sentence is vacated on collateral attack due to an **Apprendi** violation does not require a new trial when the State seeks an extended sentence based solely on defendant's prior convictions.

People v. Perea, 347 Ill.App.3d 26, 807 N.E.2d 26 (1st Dist. 2004) The juvenile presumptive transfer statute does not violate **Apprendi**.

People v. McClain, 343 Ill.App.3d 1122, 799 N.E.2d 322 (1st Dist. 2003) P.A. 91-953, which conformed Illinois law to **Apprendi**, concerning "only the *procedural* aspects of complying with **Apprendi**" and therefore could be applied to offenses which occurred before its effective date of February 23, 2001. Because **Apprendi** did not render any Illinois statute facially unconstitutional, a particular sentence satisfies due process so long as the procedures used to obtain it satisfied **Apprendi**. P.A. 91-953 is constitutional though it allows the State to charge elements of an offense by written notice rather than by information or indictment.

People v. Askew, 341 Ill.App.3d 548, 793 N.E.2d 56 (1st Dist. 2003) By enacting Public Act 91-953, the legislature intended to conform Illinois law to the requirements of **Apprendi**. The legislature intended to exempt from the reasonable doubt standard "extended term eligibility factors based upon prior convictions," although the plain language of the amended version of 730 ILCS 5/5-8-2 contains no such exemption. The version of section 5-8-2(a) under which defendant was sentenced should be read to include an exception for the fact of prior convictions.

People v. O'Quinn, 339 Ill.App.3d 347, 791 N.E.2d 1066 (5th Dist. 2003) Even before P.A. 91-953, which attempted to conform Illinois sentencing law to **Apprendi**, was enacted, the extended-term statute did not violate **Apprendi** if the jury was required to determine the extended-term factor under the reasonable doubt standard. Use of a special interrogatory to determine the victim's age (i.e., the sentence enhancing factor) did not usurp legislative function and did not add an element of the offense, in violation of the *ex post facto* clause. Also, though special interrogatories are not favored in criminal cases, they may be used where the defense is not prejudiced.

In re Matthew M., 335 Ill.App.3d 276, 780 N.E.2d 723 (2d Dist. 2002) Statute governing extended jurisdiction juvenile (EJJ) prosecutions does not violate **Apprendi**. An EJJ designation amounts to a determination of the appropriate forum and not a substantive determination of the authorized maximum sentence.

People v. Bell, 327 Ill.App.3d 238, 764 N.E.2d 551 (3rd Dist. 2002) Truth-in-sentencing provision did not violate defendant's due process and jury trial rights under **Apprendi**; the provision did not increase the maximum penalty to which defendant could be sentenced. See also, **People v. Fender**, 325 Ill.App.3d 168, 757 N.E.2d 645 (5th Dist. 2001).

People v. Cabrera, 326 Ill.App.3d 555, 760 N.E.2d 1041 (3rd Dist. 2001) Natural life sentence based on murder conviction in another state qualifies for recidivism exception; no due process violation.

People v. Ware, 323 Ill.App.3d 47, 751 N.E.2d 81 (1st Dist. 2001) Recidivist sentencing

statute is not unconstitutional based on lack of sentencing requirement that jury determine fact of prior convictions beyond a reasonable doubt. See also, **People v. Brown**, 327 Ill.App.3d 816, 764 N.E.2d 562 (4th Dist. 2002) (defendant's extended-term sentence, under statute authorizing imposition of extended sentence when defendant has prior convictions without requiring submission of issue to jury to be proved beyond a reasonable doubt, did not violate due process).

People v. Chanthaloth, 318 Ill.App.3d 806, 743 N.E.2d 1043 (2d Dist. 2001) Extended-term sentence for home invasion was not permissible where the statutory factors warranting the extended sentence (that the crime was exceptionally brutal and heinous, that the victim was over the age of 60, and that the victim was physically handicapped) were required to be submitted to the jury and proven beyond a reasonable doubt.

§44-1(c)
***Miller-Roper-Graham* Issues**

Note: See also §33-6(g) Juvenile Proceedings – Dispositions (Sentencing) - *Miller-Roper-Graham* Issues.

§44-1(c)(1)
Generally

United States Supreme Court
Jones v. Mississippi, ____ U.S. ____ (No. 18-1259) In **Miller v. Alabama**, 567 U.S. 460 (2012), the Court held that the eighth amendment prohibits imposition of a mandatory life sentence for a juvenile offender. Subsequently, in **Montgomery v. Louisiana**, 577 U.S. 190 (2016), the Court held that **Miller** applies retroactively. Jones argued that under **Miller** and **Montgomery**, the eighth amendment requires that there be a finding that a juvenile offender is permanently incorrigible before a discretionary life sentence can be imposed.

Jones was convicted of murdering his grandfather in 2004 when he was just 15 years old. At the time, the offense carried a mandatory life sentence. Subsequently, Jones challenged his life sentence in post-conviction proceedings based on **Miller** and **Montgomery** and obtained a new sentencing hearing. At resentencing, the judge again imposed a life sentence, noting that he had discretion to impose a lesser term but that he had reviewed factors "relevant to the child's culpability" and believed a life sentence was appropriate.

The Supreme Court majority disagreed with Jones's argument that a sentencer must make a finding of permanent incorrigibility before imposing a discretionary life sentence on a juvenile. No such express finding is required, nor is the court required to give a sentencing explanation with an "implicit finding" on the record. The constitution is satisfied by the existence of a discretionary sentencing system, and nothing more is required by the eighth amendment. **Miller** requires a procedure by which youth and its attendant characteristics are considered along with other mitigating factors, but it does not require that a specific finding be made. And, **Montgomery** did nothing to add to **Miller's** requirements.

The Court noted that States are free to impose additional limits on juvenile sentencing, such as banning life for juvenile offenders altogether, requiring specific factual findings, or mandating sentencing explanations be made on the record. As-applied proportionality claims remain available, as well, but Jones did not present such a claim here.

The dissent characterized the majority opinion as abandoning **Miller** and **Montgomery**. The dissenting justices would have required a finding that the juvenile is one of those rare children for whom life without parole is a constitutionally permissible sentence in order to affirm such a sentence.

Montgomery v. Louisiana, 577 U. S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) Under **Teague v. Lane**, 49 U. S. 288 (1989), federal courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include rules which forbid criminal punishment of certain primary conduct as well as those which prohibit a certain category of punishment for a class of defendants because of their status or offense.

The court concluded that when a new substantive rule of constitutional law controls the outcome of a case, the States are constitutionally required to give retroactive effect to that rule in State collateral proceedings. The court stressed that substantive constitutional rules place certain persons or punishments beyond the State's criminal enforcement power, and that by definition a conviction or sentence is unlawful where it is created by an unconstitutional provision.

Under **Miller v. Alabama**, 567 U. S. 460, 132 S.Ct. 2455 (2012), a juvenile convicted of homicide cannot be sentenced to life imprisonment without the possibility of parole unless the trial court first considers the minor's special circumstances in light of the principles and purposes of juvenile sentencing. **Miller** did not bar a life sentence without parole in all cases, but limited such sentences to juvenile offenders whose crimes reflect "irreparable corruption."

The court concluded that **Miller** announced a substantive rule because it barred the imposition of a mandatory life sentence without parole upon juvenile offenders "whose crimes reflect the transient immaturity of youth." Thus, **Miller** rendered life without parole an unconstitutional penalty for a class of defendants because of their status.

Because **Miller** announced a substantive rule, it must be applied retroactively in state collateral review proceedings. The court noted, however, that giving **Miller** retroactive effect does not require States to relitigate sentences or convictions in every case in which a juvenile offender received life without parole. Instead, a **Miller** violation may be remedied by permitting juvenile homicide offenders to be considered for parole.

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012) The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. This flows from the precept that criminal punishment should be graduated and proportioned to both the offender and the offense.

Two strands of precedent reflect the court's concern with proportionate punishment. The first adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. This line of cases includes **Roper v. Simmons**, 543 U.S. 551 (2005) (invalidating the death penalty for juvenile offenders), and **Graham v. Florida**, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010) (invalidating life without parole for non-homicide juvenile offenders). The second line of precedent prohibits mandatory imposition of capital punishment and requires that the sentencer consider the characteristics of the offender and the details of the offense before sentencing him to death.

The confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for offenders under 18 violate the Eighth Amendment.

Roper and **Graham** establish that children are constitutionally different than adults for the sentencing purposes as they have diminished culpability and greater prospects for

reform. Mandatory life-without-parole statutes prohibit assessment of whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. They contravene **Roper** and **Graham**'s foundational principle that imposition of life without parole on juveniles cannot proceed as though they were not children.

Graham's treatment of juvenile life sentences as analogous to capital punishment makes relevant the second line of cases demanding individualized sentencing when imposing the death penalty. A sentencer must have the ability to consider the mitigating qualities of youth. Mandatory penalties by their nature preclude consideration of an offender's age and the wealth of characteristics and circumstances attendant to it, by treating every child like an adult. By making youth and all that accompanies it irrelevant to imposition of the harshest prison sentence, mandatory penalties pose too great a risk of disproportionate punishment.

This holding does not effectively overrule **Harmelin v. Michigan**, 501 U.S. 957 (1991), which upheld mandatory life without parole for adult offenders. Sentencing rules permissible for adults may not be so for children. Just as death is different, children are different too.

The fact that 29 jurisdictions have some form of mandatory life imprisonment for juvenile offenders does not defeat an Eighth Amendment challenge. The absence of a national consensus is relevant when the court considers a categorical bar to a form of punishment, not where, as here, it only requires that the sentencer follow a certain process. Moreover, fewer states allow mandatory life for homicide offenders than allowed mandatory life for non-homicide offenders in **Graham**. And, as in **Graham**, the fact that juvenile transfer statutes were enacted independently of mandatory life statutes makes it impossible to conclude that legislators actually endorsed the penalty of mandatory life without parole for children.

The presence of some discretion in some jurisdictions' transfer statutes is insufficient to eliminate the Eighth Amendment violation. The question at transfer hearings and the resources available may differ dramatically from the issue at post-trial sentencing. The ruling may reflect only a choice between light sentencing as a juvenile and standard sentencing as an adult. The discretion available to a judge at the transfer stage therefore cannot substitute for discretion at post-trial sentencing in adult court.

Breyer, J., joined by Sotomayor, J., concurred. Sentencing a juvenile to natural life without a finding that the juvenile killed or intended to kill the victim, violates the Eighth Amendment, whether its application is mandatory or discretionary.

Illinois Supreme Court

People v. Wilson, 2023 IL 127666 The circuit court properly denied defendant leave to file a successive post-conviction petition. Defendant's petition alleged that a discretionary, *de facto* life sentence imposed on a juvenile, without an explicit consideration of youth and its attendant characteristics, and without an explicit finding of permanent incorrigibility, violated the eighth amendment.

Pursuant to **Miller v. Alabama**, 567 U.S. 460 (2012), a sentencing court must consider youth and its attendant characteristics before sentencing a juvenile to life in prison, and a life sentence is only appropriate for juveniles who are determined to be permanently incorrigible. But **Miller** "did not impose a formal fact-finding requirement." **Jones v. Mississippi**, 141 S. Ct. 1307 (2021). As long as the court has the discretion to impose a sentence shorter than life, and doesn't expressly refuse as a matter of law to consider the defendant's youth, the sentence is constitutional.

Here, the record showed that the sentencing court had discretion to impose a sentence shorter than *de facto* life, and that it considered a range of factors, including defendant's age, prior to imposing a 59-year sentence. Thus, the sentence comported with the eighth amendment. The supreme court remanded to the appellate court for consideration of defendant's proportionate penalties claim.

Finally, the supreme court agreed that **People v. Holman**, 2017 IL 120655, must be overruled. **Holman** required an on-the-record consideration of youth and attendant characteristics before the imposition of a life sentence on a juvenile. In light of **Jones**, this holding no longer accurately reflects eighth amendment law.

People v. Jones, 2021 IL 126432 A five-justice majority held that a juvenile defendant who faces a mandatory natural life sentence, and pleads guilty to a negotiated *de facto* life sentence, cannot allege that the subsequent holding in **Miller v. Alabama**, 567 U.S. 460 (2012), rendered the plea invalid. Defendant alleged that under **Miller**, the mandatory life sentence he faced at the time he pled guilty was now unconstitutional, and because **Miller** is retroactive, he pled under false pretenses. Moreover, defendant received a *de facto* life sentence without consideration of his youth and attendant circumstances. The majority disagreed.

A guilty plea agreement forecloses any claim of error. By entering into the contract, defendant waived any future favorable legal developments. The majority relied on two federal cases which held that guilty pleas that spared the defendant the potential for the death penalty were not invalidated by later changes in the law which made the death penalty inapplicable to the defendants. Thus, the plea must be considered voluntary despite the subsequent change in law.

Finally, the majority found no error in the 50-year sentence itself, where **Jones v. Mississippi**, 593 U.S. ___ (2021) authorizes the imposition of a discretionary life sentence as long as the court was not precluded from considering the defendant's youth and attendant circumstances. Here, the court could have rejected the plea agreement had therefore exercised discretion in accordance with **Jones**.

The dissenting justices would have found the plea invalid where defendant was deprived of the protections provided by **Miller.** Defendant pled guilty for a crime committed at age 16 and agreed to a *de facto* life sentence after waiving his right to a pre-sentence investigation report and a hearing on mitigation and aggravation. Without these facts, the sentencing court could not have possibly considered the **Miller** factors. Furthermore, the federal cases are distinguishable because in both cases, the defendants faced only the possibility of the death penalty, while in the instant case the defendant faced a mandatory, unconstitutional life sentence. Regardless, the instant case cannot be compared to cases involving adults, because juveniles are different according to United States Supreme Court precedent. Finally, the court stressed that having made no findings with regard to any of the **Miller** factors, the sentencing court's imposition of a 50-year sentence was unconstitutional.

People v. Lusby, 2020 IL 124046 Defendant received a 130-year aggregate sentence for a murder, aggravated criminal sexual assault, and home invasion he committed at age 16. The sentencing hearing took place in 2001, when defendant was 21 years old. He alleged in a 2014 post-conviction petition that the sentencing court violated the eighth amendment because it did not adequately consider his youth before imposing the *de facto* life sentence. The Appellate Court reversed, finding the sentencing court's generalized references to youth failed to comply with **Miller**.

The Supreme Court reversed, holding the sentencing court adequately considered defendant's youth. In **Holman,** the court outlined five factors relating to youth that should be considered before finding the defendant permanently incorrigible and therefore eligible for a life sentence: (1) age and accompanying immaturity; (2) family and home environment; (3) degree of participation and peer pressure; (4) incompetence in dealing with the justice system; (5) and prospects for rehabilitation. The sentencing court here considered at least some information relating to all of these factors.

First, both parties "highlighted" defendant's age at the sentencing hearing, and the sentencing court noted age was a "factor." Second, the Court found adequate information about defendant's home life from the PSI, which noted he had a good relationship with his parents. Third, defendant committed the crime as principal and there was no evidence of peer pressure. Fourth, the sentencing court heard no evidence of incompetence, defendant had obtained a GED, and his testimony was clear. Finally, regarding rehabilitation, the sentencing court heard evidence of criminal history from both before and after this offense.

People v. Holman, 2017 IL 120655 Under the Eighth Amendment prohibition of cruel and unusual punishment, criminal punishment must be proportioned to both the offender and the offense. Thus, the Eighth Amendment prohibits mandatory life sentences for juveniles who commit murder. **Miller v. Alabama**, 567 U.S. 460 (2012) **Miller** is based on the concept that juveniles are less mature and responsible than adults and more vulnerable to negative influence and peer pressure.

In addition, because juveniles are more malleable than adults, criminal activity by juveniles is less indicative of irretrievable depravity than is generally the case with adults. The **Miller** court concluded that the constitution requires a sentencing process which considers an offender's youth and characteristics before a sentence of life imprisonment without the possibility of parole can be imposed.

In Illinois any life sentence imposed on a juvenile, whether mandatory or discretionary, violates the Eighth Amendment unless the trial court considered youth and its attendant characteristics. Thus, an Illinois court may sentence a juvenile defendant to life without parole only if the minor's conduct shows irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation.

In making this determination, the trial court must consider: (1) defendant's youth and attendant circumstances including chronological age, any evidence of particular immaturity, impetuosity, and failure to appreciate risks and consequences, (2) defendant's family and home environment, (3) the degree of defendant's participation in the offense and any evidence of familial or peer pressures that may have affected him, (4) defendant's incompetence, including his inability to deal with police officers or prosecutors or his own attorneys, and (5) defendant's prospects for rehabilitation.

Where before **Miller** was decided defendant received a discretionary life sentence without the possibility of parole, whether a **Miller** violation occurred depends on whether the trial court considered evidence of defendant's youth at the original sentencing hearing. Where the trial court stated that it had considered the evidence at trial and the presentence report, it was aware of defendant's age, and it heard some evidence concerning defendant's mental problems and family background, the trial court sufficiently considered defendant's youth-related characteristics to comply with **Miller**.

People v. Hunter & Wilson, 2017 IL 121306 An amendment to the statute changing the requirements for the automatic transfer of juveniles to adult court (705 ILCS 405/5-130),

which went into effect after defendant Hunter had been convicted but while his case was pending on direct appeal, was held not to apply retroactively to defendant's case. Section 4 of the Statute on Statutes (5 ILCS 70/4) allows the application of procedural changes in the law to be applied retroactively to ongoing proceedings. It also requires that "the proceedings thereafter" shall conform to the laws in force at the time of the proceedings in question. In defendant's case, the proceedings in the trial court were completed before the transfer statute was amended. Because the proceedings were completed, the amended statute does not apply retroactively to defendant's case.

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

People v. Reyes, 2016 IL 119271 Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant's sentence was a *de facto* mandatory life sentence that was unconstitutional under **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455 (2012). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. **Miller** held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

Here defendant was 16 when he committed the offense and since he must serve 89 years, he will remain in prison until he is 105. Defendant's sentence is therefore a mandatory *de facto* life sentence.

The court vacated defendant's sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant's minimum aggregate sentence would be 32 years, a term that is not a *de facto* life sentence.

People v. Davis, 2014 IL 115595 The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishments. This prohibition flows from the basic principle that criminal punishment should be graduated and proportioned to the offender and the offense. In applying the Eighth Amendment to juveniles, the United States Supreme Court has recognized three general ways that juveniles differ from adults: (1) they lack maturity and have an underdeveloped sense of responsibility; (2) they are more vulnerable to negative influences and outside pressure; and (3) their character is not as well

formed. **Roper v. Simmons**, 543 U.S. 551 (2005); **Graham v. Florida**, 560 U.S. 48 (2010); **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

In **Miller**, the Supreme Court held that because juveniles "are constitutionally different from adults for purposes of sentencing," it is impermissible to impose a mandatory sentence of natural life imprisonment on juveniles under 18.

Defendant was sentenced pursuant to section 5-8-1(a)(1)(c) of the Unified Code of Corrections which provides that if a defendant is convicted of murdering more than one individual, the court shall sentence him to natural life imprisonment. Defendant argued that this provision is facially unconstitutional because it never permits a sentencer to consider any of the mitigating factors required by **Miller**.

The Illinois Supreme Court rejected this argument since **Miller** was expressly limited to mandatory life sentences imposed on juveniles. Section 5-8-1(a)(1)(c) by contrast can be validly applied to adults and thus it is not unconstitutional in all of its applications.

The Illinois Supreme Court, however, held that **Miller** applies retroactively to cases on collateral review. While **Miller** does not forbid a sentence of life imprisonment, it does require that every minor receive a sentencing hearing where a sentence other than life imprisonment is an available outcome. **Miller** thus places a particular class of persons (juveniles) beyond the State's power to punish with a particular punishment (mandatory life imprisonment).

Defendant established cause and prejudice allowing him to raise this issue for the first time in a successive post-conviction petition. **Miller's** new substantive rule, which was decided after defendant filed his prior post-conviction petition, constitutes cause because it was not available earlier to counsel. It constitutes prejudice because it applies retroactively to defendant's sentencing hearing, rendering his mandatory life sentence unconstitutional. The court vacated defendant's mandatory life sentence and remanded for a new sentencing hearing. The trial court may still sentence defendant to life imprisonment so long as the sentence is discretionary rather than mandatory.

Illinois Appellate Court

People v. Evans, 2026 IL App (1st) 241368 Defendant was convicted of attempt first degree murder and aggravated criminal sexual assault committed at age 17, and sentenced to an aggregate 90 years in prison. Defendant ultimately filed a post-conviction petition citing **Miller v. Alabama**, 567 U.S. 460 (2012), and **People v. Buffer**, 2019 IL 122327. After dismissal, the appellate ordered defendant resentenced in accordance with changes in juvenile sentencing law. At the 2024 resentencing, the trial court reimposed the same 90-year sentence.

By the time of resentencing, 730 ILCS 5/5-4.5-105(a) required 12 statutory mitigating factors that the court must consider when sentencing juveniles. The statute originally required nine factors, but was amended in 2024, adding three factors (factors 9, 10, and 11) to the previous nine-factor version.

At re-sentencing, the State argued that defendant's parole eligibility left him with no viable claim under **Miller**, and cited the circumstances of the offense, and a poor disciplinary record in prison as reasons to uphold the sentence. Defendant relied on the 12 statutory mitigating factors, noting, in part, his involvement in the child welfare system, past mental health evaluations, his alcoholic and abusive mother, who lost custody of him at age 9, and expressions of remorse.

In re-imposing the 90-year term, the sentencing court stated that it considered the record, all aggravating and mitigating factors, and the fact that defendant maintains a

meaningful opportunity for release via parole. However, when reading through the applicable mitigating factors, the court referenced only the original nine. Counsel did not object.

On appeal, defendant argued the sentencing court committed plain error by relying on the prior version of the statute and thereby ignoring three of the 12 factors. The State agreed the court used the wrong version, but argued no plain error occurred because the court "implicitly" considered the missing factors (involvement in the child welfare system, involvement in the community, and outcome of any mental health evaluation).

The appellate court found plain error. While the sentencing court considered upbringing and family background as part of the third factor, factor nine concerns involvement in the child welfare system specifically, a distinct environment outside the family context. Folding this factor into another factor would render the new language superfluous. This constituted a material omission here, where defendant's sentencing memo discussed his involvement in the child welfare system. The sentencing court's omissions also violated section 5-4.5-105(b)'s requirement that the court "specify on the record its consideration of the factors under subsection (a)."

Additionally, the court misapplied several factors it did address. First, it equated planning and a lack of a psychiatric condition with lack of impetuosity and maturity. But "impetuosity" and "maturity" in juvenile sentencing refer to juveniles' tendency to prioritize short-term rewards over longer-term risks, and the fact that adolescent brains are not yet fully mature. The absence of a formal diagnosis did not relieve the court of its obligation to evaluate evidence bearing on defendant's developmental maturity and decision-making capacity. Moreover, planning is addressed separately under factor six, establishing that impetuosity is a distinct consideration.

The sentencing court also focused on defendant's disciplinary infractions from his early years in custody without explaining how it evaluated his subsequent two decades of progress, including obtaining his GED, taking college courses, positive response to therapy, and working his way from kitchen staff to lawn care. These facts went toward factor ten on communal involvement and factor four on rehabilitation, a key component of **Miller's** central holding that children who commit even heinous crimes are capable of change.

The cumulative effect of these errors rendered the hearing an unreliable method for evaluating mitigating and aggravating evidence. By focusing on defendant's eligibility for parole rather than a comprehensive and accurate review of the statutory factors, the entire framing of the hearing was unreliable. While the supreme court has narrowed circumstances to which **Miller** applies, the Illinois legislature incorporated them in section 5-4.5-105(a) without regard to the availability of parole. Thus, the errors affected the framework of the resentencing hearing under the second prong of the plain error analysis. The appellate court reversed and remanded for new sentencing hearing.

People v. Reyes, 2025 IL App (2d) 210423-B Defendant was convicted of murder and two attempted murders committed at age 16. His initial cumulative sentence of 97 years was vacated and remanded in light of **Miller**, as was the term of 66 years imposed on resentencing. After a third sentence. also of 66 years, was vacated on appeal, the supreme court vacated the appellate court's decision and ordered reconsideration in light of **People v. Wilson**, 2023 IL 127666. After considering **Wilson**, the appellate court again vacated the sentence and remanded for a new hearing before a different judge.

The appellate court held that in sentencing defendant to 66 years, the trial court relied on several improper factors. Specifically, the trial court relied on an "Adult Risk Assessment" that was not appropriate for use on juveniles. The court also erred in considering aggravating

factors under Section 5-4.5-105(a), where that provision allows only for the consideration of additional mitigating factors. Additionally, the court improperly gave "great weight" to the aggravating factor that the defendant's conduct caused serious harm, which is a factor inherent in the offense of murder. The court further erred by failing to apply its findings that defendant was a 16 year-old with ADHD and the mental age of a 14 year-old, when considering the statutory mitigating factor regarding a youth's "ability to consider risks and consequences." Instead, the court, against the manifest weight of this evidence, found defendant was able to consider the risks and consequences of his behavior.

A majority of the court further found that in committing these errors, the sentencing court failed to make required findings consistent with the unambiguous direction of the mandate. Thus, re-assignment of the case to a new judge on remand was warranted. The court distinguished **People v. Class**, 2025 IL 129695, noting defendant requested re-assignment in this case as opposed to the *sua sponte* nature of the re-assignment in **Class**, and the fact that this case is a direct appeal while **Class** involved post-conviction proceedings.

People v. Bell, 2025 IL App (4th) 240929 The 16 year-old defendant drove a vehicle occupied by four other minors 80 mph in a 30 mph zone and crashed the car. A 16 year-old girl died in the crash. Defendant had a BAL of .141. He entered into an open guilty plea to aggravated DUI and reckless homicide and received the maximum 14-year prison sentence. However, while defense counsel raised several arguments in mitigation, counsel did not argue the youth-based sentencing factors required by 730 ILCS 5/5-4.5-105(a). Defendant argued counsel was ineffective in a motion to reconsider sentence, but the sentencing court denied the motion. The appellate court reversed and remanded.

The failure to raise youth-based sentencing factors during the sentencing hearing rendered counsel's performance ineffective. One youth-based factor is the existence of peer pressure. Here, the State had introduced a video of the event, during which defendant's passengers could be heard yelling "I don't want to die" and "value your life" in the seconds before the crash. The sentencing court placed heavy emphasis on this fact. But, in an affidavit introduced along with the motion to reconsider, one of the occupants of the vehicle averred that this video was taken out of context and that in fact the witness and the victim were encouraging defendant to speed up so as to "catch air."

Defense counsel's explanation of his strategy – he didn't want to shift blame to the victim – did not persuade the appellate court. Omitting to mention peer pressure and other factors of youth rendered counsel ineffective. Notably, defense counsel never mentioned any of the youth-based factors, and at one point stated that all drivers, "whether 16 or 61" have the same level of responsibility, which directly undermines the statute's intent to ensure courts recognize the diminished culpability of youthful offenders. Defense counsel's strategy also prevented him from objecting to several of the victim impact statements from non-representatives, unauthorized by law, further demonstrating its unreasonableness.

The appellate court remanded the matter for a sentencing hearing before a new judge. The judge below denied the motion despite the fact that the new context completely changed the import of the video, which was a major factor in the maximum sentence (the judge stated the video "chilled [him] to the bone" and "bothered the heck out [him]."). The judge also claimed on the order denying the motion that it had in fact considered the youth-based sentencing factors, yet during the hearing, the judge explicitly stated that it was finding only one factor in mitigation – defendant's lack of a prior record. This cast doubt on the judge' ability to fairly sentence defendant on remand.

People v. Woodson, 2024 IL App (1st) 221172 The circuit court abused its discretion by failing to adequately consider defendant's youth and rehabilitative potential at sentencing. The appellate court remedied this error by reducing defendant's sentence.

In a previous post-conviction petition, defendant contended that his aggregate 60-year sentence, imposed in 2003 for a murder and carjacking committed at age 17, was unconstitutional. The appellate court remanded for resentencing in compliance with **People v. Buffer**, 2019 IL 122327, and 730 ILCS 5/5-4.5-105. At the resentencing hearing, defendant presented mitigating evidence showing that he was developmentally disabled, had an IQ of 74, suffered blunt force trauma to the head at age 5, had been abusing marijuana since age 11, and came from a broken family. The defense presented expert testimony suggesting his criminality was a function of his youth and cognitive impairments, and that he was unlikely to re-offend. Three IDOC employees, including its former director, testified that defendant was essentially the hardest-working and most trustworthy inmate they had ever encountered. They detailed the numerous educational and employment achievements he obtained in his 16 years in prison, including barber certification and his status as the "number one barber" in his institution, and his unusually low number of "tickets." The former director concluded that he checked every box for rehabilitation. Three witnesses testified that they could find jobs for defendant upon release, and defendant spoke in allocution to express his remorse for committing the offense.

The circuit court imposed a 40-year term (30 for murder and 10 for carjacking), the maximum under **Buffer**. In response to the mitigating testimony from IDOC employees, the court noted it was giving defendant only a "half mark" because his good behavior and hard work "could just be a way to release [him from] boredom." When considering the statutory required factors of defendant's age, potential for rehabilitation, impetuosity, level of maturity, family history, and prior criminal activity, the court found none of the factors were significantly mitigating. The court reasoned that defendant was almost 18 and the conduct was not impetuous because defendant and his friends had mentioned they wanted to steal a car before leaving the house.

The appellate court majority reduced defendant's sentence to 25 years for murder and 5 for vehicular hijacking. The court found that the circuit court's sentence failed to give adequate weight to **Miller** and the factors required under section 5-4.5-105, which are necessary to ensure juvenile sentences reflect these defendants' diminished culpability and heightened capacity for change. Instead, the sentencing court "deliberately and unreasonably discounted" the significant evidence of defendant's diminished capacity and rehabilitation, stating that none of this evidence "mitigates a murder." This comment, and others made by the sentencing court which emphasized the seriousness of the offense and the need for retribution, ignored the decreased penological justification for the harshest sentences, even for the most serious crimes, when the offender is a juvenile.

A dissent would have found no abuse of discretion given that defendant originally faced a maximum of 95 years, and the sentencing court showed its adequate consideration of defendant's youth and rehabilitative potential by removing the firearm enhancement and reducing defendant's sentence to 40 years. The record demonstrated that the sentencing court considered all of the factors, and that the majority's only quarrel with the sentencing court was with the way those factors were weighed, which is not the role of the reviewing court. The dissent also would have found the 40-year sentence justified by the defense's "imprudent strategy" of attempting to minimize or excuse defendant's role in the offense – blaming his friend, calling defendant a "scapegoat," and describing the shooting as an accident – rather than taking full responsibility. Finally, the dissent criticized the majority's use of Supreme

Court Rule 615(b)(4)'s resentencing power, which it felt should be used more sparingly and not in cases where the appellate court is merely re-weighing the factors considered by the sentencing court.

People v. Morris, 2023 IL App (1st) 220035 Defendant was sentenced to an aggregate 100-year sentence for a murder and an attempt murder committed at age 16. In its prior opinion, the court remanded for a new sentencing hearing, finding that, while the sentencing court commented on defendant's youth and upbringing, those observations were not the same as a full consideration of the special characteristics of youth identified by **Miller**.

On remand, the sentencing court imposed the same 100-year sentence, and the appellate court again found error. The hearing took place after the legislature's 2019 amendments to juvenile sentencing law, including the codification of the **Miller** factors. 730 ILCS 5/5-4.5-105(a). The appellate court held that the sentencing court failed to adequately comply with section 5-4.5-105(a).

Before the sentencing hearing began, and throughout the hearing, the judge seemed preoccupied with determining whether or not it could re-impose the 100-year sentence without running afoul of the law. To that end, the judge considered the factors of 5-4.5-105(a) not as tools to help him fashion an appropriate sentence, but rather as, in his words, "certain issues you have to deal with in order to make a life sentence work." Thus, although the judge went through each factor at the hearing, he clearly did so without serious thought, as his comments about each factor were either perfunctory, dismissive, or both. For example, when considering defendant's maturity, the only fact the court mentioned was defendant's attempt to silence witnesses from jail, which he found to be a mature act. When considering age, the sentencing court merely said, "Age, yeah, 16." He similarly brushed aside serious childhood trauma such as sexual abuse and substance abuse in a single sentence, noting that they were self-reported allegations.

A new judge was required to sentence defendant for a third time, as the judge here employed a results-driven approach and showed an inability to "adhere to the legislature's directives regarding the sentencing of youthful offenders, while remaining open to all possible sentences."

People v. Merriweather, 2022 IL App (4th) 210498 Defendant was originally sentenced to 70 years of imprisonment for a murder committed when he was 17 years old. He was awarded resentencing in light of **Miller** and **Buffer**, and a 35-year sentence was imposed. On appeal, defendant argued that the trial court erred in its application of six of the sentencing factors set forth in 730 ILCS 5/5-4.5-105(a). The appellate court disagreed and upheld defendant's sentence.

The sentencing judge addressed all nine of the factors set forth in Section 5-4.5-105 at resentencing and did not err in referring to three of those factors as "aggravating." While the statute does not describe the factors in terms of aggravation, nothing precludes a court from considering them as such. The court properly considered defendant's youth and its attendant characteristics, noted that defendant had shown rehabilitative potential during the years since the offense, and declined to impose the firearm enhancement. Defendant's 35-year sentence was not an abuse of discretion.

People v. Bruce, 2022 IL App (1st) 210811 The sentencing court abused its discretion when, on a remand for resentencing pursuant to **Miller v. Alabama**, it rejected the parties'

agreement to a reduction from natural life to 23 years' imprisonment, and instead imposed a 28-year term.

Defendant was convicted for a double-murder committed at age 16. He was found guilty on a theory of accountability, having pushed the gunman to the scene in a wheelchair at the behest of a 25-year-old. Defendant left the scene prior to any shooting. He had significant cognitive impairments, including a 76 IQ. At the resentencing hearing, the defense presented substantial evidence of mitigation and rehabilitation, including the fact that defendant had become a model inmate.

Although a dissent would have affirmed because defendant took part in a murder that had been planned days in advance, the majority did not view the offense as fully thought out. The 25-year-old made a single comment about killing one of the victims, and defendant's role wasn't conceived until the moment he was ordered to push the wheelchair. Defendant never touched the weapon and wasn't there for the shooting, two facts the resentencing judge failed to consider. The trial court also abused its discretion when it refused to consider defendant's explicit apology as evidence of remorse.

When reviewing a trial court's rejection of a plea agreement, the question is not what the trial court would have done were it the prosecuting attorney, but whether the decision of the prosecuting attorney is such a departure from sound prosecutorial principle as to make it an abuse of prosecutorial discretion. The 23-year sentence in this case was not an abuse of prosecutorial discretion where it was supported by defendant's limited role in the offense and the substantial mitigating evidence presented at resentencing.

People v. Watson, 2022 IL App (1st) 192182 Defendant, who was 17 years old at the time of his offense, filed a post-conviction petition arguing that truth in sentencing was unconstitutional as applied to juvenile offenders like him and that, accordingly, his 32-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution. The circuit court summarily dismissed defendant's petition, and the Appellate Court affirmed.

The Appellate Court first found that defendant had waived his claim by entering a negotiated plea of guilty, relying on **People v. Jones**, 2021 IL 126432. Additionally, the court held that the truth in sentencing requirement that defendant serve 100% of his sentence for murder did not violate the eighth amendment or **Miller v. Alabama**, 567 U.S. 460 (2012). Defendant's 32-year sentence, even if served at 100%, is not a life sentence under any constitutional measure. Requiring a juvenile offender to serve the full term of a non-life sentence for murder does not violate **Miller**. The court also noted that defendant's reliance on the now-vacated truth-in-sentencing portion of the decision in **People v. Othman**, 2019 IL App (1st) 150823, was misplaced. The reasoning in **Othman** was, at best, *dicta*, even before it was vacated.

People v. Johnson, 2022 IL App (3d) 180357-B Defendant, who was 16 years old at the time of the offenses, pled guilty to one count of second degree murder and one count of first degree murder, in exchange for the State's recommendation of consecutive sentences of 20 years and 90 years, respectively. At the plea hearing, the State advised that if convicted on the original charges, defendant would have been sentenced to a mandatory natural life term.

Defendant filed a successive post-conviction petition raising a **Miller** claim that his *de facto* life sentence was unconstitutional because it was imposed without consideration of youth and its attendant characteristics. The trial court dismissed the petition on the basis that defendant had entered into a fully negotiated plea. The Appellate Court originally

concluded that defendant's plea did not waive his **Miller** claim, but the Illinois Supreme Court directed the Appellate Court to reconsider in light of **People v. Jones**, 2021 IL 126432. On reconsideration, the court found that it was bound by **Jones** and thus concluded that defendant had waived any **Miller** claim by pleading guilty. The court noted that the trial court was able to exercise its discretion in deciding whether to impose the sentence recommended by the State as part of the plea agreement. The dismissal of defendant's petition was affirmed.

People v. Ferguson, 2021 IL App (3d) 200041 Sentencing court did not err by considering fact that defendant was on probation at the time he committed the instant offense. The PSI showed that defendant's probation should have ended before the date of the instant offense, but the appellate court took judicial notice of docket entries from the earlier case showing that the court had extended the probation term during proceedings on a prior petition to revoke. Thus, defendant was still on probation at the time he committed this offense, and it was proper for the court to consider that factor in aggravation at sentencing.

The Appellate Court also rejected defendant's contention that it was improper for the sentencing judge to consider his student disciplinary records under **Miller v. Alabama**, 567 U.S. 460 (2012), because black youths are disproportionately disciplined in school. Disciplinary records are relevant to an individual's history of delinquency, and they were just one of many factors considered in determining the sentence here. And, the **Miller** rationale did not apply because defendant was 23 years old at the time of the offense for which he received an 11-year sentence.

The dissent would have awarded a new sentencing hearing on the basis that the judge erred in considering defendant's student disciplinary records. In addition to the fact such records do not document criminal behavior, the dissent noted that empirical studies show that black students are subject to academic discipline at a disproportionately higher rate than their white peers. And, the dissent found that the judge's comments showed that he gave significant weight to the disciplinary records even though the judge also considered other factors at sentencing.

People v. Robinson, 2021 IL App (1st) 181653 Defendant pled guilty to murder and attempt murder, committed at age 17, and received concurrent sentences of 35 and 30 years. The defendant's post-conviction petition stated the gist of a claim that his guilty plea was secured by the threat of a now unconstitutional *de facto* life sentence. As in **People v. Parker**, 2019 IL App (5th) 150192, the Appellate Court held that the defendant's belief that he faced a 60-year maximum, rather than a potential 40-year maximum, rendered his plea involuntary.

The Appellate Court rejected the State's argument that defendant's fully negotiated plea foreclosed his claim. Defendant's rights under the eighth amendment in this context were not known at the time he pled guilty; therefore, he could not have voluntarily relinquished them. The court also rejected the State's argument that defendant lacked a claim because he did not receive a *de facto* life sentence, as the key question is not whether he received a life sentence, but whether his decision to accept the plea was involuntary due to the threat of a potential *de facto* life sentence.

People v. Robinson, 2021 IL App (1st) 192289 Defendant's mandatory life sentence for a second aggravated criminal sexual assault, imposed when he was 24 years old, was not unconstitutional despite his mental illnesses. Defendant alleged that his sentence, as applied

to a young offender with mental illness, violated the Eighth Amendment and the proportionate penalties clause.

The Appellate Court found only the proportionate penalties claim viable, as the Eighth Amendment as interpreted by **Miller** and its progeny does not apply to defendants older than 17. The Appellate Court further found that defendant presented adequate documentation of his background, including DCFS records, mental illness treatment records, and family history, to warrant review of his as-applied challenge.

The Appellate Court affirmed the sentence, however, relying on **People v. Coty**. 2020 IL 123972. As in **Coty**, where the court affirmed a life sentence imposed on a defendant with severe intellectual disabilities, the Appellate Court here found defendant's mental illness is not inherently mitigating. Given the nature of the crimes, where defendant deceived and lured women to abandoned locations in order to sexually assault them, a sentencing court could reasonably conclude that the risk of future dangerousness outweighs any lessened culpability. Although defendant sought to distinguish **Coty** by pointing out that mental illness, unlike intellectual disability, is treatable, making defendant's prospects for rehabilitation greater than in **Coty**, the record failed to show that he was capable of being treated. The Appellate Court noted that after defendant's first sexual assault, he did not use his time in prison to treat his mental illness or his predilection for violent sexual behavior, but rather received 50 citations for various offenses, including violent altercations.

Regardless, despite the mandatory nature of the sentence, the trial court adequately considered the relevant factors regarding defendant's upbringing, mental illnesses, culpability, future dangerousness, and rehabilitative potential before imposing the sentence.

People v. Clark, 2021 IL App (3d) 180610 Defendant's successive post-conviction petition alleged his *de facto* life sentence was unconstitutional as applied to him due to his intellectual disabilities and mental illness, including antisocial personality disorder, borderline personality disorder, and fetal alcohol syndrome. The Appellate Court majority affirmed the denial of leave to file, citing **People v. Coty**, 2020 IL 123972. The **Coty** Court found that while intellectual disability diminishes culpability, it also decreases the likelihood of rehabilitation. Unlike youth, defendant's disability was not transient, and therefore the rationale of **Miller** and its progeny were not applicable. Applying that rationale here, the Appellate Court found that defendant could not establish prejudice.

The dissent would have allowed defendant leave to file, because it believed the **Coty** Court determined only the constitutionality of that specific defendant's sentence, not the constitutionality of the sentence of every intellectually disabled adult defendant who has received a life sentence. The dissent noted that defendant here was half the age of the defendant in **Coty**, and that much of **Coty** revolved around the particular characteristics of sex offenders, whereas the instant case involved a murder and robbery.

People v. O'Neal, 2021 IL App (4th) 170682 Defendant alleged that his life sentence under the habitual criminal statute was the result of an improper double enhancement. Defendant had two prior Class X felony convictions that were used to establish an element of the armed habitual criminal offense in the instant case. Those same two convictions were also used to adjudicate him a habitual criminal under section 5-4.5-95(a). Furthermore, he alleged that because he committed one of the priors when he was a juvenile, and both priors were non-violent offenses, the life sentence violated the eighth amendment.

Although defendant was subject to a double enhancement, the Appellate Court found it proper. Based on the clear language of the habitual criminal statute, which mandates a life

sentence for any third Class X offense, this case represents an instance where the legislature clearly intended to enhance the penalty despite repeated use of the prior two Class X offenses.

Finally, even though defendant committed one of his prior Class X offenses, an armed robbery, as a 17-year-old, and new legislation would have subjected that offense to discretionary rather than mandatory transfer to adult court, the Appellate Court found it still qualified for purposes of the habitual criminal statute. It declined to follow **People v. Miles**, 2020 IL App (1st) 180736, and instead adopted the reasoning of **People v. Reed**, 2020 IL App (4th) 180533, which found the elements of the offense, not the defendant's age, dispositive.

People v. Johnson, 2021 IL App (3d) 180357 Defendant pled guilty to one count of first degree murder and one count of second degree murder and received an aggregate sentence of 110 years in prison. He was 16 years old at the time of the offenses.

The circuit court erred in denying defendant leave to file his successive post-conviction petition where he set forth a meritorious **Miller** claim. The claim was not waived by the plea. **Miller** set forth a new substantive rule that applies retroactively, and defendant could not have voluntarily relinquished a right that was not available to him at the time that he pled guilty. Because he received a *de facto* life sentence without a finding of permanent incorrigibility or irretrievable corruption, he was entitled to a new sentencing hearing.

People v. Vatamaniuc, 2021 IL App (2d) 180379 The Appellate Court vacated defendant's 54-year sentence for first degree murder and remanded for resentencing because the trial judge never determined that this defendant was beyond the possibility of rehabilitation before imposing that *de facto* life term. While the court did mention the **Miller** factors, "it provided little explanation as to how it applied them to defendant's particular circumstances." The court also noted that on remand the sentencing judge should be aware that the firearm enhancement is discretionary, not mandatory, under 730 ILCS 5/5-4.5-105.

People v. McKinley, 2020 IL App (1st) 191907 Defendant's 39-year sentence for murder, imposed on remand for resentencing in accordance with **Miller**, was an abuse of discretion because the judge gave little regard to defendant's significant rehabilitation. Defendant had obtained his GED, had completed various educational courses, and was on track to earn his bachelor's degree from Northwestern through the school's Prison Education Program. Defendant had been a model inmate and had shown remorse. While the judge stated generally that defendant had rehabilitative potential, he disregarded the extent of defendant's rehabilitation and did not afford it adequate weight. The judge also rejected evidence of peer pressure, gave improper weight to the need to deter future criminal conduct, and erred in concluding that the fact that defendant used a gun in the offense "made him older" than his actual age (which was 16 at the time of the offense).

The Appellate Court concluded that "defendant is the epitome of an offender who has been restored to useful citizenship." While defendant's sentence was constitutional under **Buffer**, it was still an abuse of discretion. The Appellate Court invoked its authority under Supreme Court Rule 615(b)(4) and resentenced defendant to 25 years.

People v. Royer, 2020 IL App (3d) 170794 Defendant received a 60-year sentence for a murder committed at age 16. Defendant filed a post-conviction petition alleging his sentence violated the eighth amendment. The circuit court dismissed, but the Appellate Court majority

reversed, finding the sentencing court failed to comply with **Miller** before imposing a *de facto* life sentence.

Before sentencing a juvenile to a life sentence, a sentencing court must not only consider the factors outlined in **People v. Holman**, 2017 IL 120655, it must consider them *as mitigation.* Here, the sentencing court did consider age and immaturity as mitigating factors. But it appeared to consider defendant's traumatic childhood as an aggravating factor, noting that it contributed to his anger and violence. While the State argued that the court did not explicitly consider this factor as aggravating, any ambiguity must be resolved in favor of defendant because "merely having evidence of the **Miller** factors before the court is not enough to show that the court considered it in mitigation."

People v. Wyma, 2020 IL App (1st) 170786 Sentencing hearing for 17-year-old murder defendant complied with **Miller** where the trial court engaged in an "exhaustive review" of defendant's youth and its attendant circumstances, statutory factors applicable to juveniles, and voluminous mitigation evidence presented by the defense. The trial court's finding that defendant's conduct showed irretrievable depravity and permanent incorrigibility was not an abuse of discretion, and defendant's natural life sentence was upheld.

In a special concurrence, one justice expressed support for a change to juvenile sentencing laws in Illinois to preclude a life without parole sentence for a minor under any circumstances. That justice concurred in upholding defendant's life sentence, however, based on binding precedent.

People v. Walls, 2020 IL App (2d) 130761-B The Appellate Court vacated a 43-year sentence imposed on a 16-year-old for first-degree murder. While the sentencing court considered defendant's youth and reviewed the PSI, which contained evidence pertinent to the **Miller** analysis, it also made comments suggesting that it believed defendant had rehabilitative potential. The court implied that it believed defendant may not have had an intent to kill and acted at the behest of adult co-defendants, noted defendant's educational progress in prison, and referred to defendant's friends and family as an important support group for rehabilitation. The court never indicated that it found defendant irreparably corrupt or otherwise beyond rehabilitation. Thus a *de facto* life sentence was not appropriate and the case was remanded for resentencing.

People v. Mahomes, 2020 IL App (1st) 170895 Defendant received a 44-year aggregate sentence for crimes committed at age 17: 30 years for murder consecutive to 14 years for two aggravated batteries The sentencing court mentioned defendant's youth and declined the firearm enhancements, stating that it wanted to avoid imposing a life sentence. The Appellate Court remanded for a new sentencing hearing. While the State argued that the court properly considered the **Miller** factors, the Appellate Court held that the sentencing court did not find defendant beyond rehabilitation, as evidenced by its desire to avoid a life sentence. Although the court thought it had not imposed a life sentence, **Buffer** later held otherwise when it defined a life sentence as anything over 40 years.

People v. Johnson, 2020 IL App (3d) 130543-B Defendant received an 80-year sentence for a murder he committed at age 17. The sentencing court never mentioned youth or its attendant circumstances in announcing its sentence. Instead, the court stated that it was "hard pressed to find any" mitigation. Nor did it indicate that defendant lacked rehabilitative potential. The Appellate Court held that the trial court's imposition of a *de facto* life sentence

without first considering the juvenile's youth in mitigation violated the Eighth Amendment. It remanded for a new sentencing hearing pursuant to **Miller.**

People v. Perez, 2020 IL App (1st) 153629-B On remand from the Supreme Court in light of **Buffer,** the Appellate Court found defendant's 53-year sentence for a murder committed at age 17 violated **Miller.** The majority concluded a new sentencing hearing was required because the sentencing court did not sufficiently discuss the defendant's youth as mitigation, any familial or peer pressure, defendant's ability to cooperate with counsel, or find the defendant permanently incorrigible.

The dissenting justice would have found the sentencing court complied with **Miller** because he was represented by a zealous attorney who would have brought the omitted factors to the court's attention if they had been mitigating. The dissent also believed an explicit finding of permanent incorrigibility is not required.

People v. Nieto, 2016 IL App (1st) 121604-B Upon conviction for murder and aggravated battery committed at age 17, defendant received an aggregate 78-year term. After dismissal of a post-conviction petition, he raised a **Miller** claim for the first time on appeal. In an initial opinion, the Appellate Court remanded for a new sentencing hearing. The Supreme Court issued a supervisory order, requiring the Appellate Court to vacate the decision and issue a new decision in light of **Buffer** and **Holman**.

The Appellate Court again remanded for resentencing. Initially, the court reiterated that it was excusing defendant's forfeiture. While the supervisory order did not mention forfeiture, nothing in the caselaw in the four years since the initial opinion changed the court's mind that an as-applied **Miller** claim may be raised for the first time on appeal from the dismissal of a post-conviction petition, as long as the record is sufficiently developed. In fact, **Holman** itself made this rule more explicit.

Buffer confirmed that the court was correct in its first decision, where it held that defendant received a life sentence for purposes of **Miller.** As for **Holman,** and the question of whether the sentencing court sufficiently applied the **Miller** factors, the court again found a need for resentencing. The sentencing court here merely mentioned defendant's "young age" without acknowledging the attendant characteristics of youth.

People v. Johnson, 2020 IL App (2d) 170646 The circuit court properly denied defendant's motion for leave to file successive post-conviction petition. While the petition raised both a **Miller** challenge and a proportionate penalties challenge to his 27-year sentence for first degree murder, on appeal defendant argued that the truth-in-sentencing statute – requiring him to serve 100% of his sentence – was unconstitutional on its face and as applied to him.

The Appellate Court rejected the State's argument that defendant's truth-in-sentencing claim was both waived and forfeited. A sentence which violates the constitution can be challenged at any time, and defendant's claim on appeal was that his sentence was unconstitutional based on the reasoning in **Miller**. The court also concluded that the record here was sufficient to review defendant's as-applied challenge even though such challenges generally should be presented in the trial court first.

Ultimately, though, the Appellate Court rejected defendant's claim on the merits. Defendant's 27-year sentence did not bring him under the protections of **Miller** because it was not a *de facto* life term. Further, the record established that the sentencing judge considered defendant's youth and its attendant characteristics, as well as the fact that he was an accomplice and not the principal offender. Finally, the court noted that **People v.**

Othman, 2019 IL App (1st) 150823, on which defendant's truth-in-sentencing challenge was based, had since been vacated.

People v. Murphy, 2019 IL App (4th) 170646 Following his convictions for murder and attempt murder, the 16-year-old defendant received consecutive sentences of 40 and 15 years' imprisonment. Although the sentencing court stated that it considered defendant's youth and other factors consistent with **Miller** and **Holman**, it also noted that defendant had some rehabilitative potential. By finding that defendant possessed some rehabilitative potential, the court could not have found defendant permanently incorrigible and eligible for a *de facto* natural life sentence. The case was remanded for a sentence shorter than 40 years, consistent with **Buffer**.

People v. Parker, 2019 IL App (5th) 150192 The trial court erred in denying defendant leave to file a successive petition alleging a **Miller** violation. Defendant pled guilty to first-degree murder, based on accountability, committed at age 16, after the State agreed to a 50-year sentencing cap. Defendant was admonished that the crime carried a sentence up to natural life. He agreed to the cap, pled guilty and received 35 years. In his successive petition, he alleged he received a *de facto* natural life sentence in violation of **Miller**. The circuit court denied leave to file, finding the sentence was not *de facto* life, and that the sentencing court did consider defendant's age in mitigation.

On appeal, defendant conceded that in light of **Buffer**, his sentence is not a *de facto* life sentence. But he argued that his plea was not voluntary where he was not adequately informed of his eligibility for a life sentence or the 50-year cap, neither of which were available absent a finding of incorrigibility. The Appellate Court held that defendant established cause, as his initial petition was filed before **Miller.** It also found prejudice, because **Buffer** would have established that the State's cap represented a *de facto* life sentence, and defendant could not have knowingly agreed to this plea without understanding that neither the maximum nor the sentencing cap would be available absent a finding of incorrigibility.

People v. Stafford, 2018 IL App (4th) 140309-B On remand in light of **People v. Holman**, 2017 IL 120655, the Appellate Court affirmed the 17-year-old defendant's life sentence. As in **Holman**, the sentencing court considered factors in aggravation, mitigation, the PSI, and the defendant's youth, including its belief that juveniles generally deserve a chance to learn from their mistakes, before imposing the discretionary life sentence. The sentencing court's reasoning sufficiently conveyed its belief that defendant fell into the rare class of juveniles who were beyond rehabilitation.

People v. Croft, 2018 IL App (1st) 150043 Defendant's Eighth Amendment challenge to his discretionary life sentence was not barred by *res judicata* because the law had changed since his previous challenge. In a prior PC, the Appellate Court rejected his challenge partly on the ground that his sentence was discretionary. Since then, the Illinois Supreme Court, in **Holman**, 2017 IL 120655, extended the rule of **Miller** to discretionary life sentences and offered further guidance on how to comply with **Miller**.

Nevertheless the Appellate Court concluded that defendant's sentencing hearing complied with **Miller** where the circuit court adequately considered evidence of defendant's youth and attendant characteristics. The court heard evidence as to each of the factors outlined in **Miller** and **Holman**, and concluded that the defendant could not show that his

criminal conduct was the product of immaturity and not incorrigibility. The sentencing court knew defendant was 17 at the time of the offense, and none of his witnesses in mitigation testified that he was immature or impetuous. He held jobs and had no criminal history. The court considered the witnesses who testified to his prospects for rehabilitation and knew that the defendant was convicted as an accomplice. Because the court considered the evidence, the Appellate Court was not free to substitute its judgment merely because a different court might have reached a different conclusion about the necessity of a life sentence.

People v. Lusby, 2018 IL App (3d) 150189 Defendant should have been allowed to file a successive post-conviction petition based on **Miller v. Alabama** where he was 16 years old at the time he committed the offenses of first degree murder, home invasion, and aggravated criminal sexual assault in 1996 and was sentenced to a total of 130 years of imprisonment. Defendant established cause for not raising the issue in a prior post-conviction petition because **Miller** had not been decided at that time. While defendant had argued in a motion to reconsider sentence and on direct appeal, that the trial court failed to properly consider his age and rehabilitative potential, the **Miller** argument was not barred by *res judicata* because the specific argument had not been available. Defendant established prejudice because, while the trial court mentioned defendant's age, it did so in a general statement about youth but did not specifically consider defendant's immaturity and family background. Accordingly, defendant's sentence violated the eighth amendment, and a new sentencing hearing is required without the need for further post-conviction proceedings.

People v. Johnson, 2018 IL App (1st) 153266 Regardless of whether a discretionary 40-year sentence on a 15 year-old defendant triggers the protections of **Miller,** defendant's sentencing hearing complied with **Miller** where the circuit court adequately considered evidence of defendant's youth and attendant characteristics. The court heard evidence as to each of the factors outlined in **Miller** and **Holman**, 2017 IL 120655, and concluded that the defendant could not show that his criminal conduct was the product of immaturity and not incorrigibility.

People v. Coty, 2018 IL App (1st) 162383 In a prior appeal, the Appellate Court held that a mandatory natural life sentence for predatory criminal sexual assault ("CSA") violated the proportionate penalties clause as applied to defendant because of his intellectual disability. On remand, the sentencing court imposed a *de facto* life sentence (52 years on a 50 year-old). The defendant appealed, again alleging his sentence violated the proportionate penalties clause.

The **Miller** analysis must apply to adults with intellectual disabilities via **Atkins v. Virginia**, 536 U.S. 304 (2002). Under our community's evolving standards of decency, a *de facto* life sentence imposed on an intellectually disabled adult, without the procedural safeguards of **Miller**, violates the Illinois proportionate penalties clause.

Here, the trial court did not take into consideration the characteristics accompanying an intellectual disability so as to show irretrievable depravity or permanent incorrigibility. The PSI did not mention his disability, and trial counsel failed to have defendant evaluated so as to enlighten the court as to the characteristics of the disability with regard to the relevant factors, including diminished capacity (1) to understand and process information, (2) to communicate, (3) to abstract from mistakes and learn from experience, (4) to engage in logical reasoning, (5) to control impulses, and (6) to understand others' actions and reactions, so as to be more susceptible to manipulation and pressure. The Appellate Court vacated the

sentence and remanded for a new sentencing hearing at which the sentencing court should determine whether the disability diminishes both defendant's culpability and the need for retribution.

People v. Walker, 2018 IL App (3d) 140723-B Defendant's 2013 post-conviction petition, attacking his 1984 life sentence under **Miller**, was untimely. Defendant, 17 at the time of the offense, and given a discretionary life sentence without parole, could have made his arguments as early as 2005, when the USSC issued its decision in **Roper**, wherein the court recognized the greater rehabilitative potential of juveniles under 18.

Even if it were not untimely, defendant's claim lack merit under **Miller** because defendant received a discretionary life sentence and the record showed that when choosing to impose a life sentence, the sentencing court "was aware" of defendant's age. The Appellate Court found support in **People v. Holman**, 2017 IL 120655, which upheld a discretionary life sentence because the sentencing court adequately considered age, maturity, family and home environment, degree of participation in the offense, peer pressure, incompetence, and rehabilitative potential. The Appellate Court here found adequate consideration of these factors because the court knew defendant's age, defense counsel described defendant as a "creature of the streets," and the PSI mentioned prior family counseling "for a variety of family social, sexual, and educational problems."

People v. Generally, 2017 IL App (5th) 140489 Defendant, who was 17 years old at the time he committed murder, sought leave to file a successive post-conviction petition arguing that his discretionary natural life sentence violated **Miller v. Alabama**, 567 U.S. 460 (2012). The trial court denied leave to file, and the Appellate Court affirmed.

In **People v. Holman**, 2017 IL 120655, the Illinois Supreme Court held that a discretionary natural life sentence imposed on a juvenile defendant is not unconstitutional as long as the original sentencing judge considered youth and its attendant characteristics in imposing the sentence. Relevant to the reviewing court's consideration is the evidence of defendant's youth and attendant characteristics that was before the trial court at the time of sentencing. Here, the sentencing judge specifically noted the brutal nature of the offense and defendant's history of violent acts. That judge also recognized defendant's difficult upbringing, prior psychiatric treatment, and his young age. Defendant's natural life sentence did not violate **Miller**.

Likewise, because the record showed that the sentencing judge gave extensive consideration to the seriousness of the offense and the defendant's rehabilitative potential, the natural life sentencing statute was not unconstitutional as applied.

People v. Edwards, 2017 IL App (3d) 130190–B Defendant, who was 17 years old at the time of the offense, was convicted of first degree murder and attempt murder. Because of firearm add-ons, the minimum sentences applicable in this case were 45 years for murder and 31 years for attempt murder, and since the sentences were required to be served consecutively, the total mandatory minimum was 76 years. The court sentenced defendant to consecutive terms of 50 years for murder and 40 years for attempt murder, for a total of 90 years.

Defendant argued that his 76-year mandatory minimum sentence was unconstitutional under **Miller v. Alabama**, 132 S.Ct. 2455 (2012). The Appellate Court disagreed. Defendant's sentence of 90 years was 14 years over the mandatory minimum, and the Court found no authority allowing a defendant to argue that a sentence he did not

actually receive was unconstitutional.

Moreover, **Miller** did not hold that a juvenile could never be sentenced to life imprisonment. It instead held that a mandatory sentence of life imprisonment was unconstitutional since the court had no discretion to consider mitigating factors. Here, the trial court sentenced defendant to a term of imprisonment above the mandatory minimum, and thus **Miller** did not apply.

(On reconsideration of this issue in response to a supervisory order from the Illinois Supreme Court (ordering the Appellate Court to reconsider its holding in light of **Reyes**, 2016 IL 119271, which held that a minor could not receive a statutorily-mandated *de facto* life sentence), the Appellate Court once again affirmed defendant's sentence. The critical distinction between this case and **Reyes** was that **Reyes** was sentenced to the statute-mandated minimum sentence of 97 years. Here, by contrast, defendant was challenging a sentence he never received.)

People v. Nieto, 2016 IL App (1st) 121604 Under the Post-Conviction Hearing Act, any claim not raised in the original or amended post-conviction petition is waived. This rule is more than a suggestion and reviewing courts generally may not overlook forfeiture caused by defendant's failure to raise the issue in his petition.

A jury convicted defendant, who was 17 years old at the time of the offense, of first degree murder and aggravated battery with a firearm, and additionally found that defendant personally discharged a firearm which proximately caused death, making the minimum sentence 51 years imprisonment. The court sentenced defendant to 78 years imprisonment. In imposing sentence, the court stated that it had considered defendant's "young age" and the fact that everyone can change their lives.

The Appellate Court affirmed defendant's conviction and sentence on direct appeal, specifically holding that his sentence was not excessive. Defendant filed a post-conviction petition raising several claims, but did not argue that his sentence was unconstitutional. After the trial court dismissed his petition at the first stage, the United States Supreme Court held in **Miller v. Alabama**, 567 U.S. 460 (2012) that the Eighth Amendment prohibited mandatory sentences of life imprisonment for juveniles.

On appeal from the denial of his post-conviction petition, defendant argued for the first time that his sentence was unconstitutional under **Miller**. The Appellate Court examined several cases that followed **Miller** and determined that it could reach defendant's claim. In **People v. Davis**, 2014 IL 115595, the Illinois Supreme Court held that the sentencing statute mandating life sentences was not facially unconstitutional since it could be validly applied to adults. In **People v. Thompson**, 2015 IL 118151, the court held that a judgment based on facially unconstitutional statute is void and may be attacked at any time. The same was not true for an as-applied challenge.

But **Thompson** also discussed **People v. Luciano**, 2013 IL App (2d) 110792, which held that an as-applied sentencing challenge by a juvenile could be raised at any time. The Supreme Court did not expressly find that **Luciano** was incorrect in it's forfeiture holding, but instead distinguished it on the merits since the defendant in **Thompson** was not a juvenile. The Appellate Court thus concluded that "considered as a whole, **Thompson** implies that courts must overlook forfeiture and review juveniles' as-applied Eighth Amendment challenges under **Miller**."

Additionally, in **Montgomery v. Louisiana**, 577 U.S. ___(2016), the United States Supreme Court held that **Miller** announced a substantive rule that barred life sentences for all but the rarest of juvenile defendants, and courts lack authority to leave in place a sentence

which violates a substantive rule. **Thompson** and **Montgomery** thus suggest that forfeiture cannot apply to juvenile defendants raising **Miller** claims.

The Appellate Court held that defendant's sentence was unconstitutional as applied to him. Since defendant would not be released from prison until he is 94 years old, the court found that he effectively received a natural life sentence.

Montgomery held that a life sentence was impermissible "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." Even if a court considers a defendant's age, as the court did here, a life sentence is still impermissible for a defendant whose crime "reflects unfortunate yet transient immaturity."

Here the trial court's reasoning in imposing sentence did not comport with the factors required by **Miller** and **Montgomery**. The trial court considered defendant's young age but did not consider the corresponding characteristics of his youth. His sentence thus violated **Miller**.

Although relief following a first-stage dismissal typically involves remand for second-stage proceedings, the proper relief for this claim was to vacate defendant's sentence and remand for resentencing.

People v. Sanders, 2016 IL App (1st) 121732-B A jury convicted defendant, who was 17 at the time of the offense, of murder and two counts of attempt murder. The trial court sentenced defendant to consecutive terms of 40 years for murder and 30 years for each count of attempt murder, for a total of 100 years imprisonment. In sentencing defendant, the court stated that it could sentence him to natural life, "but because of your young age" and potential for rehabilitation "I am not going to do that." But the court stated that it would impose a sufficiently long sentence so that society would not need to worry about defendant committing similar crimes in the future.

Defendant eventually filed a second successive postconviction petition arguing that the trial court did not properly consider his youth in imposing sentence, and that the recent case of **Graham v. Florida**, 560 U.S. 48 (2010) changed the law applicable to juvenile sentencing providing cause for his failure to raise the issue earlier. The trial court denied leave to file.

The Appellate Court held that the trial court violated the Eighth Amendment by imposing a *de facto* life sentence without considering the special circumstances of defendant's youth. And the Supreme Court decisions in **Graham** and **Miller v. Alabama**, 567 U.S. 460 (2012), substantially changed the law concerning juvenile sentencing thus providing cause and prejudice for filing a successive petition.

The Appellate Court noted that defendant would need to serve at least 49 years of his 100 year sentence before he would be eligible for parole. A prisoner has a life expectancy of only 64 years, meaning defendant would be effectively imprisoned for the rest of his life. But the trial court did not consider the special circumstances of youth in imposing sentence. The Appellate Court reversed the denial of defendant's successive petition and remanded the cause for further proceedings.

People v. Baker, 2015 IL App (5th) 110492 The court accepted the State's concession that under **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455 (2012), the Eighth Amendment was violated by the imposition of mandatory natural life sentences for offenses which defendant committed when he was 15 years old. In remanding for resentencing, the court noted that **Miller** does not foreclose the possibility of life without parole for a juvenile who is convicted of murder provided that the sentencing court has discretion to impose a different penalty and

takes into consideration the offender's youth and personal characteristics before imposing sentence.

People v. Pacheco, 2013 IL App (4th) 110409 In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

Under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

People v. Chambers, 2013 IL App (1st) 100575 The court rejected defendant's argument that on appeal from denial of post-conviction relief, he could argue for the first time that a mandatory life sentence for a person who was a minor at the time of the offense violates **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). In **Miller**, the Supreme Court held that the Eighth Amendment is violated by mandatory life sentences without parole for persons who were under the age of 18 at the time of their crimes. **Miller** did not prohibit sentencing juveniles to life imprisonment without parole, but held that the mandatory imposition of such a sentence violates the Constitution.

The court noted that under **People v. Williams**, 2012 IL App (1st) 111145, a sentence which violates **Miller** is not void *ab initio*. In addition, because defendant's petition did not satisfy the cause and prejudice test for successive post-conviction petitions, the court could have considered the issue only if the mandatory life sentence was void.

A sentence is void only if the court which rendered it lacked jurisdiction to do so. Unless a statute is unconstitutional on its face, the fact that the sentence which it authorizes is applied improperly does not mean that the trial court lacked jurisdiction. In reaching its holding, the court rejected the reasoning of **People v. Luciano**, 2013 IL App (2d) 110792, which held that a sentence which violates **Miller** is void.

§44-1(c)(2)
***De Facto* Life Sentences**

Illinois Supreme Court

People v. Dorsey, 2021 IL 123010 Defendant was sentenced to an aggregate term of 76 years in prison for a murder and two attempted murders committed at age 14. The sentence was eligible for day-for-day good conduct credit. Defendant filed a successive post-conviction petition, alleging that his sentence violated **Miller v. Alabama**, 567 U.S. 460 (2012). The Appellate Court affirmed the denial of leave to file, finding that defendant's eligibility for day-for-day sentencing credit meant that he did not receive a *de facto* life sentence.

A six member majority of the Supreme Court affirmed. The majority first held that defendant established cause where he could not have raised his claim earlier. Defendant's direct appeal was decided in 2000, and he filed his initial PC in 2005. The instant successive petition was filed in 2014. The appellate court correctly found that the "cause" prong was established where **Miller** set forth a new substantive rule in 2012 and was not available to defendant in his first petition.

The Supreme Court further held, however, that defendant could not establish prejudice because the day-for-day sentencing scheme meant that defendant did not receive a *de facto* life sentence. **Miller** precludes a life sentence for most juveniles without "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." The day-for-day sentencing scheme gives juveniles that meaningful opportunity. It is guaranteed by statute as long as the defendant complies with good conduct rules. By complying with those rules, defendants can earn an opportunity for early release.

Although defendant argued that the loss of good conduct credit for minor violations of prison rules did not mean a juvenile was not mature or rehabilitated, the Supreme Court disagreed. It is in a defendant's power to shorten his sentence by earning good-conduct credit, and earning such credit allows a defendant the opportunity to exhibit maturity and rehabilitation. And while a juvenile may be stripped of good conduct credit without the approval of courts, the court found no distinction between this scheme and a discretionary parole system, which was explicitly endorsed by **Miller.** The Supreme Court found that several regulations ensured that good conduct credit would not be lost without due process, making the system even more favorable to defendants than parole.

The majority further held that even if it accepted defendant's argument regarding day-for-day credit, his claim would fail in light of the Supreme Court's decision in **Jones v. Mississippi**, 593 U.S. ___, (2021). Under **Jones**, a judge who imposes a discretionary life sentence does not need to make an explicit finding of incorrigibility. As long as the judge had the discretion to consider youth and its attendant circumstances, a life sentence was permissible. Here, defendant's mandatory minimum was 32 years, and the sentencing court had the discretion to consider defendant's youth before it chose to impose the 76-year term.

Finally, the majority refused to reach defendant's argument that his sentence violated the proportionate penalties clause of the Illinois Constitution, finding the claim forfeited and barred by *res judicata*. Defendant did not raise the proportionate penalties argument in his petition for leave to file a successive post-conviction petition or in the petition itself, nor did he raise it in his petition for leave to appeal. Although defendant argued he preserved the claim by raising it in the Appellate Court, the Supreme Court found a mere reference to the proportionate penalties clause, without further argument, was insufficient. And because defendant raised a proportionate penalties argument in his direct appeal, the claim was

barred by *res judicata* despite the evolution of the law in subsequent years. **Miller**'s unavailability prior to 2012 at best deprived defendant of "some helpful support" for his state constitutional law claim, which is insufficient to establish "cause."

The dissent would have found the issue of good-conduct credit a factual question inappropriately resolved at the pleading stage. It further would have adhered to precedents that held sentencing credit controlled by prisons is not a part of the sentence. The dissent pointed out that the range of infractions – including "unauthorized movement," "business ventures," and "dangerous written materials" – was so broad and vague that it allowed for arbitrary revocation of credit. Finally, the dissent would have reached the proportionate penalties clause and found it sufficient to reach the second stage, citing the importance of the issue and disagreeing with the majority's conclusion that the claim was not adequately raised in the Appellate Court.

People v. Buffer, 2019 IL 122327 The circuit court erred in summarily dismissing a post-conviction petition alleging that a 50-year sentence on a 16 year-old defendant was unconstitutional. Under **Miller v. Alabama**, 567 U.S. 460 (2012), courts may not impose a life sentence on a juvenile without first considering defendant's youth and its attendant characteristics. Here, defendant alleged that his 50-year sentence constituted a *de facto* life sentence, and asked for a new sentencing hearing because the sentencing court failed to adequately consider his youth.

The Supreme Court agreed, and held that a sentence of 40 years or more imposed on a juvenile represents a *de facto* life sentence. The court reasoned that the legislature set a mandatory minimum of 40 years for juveniles who commits an offense that, if committed by an adult, would justify natural life imprisonment. The court noted that a sentence of 40 years or less imposed on a juvenile offender "provides some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," in accordance with the requirements of **Miller**. The court granted post-conviction relief and remanded for a new sentencing hearing.

People v. Reyes, 2016 IL 119271 Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant's sentence was a *de facto* mandatory life sentence that was unconstitutional under **Miller v. Alabama**, 567 U.S. 460, 132 S.Ct. 2455 (2012). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. **Miller** held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

Here defendant was 16 when he committed the offense and since he must serve 89 years, he will remain in prison until he is 105. Defendant's sentence is therefore a mandatory *de facto* life sentence.

The court vacated defendant's sentence and remanded for a new sentencing hearing

under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant's minimum aggregate sentence would be 32 years, a term that is not a *de facto* life sentence.

Illinois Appellate Court

People v. Tolliver, 2025 IL App (1st) 231485 Defendant received a 52-year sentence for a murder committed at age 17. After the appellate court affirmed his sentence, the supreme court remanded in light of **Buffer**. The appellate court vacated the sentence and remanded for resentencing. Defendant received a 47-year sentence on remand. He appealed, arguing that he received a *de facto* life sentence and that the sentencing court refused to consider his youth.

The appellate court affirmed. Defendant was sentenced under the amended juvenile sentencing provision allowing for parole review after serving 20 years. Therefore, he had a meaningful opportunity for release. **People v. Spencer**, 2025 IL 130015.

Defendant further argued that the sentencing court violated **Miller** when it refused to consider defendant's youth and its attendant circumstances as mitigating evidence at sentencing. Specifically, the sentencing court stated that it did not "see the immaturity on this where he was so impulsive and could not understand consequences." But this comment referred to the sentencing court's belief that the shooting was premeditated rather than impulsive. The appellate court held that this finding was supported by facts showing that defendant waited for his victim on a street corner, dressed in a hoodie with the hood pulled down, approached the victim on foot, pulled out a gun, and fired multiple times.

People v. Deleon, 2025 IL App (1st) 211454 Defendant received a mandatory life sentence for murder and 30 years for attempt murder, committed at age 17. After the statute requiring a life sentence was found unconstitutional, he was resentencted to 100 years for the murder and 30 years for the attempt murder. Following the issuance of **Miller v. Alabama**, 567 U.S. 460 (2012), defendant received another sentencing hearing, after which he received 60 years for murder and a 20 years for attempt murder. He appealed these sentences, arguing they violated the eighth amendment and the proportionate penalties clause of the Illinois Constitution. He also argued his sentence was excessive.

The appellate court affirmed. The court rejected the eighth amendment claim for several reasons. First, a life sentence imposed on a juvenile is constitutional if discretionary and the sentencing court is able to consider youth and its attendant characteristics. **Jones v. Mississippi**, 593 U.S. 98, 105 (2021). Here, the sentencing court had discretion to impose a term less than 40 years (*de facto* life), and the record did not suggest that it refused to consider youth and rehabilitative potential when it chose a term of 80 years.

Second, under section 730 ILCS 5/3-6-3(a)(2.1), defendant is eligible for one day of sentence credit for each day of his imprisonment. Defendant's 80-year sentence, with good-time credit, is effectively a 40-year sentence and he therefore did not receive a life sentence. This is true even in light of the fact that defendant has had two months of good time revoked. Defendant has the ability to regain that credit under 730 ILCS 5/3-3-2(b), 3-6-3(c), and regardless, a sentencing scheme that offers day-for-day credit allowing for a defendant to serve less than *de facto* life is one that offers a meaningful opportunity for release, thus satisfying **Miller**.

Third, in 2019, the legislature enacted a statute providing for parole review with respect to offenses committed by defendants who were under the age of 21. This too would seem to offer a meaningful opportunity for release, and render **Miller** inapplicable. However, because this issue is pending in the supreme court, and because **Miller** is inapplicable for the above reasons, the appellate did not decide whether Illinois' parole system offers a sufficiently meaningful opportunity for release.

Nor was defendant's sentence excessive or in violation of the proportionate penalties clause. Defendant's proportionate penalties clause claim largely focused on the inadequacy of the youth parole statute, arguing that its intervals of 20 and 10 years do not afford juveniles a meaningful opportunity to demonstrate rehabilitation. The court found this argument irrelevant to the proportionate penalties clause and noted that the sentence was imposed following a lengthy sentencing hearing at which the trial court heard a great deal of evidence, expressly went through the statutory factors, and stated it considered each factor in mitigation and aggravation. The court commented on defendant's allocution, finding it unimpressive, and considered the offense, in which defendant shot at a rival gang member, striking him and killing a seven-year-old girl who was standing on the sidewalk buying ice cream. For the same reason, the sentence was not excessive. While defendant argued that the court should have placed greater weight on defendant's youth and rehabilitative potential, it is not job of the appellate court to re-weigh the evidence on appeal.

People v. Anderson, 2024 IL App (1st) 220864 The circuit court did not violate the eighth amendment when, at re-sentencing ordered pursuant to **Miller**, it reduced defendant's two murder sentences from natural life and 50 years, to 40 and 37 years. Defendant argued that the aggregate 77-year consecutive sentences, imposed for two separate murders committed at age 17, violate the eighth amendment because they amount to a *de facto* life sentence. However, neither of defendant's sentences exceed the 40-year limit set by **Buffer**. Defendant has no constitutional grounds on which to argue that consecutive sentences imposed for separate offenses may be considered a single *de facto* life sentence. Regardless, defendant is statutorily eligible for parole after 20 years, so he has a meaningful opportunity for release. Finally, neither of these sentences were mandatory. See **People v. Wilson**, 2023 IL 127666, citing **Jones v. Mississippi**, 593 U.S. 98, 105 (2021) (discretionary sentencing scheme is constitutionally sufficient).

Nor did the court err in its consideration of the sentencing factors. The court explicitly considered "youth and its attendant characteristics" as well as the factors required by 730 ILCS 5/5-4.5-105(a), before imposing the sentences. Defendant argued that the court ignored or misapplied some of the factors in section 5-4.5-105(a). For example, defendant argued that the court considered a lack of remorse despite the fact that subsection 9 of the statute prohibits the court from considering in aggravation a lack of remorse if defendant does not make a statement in allocution. But this factor was inapplicable, as defendant did speak in allocution, and regardless, the court did not mention a "lack of remorse" in its remarks. The appellate court similarly rejected defendant's contentions that the court deferred to the original sentencing judge's findings; rather, the court merely noted they were "germane" before making its own findings. Finally, there was nothing improper in the sentencing court's consideration that defendant was already eligible for parole, as this is a relevant sentencing factor.

People v. Langston, 2024 IL App (5th) 220296 Defendant argued that the aggregate 25-year sentence he received for home invasion and aggravated battery was excessive because

it amounted to a *de facto* life sentence given that he was 65 years old at the time of sentencing. The appellate court disagreed. The record demonstrated that the trial court considered both aggravating and mitigating factors in fashioning defendant's sentence. There is no requirement that the court impose a sentence that would restore the defendant to useful citizenship, and the court was not obligated to make an express finding that defendant was "irredeemable" before imposing a *de facto* life term.

People v. Gates, 2023 IL App (1st) 211422 In 2021, defendant, who was 18 years old at the time of the offense, was sentenced to a term of 48 years of imprisonment for first degree murder committed in 2017. Accordingly, he is eligible to seek parole after serving 20 years of that sentence, pursuant to 730 ILCS 5/5-4.5-115(b).

At the sentencing hearing, defendant presented evidence of his tragic upbringing, including the sudden death of his mother when defendant was just 12 years old, the subsequent violent deaths of a cousin and a close friend, and his father's incarceration for a gun offense. The court rejected application of the proportionate penalties clause to defendant because he was the principal and not an accomplice, and the court noted that defendant's eligibility for parole in 20 years meant that his sentence was not a *de facto* life term pursuant to **People v. Dorsey**, 2021 IL 123010.

On appeal, defendant argued that the 48-year sentence was an unconstitutional *de facto* life sentence under the proportionate penalties clause of the Illinois constitution. The appellate court acknowledged that **Dorsey** held that good conduct credit must be considered in determining whether a prison sentence amounts to a *de facto* life term. Such credit can be readily determined, and generally it is within an inmate's control whether he or she earns it. "In contrast to good conduct credit, under the parole scheme, inmates do not have control over their shortened term and minimal chance for review." Parole is not a right, and the appellate court held here that the youthful offender parole statute does not afford a meaningful opportunity for release. Thus, defendant's 48-year sentence was a *de facto* life term despite the possibility of his being paroled before serving 40 years. A dissenting justice would have followed **People v. Elliott**, 2022 IL App (1st) 192294, which held that a sentence where an offender is eligible for parole after 40 or fewer years is not a *de facto* life sentence.

As the law on sentencing youthful offenders continues to evolve, Illinois courts have allowed emerging adults to bring proportionate penalties challenges to *de facto* life sentences. Defendant's trial counsel was ineffective for not making such an argument here. Instead, counsel at sentencing simply acknowledged that defendant was not a juvenile and failed to advance any proportionate penalties challenge to either the mandatory minimum or the firearm enhancement. Accordingly, the court vacated defendant's sentence and remanded the matter for resentencing.

People v. Cavazos, 2023 IL App (2d) 220066 Defendant received a 75-year aggregate sentence, including firearm enhancements, for a murder and attempt murder committed at age 17. In a previous appeal, the case was remanded for re-sentencing pursuant to **People v. Buffer**, 2019 IL 122327. Re-sentencing took place after the legislature enacted juvenile sentencing reform statutes. These statutes required consideration of the **Miller** factors, made the firearm enhancements discretionary, and mandated parole hearings after 20 and 30 years.

The sentencing court on remand imposed a 20-year sentence for murder with no firearm enhancement and no day-for-day sentencing, and a 10- year sentence with a 20-year enhancement, with 85% day-for-day credit, for attempt murder. The aggregate sentence was

therefore 50 years. The sentencing court found that defendant had rehabilitative potential, but provided two justifications for its decision to impose a *de facto* life sentence. First, the court noted that with the 85% credit, and with a 13-year credit for time already served on the original sentence, the true sentence was closer to 32 years, and therefore not a *de facto* life sentence. Second, the court reasoned that in light of the new parole statute, defendant would have a meaningful opportunity for release.

The appellate court disagreed with the first rationale. It held that when measuring a juvenile sentence for purposes of an eighth amendment **Miller** challenge or a proportionate penalties challenge, a court considers the entirety of the sentence, and doesn't consider credit for time served. Thus, the relevant sentence at issue is a 50-year sentence.

The appellate court agreed with the second rational. **Miller** and its progeny held that only sentences that do not allow for a meaningful opportunity for release violate the eighth amendment. These cases repeatedly invoked parole as a method states could use to comply with the eighth amendment. Illinois' new juvenile parole statute mandates a parole hearing at 20 years and, if unsuccessful, another chance 10 years later. Even though parole is not guaranteed, and several other states grant juveniles more, and more frequent, opportunities for parole, the Illinois parole statute is nevertheless a meaningful opportunity for juvenile defendants to avoid life in prison.

People v. Campbell, 2023 IL App (1st) 220373 In 2009, defendant was sentenced to a total of 110 years of imprisonment for first degree murder and armed robbery. In 2019, defendant filed a motion for leave to file a successive post-conviction petition challenging that sentence in light of the holding in **People v. Reyes**, 2016 IL 119271, that the protections afforded by **Miller** apply to a term-of-years sentence that constitutes a *de facto* life sentence. The circuit court denied leave to file, concluding that his sentence was a *de facto* life term but that his sentencing hearing had complied with **Miller**.

The appellate court reversed, vacated defendant's sentence, and remanded for a new sentencing hearing before a different judge. Defendant established cause for not raising this issue in his initial post-conviction petition, which was summarily dismissed in early 2012, because **Miller** had not yet been decided at that time. And, it was not until 2016 that the Illinois Supreme Court extended **Miller**'s protections to mandatory *de facto* life sentences in **Reyes**, and not until 2019 when the Court defined a *de facto* life sentence as one exceeding 40 years in **People v. Buffer**, 2019 IL 122327.

And, defendant demonstrated prejudice where the sentencing court had no discretion to sentence him to anything other than a *de facto* life sentence. Given the finding that defendant personally discharged the firearm that killed the victim, the minimum term available was 51 years. The State agreed that this constituted a **Miller** violation but argued that it was harmless because the sentence imposed was so far above the statutory minimum that the discretion to impose something less than natural life would have made no difference. The court rejected that argument, noting that while the sentencing court imposed a term in excess of the 51-year minimum, the court's exercise of discretion is meaningless under **Miller** where it did not have the option to sentence to anything other than a *de facto* life term.

Further, the court noted that even if harmless error did apply, it was not demonstrated here. **Miller** requires consideration of peer pressure which may have affected his participation in the offense, and there was evidence here that defendant felt beholden to, and fearful of, his older co-defendant. And, while a finding of permanent incorrigibility is not required, the court here noted defendant's rehabilitative potential when it imposed the 110-year sentence.

People v. Reyes, 2023 IL App (2d) 210423 Defendant was convicted of murder and two counts of attempt murder committed at age 16. In **People v. Reyes**, 2016 IL 119271, the supreme court found his original sentence of 97 years an unconstitutional mandatory life sentence under **Miller**. On remand, the trial court sentenced defendant to 66 years, and the appellate court vacated the sentence, finding another **Miller** violation. On remand, the trial court again imposed a 66-year sentence.

The appellate court vacated the sentence again. The sentencing court committed several errors in its application of 730 ILCS 5/-4.5-105(a). First, it relied on an Adult Risk Assessment to measure defendant's recidivism risk. Several factors in this assessment were inapplicable to juveniles, including whether defendant lived in a high-crime area, completion of high school, and securing of employment. And the assessment failed to consider the greater rehabilitative potential of young offenders. Also, it was improper to consider the assessment where it was not listed in section 5-4.5-105(a), which allows a sentencing court to consider other evidence, but only in mitigation.

Second, the sentencing court erroneously found defendant was able consider the risks and consequences of his behavior. To the contrary, defendant was 16 at the time of the offense and his low intelligence put his mental age at about two years behind peers of the same age. As the sentencing court itself found, defendant would act impulsively despite suffering adverse consequences, showing that he was unable to consider consequences. Finally, the court improperly gave "great weight" to the aggravating factor that defendant's conduct caused or threatened serious harm, despite the fact that this factor was inherent in the offenses.

Defendant also alleged the *de facto* life sentence was unconstitutional because the sentencing court found some rehabilitative potential and did not find defendant irredeemable. The appellate court declined to consider the issue, finding it could vacate the sentence on non-constitutional grounds.

Finally, given the sentencing court's failure to comply with the first mandate, a majority of the appellate court appointed a different judge on remand. Although the trial court ruled that under **Jones v. Mississippi**, 141 S. Ct. 1307 (2021), it was free to impose a life sentence without an explicit finding of incorrigibility, the appellate court pointed out that **Jones** also held that state courts may require sentencers to make certain additional findings. Here, the mandate of the appellate court explicitly commanded the sentencing court to sentence defendant to life *only* if it determines defendant is beyond rehabilitation.

People v. Hill, 2022 IL App (1st) 171739-B After challenging his natural life sentence under **Miller**, defendant, who was 15 years old at the time of his crimes, was sentenced to terms of imprisonment totaling 60 years, eligible for day-for-day credit. Initially, the appellate court found that his 60-year sentence exceeded the *de facto* life threshold established in **Buffer**, despite the availability of good-time credit. The court was directed to reconsider its decision, however, after the Illinois Supreme Court issued its opinion in **People v. Dorsey**, 2021 IL 123010, which held that courts must consider the possibility of early release in determining whether a sentence is a *de facto* life term. The appellate court then concluded that defendant's 60-year term, subject to good-time credit, was not a *de facto* life sentence which violated **Miller**.

But, the appellate court went on to apply traditional sentencing review and held that the trial court abused its discretion at sentencing. Specifically, the trial court minimized the "veritable mountain" of evidence as to defendant's youth and its attendant characteristics.

The appellate court noted that at resentencing, the court heard expert testimony explaining defendant's particular diminished culpability and rehabilitative potential. The expert concluded that defendant's juvenile behavior had virtually no predictive value on his likelihood to re-offend and instead noted that defendant's present-day behavior, which was "exemplary," was far more indicative of his current character.

The appellate court also concluded that deterrence was an inapt consideration where expert testimony demonstrated that defendant's criminal behavior, at the age of 15, was based primarily on the impetuousness of youth, as opposed to considered adult decision-making. Accordingly, a lengthy prison sentence was unlikely to deter other juveniles with the same degree of impetuosity and equally unlikely to deter adults capable of making reasoned decisions about their behavior.

While defendant's offense was serious – he personally shot and killed two individuals – courts must consider both the seriousness of the offense and the objective of restoring the offender the useful citizenship in fashioning an appropriate sentence. Here, the trial court abused its discretion in minimizing the effects of youth on defendant's commission of the offense, as well as his demonstrated ability as an adult to conform his conduct to the requirements of the law. Thus, the matter was remanded for resentencing.

People v. Peacock, 2022 IL App (1st) 170308-B In a successive post-conviction petition, defendant challenged as an unconstitutional *de facto* life sentence his 80-year sentence for a 1995 murder, committed when he was 17 years old. Defendant is eligible for day-for-day credit against his sentence, which means he may be released after serving only half of his sentence, or 40 years. In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that a sentence of 40 years or more imposed on a juvenile is a *de facto* life sentence.

Initially, the Appellate Court found that defendant's 80-year sentence constituted a *de facto* life sentence and remanded for a new sentencing hearing. The State sought leave to appeal, and the Illinois Supreme Court issued a supervisor order directing the Appellate Court to reconsider its decision in light of **People v. Dorsey**, 2021 IL 123010. In **Dorsey**, the defendant was subject to a day-for-day sentencing credit scheme which allowed some meaningful opportunity for release before serving more than 40 years in prison.

On reconsideration, the Appellate Court noted that the defendant here is also entitled to day-for-day credit and could be released after serving 40 years, just short of a *de facto* life sentence. While defendant ultimately may serve more than 40 years, the Court held that under **Dorsey**, the relevant consideration is whether the statutory scheme under which he was sentenced allows the opportunity for release before serving more than 40 years.

The Court also rejected defendant's Illinois proportionate penalties claim, concluding that defendant had not established cause for not raising that claim in his initial post-conviction petition. In reaching this conclusion, the Court followed **Dorsey** and several other cases that have rejected such an argument. The proportionate penalties clause was in existence at the time defendant filed his initial petition, and Illinois has long recognized that sentencing youthful offenders requires consideration of their emotional maturity.

People v. Glazier, 2022 IL App (5th) 120401-B On reconsideration in light of **People v. Buffer**, 2019 IL 122327, the Appellate Court concluded that 60-year sentence imposed on 17-year-old defendant was an unconstitutional *de facto* life sentence. There was no indication that the trial court considered defendant's youth and attendant characteristics at sentencing. The court vacated defendant's sentence and remanded for resentencing under the juvenile sentencing scheme set forth at 730 ILCS 5/5-4.5-105.

People v. Beck, 2021 IL App (5th) 200252 Defendant was originally sentenced to a total of 120 years for six counts of armed violence committed in 1986 when he was a juvenile. He subsequently obtained resentencing via a successive post-conviction petition based on **Graham v. Florida**, 560 U.S. 48 (2010) (juvenile cannot be sentenced to life for non-homicide offense), and **People v. Buffer**, 2019 IL 122327 (sentence of more than 40 years is *de facto* life sentence). On resentencing, the court imposed a total of 80 years of imprisonment.

The Appellate Court rejected defendant's challenge to his 80-year sentence. The court first held that the new parole statute - 730 ILCS 5/5-4.5-115(b) - affords a juvenile sentenced after June 1, 2019, an opportunity for parole review after serving 10 years of more of his sentence. While this statute was enacted well-after the commission of the offenses and the original sentencing hearing, the Appellate Court held that it applies by its plain language to defendant's case because his resentencing occurred after June 1, 2019. **Graham**'s prohibition on life sentences for non-homicide offenders is specifically limited to life sentences without parole. Because defendant will have the opportunity for parole before serving a life term, his sentence is not unconstitutional.

The court also rejected defendant's assertion that the new parole statute violates the *ex post facto* clause because, without it, he could have been resentenced to no more than 40 years of imprisonment. Under **Graham**, a non-homicide juvenile was only ever entitled to a meaningful opportunity for release before serving a *de facto* life sentence. **Graham** does not require actual release of a non-homicide juvenile offender during his lifetime. The new juvenile parole statute effectuates **Graham** and does not allow a greater sentence than could otherwise have been imposed. And, because defendant is entitled to day-for-day credit on his sentence, he may be released after serving 40 years of his 80-year term, regardless.

People v. Brakes, 2021 IL App (1st) 181737 Defendant, who was a juvenile at the time of his offenses, did not receive a *de facto* life sentence where he was sentenced to 33 years for murder and consecutive terms totaling 12 years for attempt armed robbery. Defendant is eligible for day-for-day credit on the attempt armed robbery sentences. Accordingly, he will be eligible for release after serving 39 years, short of the 40-year minimum established in **Buffer**. Under **People v. Dorsey**, 2021 IL 1123010, a sentence that affords a juvenile an opportunity for release before serving more than 40 years does not constitute a *de facto* life sentence.

People v. Ruiz, 2021 IL App (1st) 182401 Defendant committed one murder in 1994 and received a 30-year sentence. He was found guilty of a second murder and an attempt murder in 1996 and received concurrent mandatory natural life and 30-year sentences. These sentences ran consecutive to the original 30-year sentence. Defendant committed all of his crimes as a juvenile.

The mandatory life sentence was vacated pursuant to **Miller** and on remand, defendant received 50 years, concurrent to the 30-year term for attempt murder and consecutive to the first 30-year murder sentence. The sentencing court, having heard extensive evidence in mitigation and aggravation, stressed that it did not view the 50-year term as a life sentence, as defendant would be eligible for day-for-day credit. The sentencing court explicitly considered each of the **Miller** factors before arriving at the 50-year term. The court denied defendant's motion to reconsider, which alleged that the 50-year term combined with the consecutive 30-year term created an unconstitutional *de facto* life sentence.

Defendant challenged the 50-year sentence as an improper *de facto* life sentence under the eighth amendment. The Appellate Court agreed. Courts have repeatedly held that the availability of statutory good-time sentencing credit is irrelevant to the determination of whether a juvenile defendant has been sentenced to a *de facto* life sentence. To hold otherwise would be to leave it up to IDOC to determine whether defendant serves an unconstitutional *de facto* life sentence. Here, the sentencing court made clear that it did not find defendant incorrigible, as it sought to impose a non-life sentence.

The court vacated the sentence and remanded for a new sentencing hearing. At the new hearing, the sentencing court must consider that defendant will be serving the sentence consecutively to any years remaining on the original 30-year term. Any aggregate sentence, regardless of whether it is imposed for a single or separate crime, which by operation of law exceeds *de facto* life as defined by **Buffer**, is unconstitutional unless it is also made in tandem with a finding that the defendant is beyond rehabilitation.

People v. Simental, 2021 IL App (2d) 190649 The trial court erred in denying defendant leave to file a successive post-conviction petition challenging the 60-year prison sentence he received for a murder committed when he was 16 years old. Defendant's sentence was an improper *de facto* life sentence under **Miller** and **Buffer** even though defendant was eligible for day-for-day credit.

Statutory sentencing credit is irrelevant to determining whether a prison sentence constitutes a *de facto* life sentence. The fact that defendant had since been released from prison was not fatal to his claim either. Defendant was still serving the accompanying term of mandatory supervised release and remained subject to the remainder of his prison term until discharged from MSR.

Rather than remanding for further post-conviction proceedings, the appellate court vacated defendant's sentence and remanded the matter for resentencing.

People v. Benford, 2021 IL App (1st) 181237 Defendant received a 40-year sentence for a murder committed at age 21. He filed a successive post-conviction petition alleging a disproportionate life sentence in light of his severe mental disabilities and youth. The Appellate Court held that a 40-year sentence is not a *de facto* life sentence under **Buffer.** Therefore, defendant could not show prejudice to obtain leave to file his successive post-conviction petition.

People v. Gavin, 2021 IL App (1st) 182085 The court upheld the 17-year-old defendant's murder sentence of 33 years, which ran consecutively to three sentences imposed in prior cases, for a total of 47 years. The prior sentences were subject to day-for-day custody credit, such that the total time served would be 39 years.

Without deciding whether the court could find a *de facto* life sentence by combining the murder sentence with the prior sentences, the court affirmed by finding the operable sentence for purposes of **Buffer** is 39 years. Although the court agreed with prior cases holding that courts should not consider custody credit when determining whether a sentence is a *de facto* life sentence, in this case, defendant had already received the custody credit, having served the prior sentences by the time of this decision. Thus, defendant's term did not constitute a life sentence.

People v. Chambers, 2021 IL App (4th) 190151 The trial court erred in summarily dismissing 18-year-old defendant's post-conviction petition asserting that his 42-year

sentence violated **Miller** and its progeny. While it may ultimately be a close call whether defendant's sentencing hearing and resulting term of imprisonment were proper, it was at least arguable under the "extremely undemanding first stage" of post-conviction proceedings.

People v. Helgesen, 2020 IL App (2d) 160823-B After having his natural life sentence vacated under **Miller**, defendant was resentenced to concurrent terms of imprisonment of 90 years each for two counts of first degree murder. The Appellate Court affirmed, concluding that the court properly considered defendant's youth and its attendant characteristics at resentencing. While the judge specifically stated his belief that "if released at some point in time [defendant] will not pose a danger to others," the Appellate Court held that this did not require a sentence less than *de facto* life, declining to follow **People v. Murphy**, 2019 IL App (4th) 170646. The Appellate Court noted that the sentencing court made detailed findings showing that it considered and weighed the **Miller** factors and crafted a proportionate sentence, which is all that is required.

People v. DiCorpo and Henney, 2020 IL App (1st) 172082 Defendants received natural life sentences plus consecutive 30-year sentences for murder and aggravated arson, committed at age 17. Defendants had been found guilty of setting a fire to a home, resulting in the deaths of five children and their father. Both filed post-conviction petitions containing **Miller** challenges. At a hearing on the petitions, the circuit court vacated the natural life sentences and heard extensive aggravation and mitigation relating to each co-defendant. The court found that it could leave the consecutive 30-year sentence intact, is it was not a life sentence. The court imposed a 50-year sentence on Henney, for an aggregate term of 80 years (to be served at 50%), and a 60-year sentence on DiCorpo, for an aggregate term of 90 years (to be served at 50%).

The Appellate Court vacated all of the sentences and remanded for a new sentencing hearing before a new judge. The Court held that when considering whether a sentence imposed on a juvenile is a *de facto* life sentence, courts must consider the aggregate term. And even though day-for-day sentencing credit would put Henney's sentence at exactly 40 years, the Court agreed with **People v. Peacock**, 2020 IL App (1st) 170308, that this credit could not be taken for granted. Thus, both defendant received *de facto* life sentences. Because the circuit did not find that the defendants were permanently incorrigible, the sentences violated the eighth amendment.

The Court further held that re-sentencing must occur before a different judge. The Court was concerned that the judge below minimized the defendants' juvenile status. The judge had noted that defendants were close to their 18th birthdays at the time of the offense, that adults can use poor judgment as well, that some young people are "very mature," and that these defendants "were closer to being legally adults than they were children in my opinion."

People v. Applewhite, 2020 IL App (1st) 142330-B Defendant's 45-year sentence, entered pursuant to a fully negotiated plea agreement for offenses committed in 2001 when he was 17 years old, was an unconstitutional *de facto* life sentence under **People v. Buffer**, 2019 IL 122327. The State conceded that defendant did not waive his right to challenge the constitutionality of his sentence by pleading guilty, and the Appellate Court agreed. And, while defendant's appeal was from the summary dismissal of his post-conviction petition, the court did not remand for further post-conviction proceedings but rather vacated his sentence and remanded for a new sentencing hearing in the interest of judicial economy.

People v. Cavazos, 2020 IL App (2d) 120171-B Defendant's 75-year sentence, consisting of consecutive terms of 45 years for first degree murder and 30 years for attempt murder, was an unconstitutional *de facto* life sentence under **Buffer**. Defendant was 17 years old at the time of the crimes, and he was sentenced prior to **Miller**. The Appellate Court observed that the framework for sentencing juveniles to life imprisonment has evolved since defendant was sentenced here. While the court was aware of defendant's youth at the time of sentencing, "[m]ere *general* consideration of youth is a far cry from evaluating the relevant factors to find that defendant is that rare juvenile whose criminal conduct was indicative of irreparable corruption beyond the possibility of rehabilitation."

People v. Villalobos, 2020 IL App (1st) 171512 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less" provides a juvenile some meaningful opportunity for release. Thus, for purposes of juvenile sentencing, a *de facto* life sentence is *more* than 40 years. A period of mandatory supervisory release is not counted, because the question is when the defendant will be released from prison, not when he completes the totality of his sentence. Therefore, where defendant received exactly 40 years (plus three years of MSR), he could not raise an eighth amendment claim under **Miller**.

The Appellate Court further rejected a proportionate penalties claim, finding the trial court adequately balanced the defendant's youth against the severity of the offense. A 40-year sentence on a 16 year-old did not shock the conscience where defendant participated in a gang-related beating and, after his fellow gang members left the scene, returned to the prone victim and fired several shots into his back. The notion that the court did not adequately consider mitigating factors was further belied by the fact that the court refused to impose the mandatory firearm enhancements, and reduced the initial 50-year sentence by 10 years upon reconsideration.

People v. Quezada, 2020 IL App (1st) 170532 Minor defendant's 68-year sentence, to be served at 50%, constituted a *de facto* life sentence under **Buffer**. Following its prior decision in **People v. Peacock**, 2019 IL App (1st) 170308, the Appellate Court held that day-for-day credit should not be considered in determining whether a sentence constitutes *de facto* life because it is a function of IDOC, not the judiciary. Defendant's actual sentence of 68 years far exceeded the 40-year threshold set in **Buffer**, and the possibility that defendant will serve only 34 of those 68 years is within the sole discretion of IDOC. Because the record established that the trial court did not sufficiently consider defendant's youth and attendant characteristics before imposing the 68-year term, the Appellate Court vacated defendant's sentence and remanded for resentencing.

People v. Haynie, 2020 IL App (1st) 172511 At resentencing after defendant's natural life sentence was vacated in light of **Miller**, the trial court imposed consecutive terms of imprisonment of 30 years each for two counts of murder, for a total of 60 years. The Appellate Court concluded that this new sentence constituted a *de facto* life sentence under **Buffer**, which had not yet been decided at the time of resentencing. Since nothing in the record supported a finding that defendant could not be rehabilitated, and the record showed that the court erroneously focused on deterrence in imposing the 60-year-term, the Appellate Court vacated defendant's sentence and again remanded the matter for resentencing.

People v. Figueroa, 2020 IL App (1st) 172390 The trial court erred in denying leave to file a successive post-conviction petition raising a claim under **Miller v. Alabama**. The defendant was 17 years old at the time he committed murder, and subsequently was sentenced to 75 years of imprisonment. While defendant's sentence was subject to day-for-day good-conduct credit, it was a *de facto* life sentence under **Buffer** because day-for-day credit is not guaranteed. IDOC may revoke good-conduct credit for a variety of reasons, including damage to or misuse of State property, disobeying an order, abuse of privileges, possession of unauthorized property, and filing a frivolous lawsuit. IDOC's burden for such revocations is low. Accordingly, the mere possibility that defendant may earn adequate credit to be released in 40 years or less did not take his 75-year-sentence out of **Buffer**'s reach. Because the sentencing court had not complied with **Miller** at the original sentencing hearing, defendant's sentence was vacated and the matter remanded for a new sentencing hearing.

People v. Daniel, 2020 IL App (1st) 172267 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment." Here, defendant received 70 years in prison, for a murder committed at age 17, but he was eligible for day-for-day sentencing credit. The Appellate Court held that despite defendant's eligibility for a sentence as low as 35 years, his sentence must be considered *de facto* natural life under **Buffer.** Day-for-day credit is not automatic, and the court would not presume that the Department of Corrections would award him all of that credit.

Even though the case was dismissed at the second-stage of post-conviction proceedings, the court remanded for a new sentencing hearing rather than a third-stage evidentiary hearing, as a matter of judicial economy.

People v. Gunn, 2020 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Reyes, 2020 IL App (2d) 180237 Upon conviction for murder and two counts of attempt murder committed at age 16, defendant received an aggregate 97-year term. The Illinois Supreme Court held the sentence violated **Miller** and remanded for resentencing, after which defendant received a 66-year term. In this appeal, the Appellate Court held the sentence violated **Miller** because the 66-year term was a life sentence pursuant to **Buffer**, and the sentencing court did not find defendant permanently incorrigible prior to imposing it. The court remanded for resentencing.

People v. Paige, 2020 IL App (1st) 161563 Trial court erred in denying leave to file successive post-conviction petition raising **Miller** claim. Defendant was 16 years old in 1999

when he committed a murder and received a 50-year sentence, which is a *de facto* life term under **Buffer**. While the sentencing judge had considered defendant's age, the court focused its sentencing decision on the severity of the crime and the need to protect the public, without considering defendant's prospects for rehabilitation. Because the court had not determined whether defendant was one of the rarest of juvenile offenders whose crime reflected permanently incorrigibility, his sentence was imposed in violation of **Miller**. The Appellate Court vacated defendant's sentence and remanded for a new sentencing hearing.

People v. Thornton, 2020 IL App (1st) 170677 Defendant's 70-year sentence for first degree murder, subject to day-for-day credit, was a *de facto* life sentence where defendant was 17 years old at the time of the offense. Following **People v. Peacock**, 2019 IL App (1st) 170308, the Appellate Court held that the availability of statutory sentencing credit is irrelevant to the determination of whether a sentence constitutes *de facto* life. Under **Buffer**, that line is drawn at 40 years, which defendant's sentence clearly exceeded. Therefore, the trial court erred in summarily dismissing defendant's post-conviction petition challenging his *de facto* life sentence. Rather than remanding for further post-conviction proceedings on defendant's clearly meritorious claim, the Appellate Court vacated defendant's sentence and remanded for resentencing; the record established that the sentencing judge had made no more than a passing reference to defendant's young age and had not considered youth and its attendant characteristics as required by **Miller**.

People v. Gunn, 2019 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Harvey, 2019 IL App (1st) 153581 Following **People v. Buffer**, 2019 IL 153581, there is no question that the 16-year-old defendant's 52-year sentence for first degree murder is a *de facto* life sentence. The trial court's mere awareness of defendant's age and consideration of a presentence investigation report does not show that the court specifically considered defendant's youth and its attendant characteristics. Thus, defendant is entitled to a new sentencing hearing, and at resentencing defendant is entitled to be sentenced under 730 ILCS 5/5-4.5-105, which details specific factors the court must consider in sentencing a minor and allows the court to forego firearm enhancements.

People v. Smolley, 2018 IL App (3d) 150577 In successive post-conviction proceedings, defendant was granted a new sentencing hearing because his original mandatory natural life sentence, imposed for two counts of felony murder committed when defendant was 15 years old, was unconstitutional under the **Miller** line of cases. He was resentenced to 65 years of imprisonment.

The Appellate Court rejected the argument that defendant should receive a

discretionary transfer hearing because the automatic transfer age had been raised to 16 in 2016. Relying on **People v. Hunter**, 2017 IL 121306, the Appellate Court held that the amendment did not apply to defendant's case because the original trial court proceedings had concluded in 2005, well before the amendment became effective. Further, defendant was now 29 years old and thus could not be subject to the jurisdiction of the juvenile court.

The Appellate Court ordered a second new sentencing hearing, however, because the record did not indicate that the trial court considered defendant's youth before imposing the *de facto* life sentence of 65 years. While the judge stated he considered the statutory factors in aggravation and mitigation, the record must show that the court considered defendant's youth, immaturity, and potential for rehabilitation before a life sentence may be imposed for an offense committed as a juvenile.

People v. Joiner, 2018 IL App (1st) 150343 A mandatory minimum sentence of 71 years imposed on a 16 year-old for murder and attempt murder with a firearm, resulting in release at age 83, is an unconstitutional *de facto* life sentence. The Appellate Court held that the potential for "geriatric release" is not a substitute for a meaningful chance at rehabilitation under **Miller**, and found that a release at age 83 is well within the range for a *de facto* life sentence in previous cases. The Appellate Court remanded for a sentencing hearing at which the sentencing court must consider defendant's youth and potential for rehabilitation, and apply new sentencing laws making the firearm enhancements discretionary.

People v. Merriweather, 2017 IL App (4th) 150407 Defendant, who was 17 at the time of the offense, was convicted of first degree murder and sentenced to 70 years in prison. Defendant filed a *pro se* motion for leave to file a successive post-conviction petition alleging actual innocence based on newly discovered evidence. On appeal from the denial of the motion, defendant argued for the first time that his sentence was a *de facto* life sentence that was unconstitutional as applied to him.

The Appellate Court, relying on **Thompson,** 2015 IL 118151, held that defendant could not raise an as-applied challenge to his sentence for the first time on appeal. Unlike facial challenges to statutes, as-applied challenges are dependent on the facts and circumstances of each case and thus the appropriate place to raise the issue is in the trial court where the record can be adequately developed. Defendant thus forfeited this issue by failing to raise it in the trial court.

The court specifically declined to follow **Nieto**, 2016 IL App (1st) 121604, which held that courts must overlook the general rule of **Thompson** in cases where a defendant is raising an as-applied challenge to the sentence of a juvenile. The court found that it would be inconsistent to require a fully developed record in adult cases but not in juvenile cases.

The court refused to address defendant's argument but noted that he might be able to raise this issue in a successive post-conviction petition.

People v. Morris, 2017 IL App (1st) 141117 Defendant, who was 16 years old at the time of the offense, was convicted of first degree murder, attempt murder, and aggravated battery with a firearm. Due in part to mandatory firearm enhancements, defendant was sentenced to an aggregate sentence of 100 years in prison and will have to serve at least 93 years and four months of his sentence. He will be 109 years old when he is eligible for release.

The court held that defendant's sentence, which was a *de facto* life sentence, was improper because the trial court did not meaningfully consider defendant's youth and its attendant circumstances before sentencing defendant. The court noted that defendant had a

troubled background, a history of mental illness, and a history of drug and alcohol abuse. The trial court did not meaningfully consider those special circumstances and how they related to defendant's youthful characteristics before it sentenced him.

Defendant's sentence was vacated and remanded for resentencing under the provisions of 730 ILCS 5/5-4.5-105 which took effect while his case was on appeal. These provisions (1) require the sentencing court to consider several factors, including age, impetuosity, and level of maturity when sentencing a defendant under age 18, and (2) give the sentencing court discretion to not apply the firearm enhancements. In **People v. Reyes**, 2016 IL 119271, the Supreme Court held that under the Statute on Statutes (5 ILCS 70/4), a defendant may elect to be sentenced under either the law in effect at the time the offense was committed or the time of sentencing. Here, defendant may elect at resentencing to be sentenced under 5-4.5-105.

People v. Ortiz, 2016 IL App (1st) 133294 Defendant, age 15 at the time of the offense, was tried as an adult under the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130) and was convicted of first degree murder and sentenced to 60 years imprisonment.

Defendant's sentence violated the Eighth Amendment. A juvenile's mandatory or discretionary sentence of life imprisonment is constitutionally valid only where the sentencing judge takes into consideration his youth and attendant characteristics to determine whether the defendant is the rarest of juvenile offenders whose crimes reflect permanent incorrigibility.

Since defendant must serve 100% of his 60-year sentence and hence will not be eligible for release until he is 75 years old, his sentence is effectively a life sentence. Although the trial court considered defendant's young age and his personal history in sentencing defendant, it did not consider the corresponding characteristics of his youth as required by **Miller v. Alabama**, 567 U.S. 460, 132 S. Ct. 2455 (2012).

The court also held that the recent amendments to the automatic transfer provisions applied retroactively to defendant's case. These amendments took effect while defendant's case was on appeal and raised the minimum age for mandatory transfer to criminal court from 15 to 16 years. The court found that where, as here, the legislature does not provide an explicit provision establishing the effective date of the amendments, the general savings clause of section 4 of the Statutes on Statutes (5 ILCS 70/4) applies, and states that amendments that are procedural in nature may be applied retroactively. The amendments to the automatic transfer statute are procedural in nature and thus may apply retroactively to defendant's case.

The court vacated defendant's sentence and remanded the cause for the State to have the opportunity to file a petition for a discretionary transfer to adult court. If a hearing is held and the trial court determines that defendant's case should be transferred to adult court, then the court must hold a new sentencing hearing.

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

The 20-year enhancement applied to both of defendant's convictions under 720 ILCS 5/8-4(c)(1)(C), requiring that 20 years be added to the sentence where the defendant

"personally discharged a firearm" during the commission of the offense. The court imposed the minimum sentence of 26 years (including the 20-year firearm enhancement) for both convictions, to be served consecutively for a total of 52 years.

Defendant argued that the automatic transfer statute combined with the sentencing provisions violated the Eighth Amendment as applied to him. The Court rejected this argument, holding that defendant's 52-year sentence was not a *de facto* sentence of life imprisonment. Taking into account available sentencing credit, the Court determined that defendant could be released from prison at age 60, while the average life expectancy for someone in his position was 67.8 years. Defendant thus could, and likely would, spend the last several years of his life outside of prison. The Court found that, strictly speaking, defendant's sentence did not constitute life imprisonment and thus did not violate the Eighth Amendment.

The Court agreed, however, that the statutory scheme was unconstitutional as applied to defendant under the proportionate penalties clause of the Illinois Constitution. The Illinois Constitution states 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." Ill. Const. 1970, art. I, § 11. To show a violation of the clause, a defendant must show that the penalty is degrading, cruel "or so wholly disproportionate to the offense that it shocks the moral sense of the community." The clause provides a limitation on punishment beyond the eighth amendment.

The Court found that defendant's penalty shocked the moral sense of the community. Although this was a serious offense, and one of the victims suffered severe injuries, there were numerous factors that diminished "the justification for a 52-year prison term." The incident was not planned long before it occurred, but was instead the result of rash decision making. Defendant was a mentally ill juvenile who was prone to impulsive behavior, and wanted to impress his older co-defendant. And defendant did not personally inflict serious harm, even though that was primarily the result of bad aim.

The court found it meaningful that defendant had been found unfit to stand trial and thus was clearly not "at his peak mental efficiency" when the offense occurred. Defendant's inability to process information may have affected his judgment, which diminished his culpability and the need for retribution. At the same time, defendant's mental health had improved in the recent past, showing he may yet be rehabilitated. And the trial judge clearly would have imposed a shorter sentence if that had been possible. The Court found it "unsettling" that the trial court's discretion in sentencing a juvenile was frustrated by the mandatory minimum in the case. "Under these circumstances, defendant's sentence shocks the conscience and cannot pass constitutional muster."

As a remedy, the court ordered the trial court on remand to impose any appropriate Class X sentence without the mandatory firearm enhancement.

People v. Dupree, 2014 IL App (1st) 111872 The court expressed its concern that "serious constitutional issues" are presented where the convergence of mandatory minimum and mandatory consecutive sentences result in *de facto* life sentences for juveniles who were under the age of 18 at the time of the offense but who are tried as adults. Because the convictions were reversed for other reasons, however, the court did not reach this issue.

In a concurring opinion, Justice Pucinski found that the imposition of a mandatory *de facto* life sentence on a juvenile offender who was prosecuted as an adult creates constitutional issues under **Miller v. Alabama**, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012), which held that the Eighth Amendment is violated by the mandatory imposition

of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of the offense.

§44-1(c)(3)
Non-homicide Offenses

United States Supreme Court
Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) The Supreme Court concluded that the "cruel and unusual punishment" clause of the 8th Amendment prohibits a sentence of life imprisonment without the possibility of parole for a juvenile offender who is convicted of an offense other than homicide. The court concluded that there are both national and global consensuses against such sentences even in jurisdictions which authorize life sentences for juveniles, that juveniles are less mature and therefore less culpable for their actions than adults, and that a case-by-case approach would be insufficient to satisfy constitutional concerns.

Illinois Appellate Court
People v. Wilson, 2015 IL App (4th) 130512 Under **Graham v. Florida**, 560 U.S. 48 (2010), the "cruel and unusual punishment" clause of the Eighth Amendment is violated by a mandatory life sentence without the possibility of parole for a juvenile offender who did not commit a homicide. Here, the court concluded that **Graham** was violated by imposition of natural life sentences without the possibility of parole on three counts of predatory criminal sexual assault of a child which were committed about six months before defendant's 18th birthday. The natural life sentences were imposed under 720 ILCS 5/12-14.1(b)(1.2), which mandates sentences of life without parole for convictions of predatory criminal sexual assault of a child which were committed against two or more persons, "regardless of whether the offenses occurred as the result of the same act or several related or unrelated acts."

The court rejected the State's request to affirm two natural life sentences for counts of predatory criminal sexual assault of a child which occurred after defendant turned 18. First, because both counts were committed against a single victim, they did not trigger natural life sentencing on their own.

Second, the court rejected the argument that the three counts on which the natural life sentences were vacated because the offenses occurred when defendant was a minor could be used to impose natural life sentences on the two counts which were committed after defendant turned 18. "It is contrary to the analysis in **Graham** to permit the conduct for which a defendant could not receive a life sentence to trigger a life sentence for a second offense, committed after defendant's 18th birthday."

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

The 20-year enhancement applied to both of defendant's convictions under 720 ILCS 5/8-4(c)(1)(C), requiring that 20 years be added to the sentence where the defendant "personally discharged a firearm" during the commission of the offense. The court imposed the minimum sentence of 26 years (including the 20-year firearm enhancement) for both

convictions, to be served consecutively for a total of 52 years.

Defendant argued that the automatic transfer statute combined with the sentencing provisions violated the Eighth Amendment as applied to him. The Court rejected this argument, holding that defendant's 52-year sentence was not a *de facto* sentence of life imprisonment. Taking into account available sentencing credit, the Court determined that defendant could be released from prison at age 60, while the average life expectancy for someone in his position was 67.8 years. Defendant thus could, and likely would, spend the last several years of his life outside of prison. The Court found that, strictly speaking, defendant's sentence did not constitute life imprisonment and thus did not violate the Eighth Amendment.

The Court agreed, however, that the statutory scheme was unconstitutional as applied to defendant under the proportionate penalties clause of the Illinois Constitution. The Illinois Constitution states 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." Ill. Const. 1970, art. I, § 11. To show a violation of the clause, a defendant must show that the penalty is degrading, cruel "or so wholly disproportionate to the offense that it shocks the moral sense of the community." The clause provides a limitation on punishment beyond the eighth amendment.

The Court found that defendant's penalty shocked the moral sense of the community. Although this was a serious offense, and one of the victims suffered severe injuries, there were numerous factors that diminished "the justification for a 52-year prison term." The incident was not planned long before it occurred, but was instead the result of rash decision making. Defendant was a mentally ill juvenile who was prone to impulsive behavior, and wanted to impress his older co-defendant. And defendant did not personally inflict serious harm, even though that was primarily the result of bad aim.

The court found it meaningful that defendant had been found unfit to stand trial and thus was clearly not "at his peak mental efficiency" when the offense occurred. Defendant's inability to process information may have affected his judgment, which diminished his culpability and the need for retribution. At the same time, defendant's mental health had improved in the recent past, showing he may yet be rehabilitated. And the trial judge clearly would have imposed a shorter sentence if that had been possible. The Court found it "unsettling" that the trial court's discretion in sentencing a juvenile was frustrated by the mandatory minimum in the case. "Under these circumstances, defendant's sentence shocks the conscience and cannot pass constitutional muster."

As a remedy, the court ordered the trial court on remand to impose any appropriate Class X sentence without the mandatory firearm enhancement.

§44-1(c)(4)
Emerging Adults

Illinois Supreme Court

People v. Williams, 2024 IL 127304 Defendant filed a post-conviction petition alleging that his mandatory natural life sentence violated the proportionate penalties clause, because he was 22 years-old at the time of he committed multiple murders. The petition alleged that, based on **Miller** and its progeny, plus developments in brain science, defendant's age, maturity and culpability levels at the time of the offense were similar to that of a juvenile.

The supreme court affirmed the summary dismissal of the petition. The claim may have had a rational basis in law, because the court has previously held that it has not

foreclosed emerging adults between 18 and 19 years-old from raising as-applied proportionate penalties challenges to life sentences based on the evolving science on juvenile maturity and brain development. But without deciding whether a 22 year-old could make such a claim, the court held the claim here lacked a rational basis in fact.

Defendant alleged that given his age, criminal history, involvement in the crime, and the "hallmark features of youth" that make him less culpable, his sentence was excessive. But nowhere in the petition did defendant detail the hallmark features of his youth, besides his age, that might explain why he was less mature and less culpable. Section 122-2 of the Post-Conviction Hearing Act requires petitioners to provide factual support for their claims. "An emerging adult postconviction petitioner who simply cites his age at the time of the offense and the evolving science on juvenile maturity and brain development does not state the gist of an as-applied claim that a mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution."

While defendant pointed out that the trial record contains some detail in support of the claim, including assertions made during closing argument by defense counsel that defendant was an immature "kid" who was manipulated by others, the supreme court found these allegations contradicted by the record:

> [A]ll five victims died from gunshot wounds to the head, three of the victims were shot at close range, and defendant personally shot at least two of the victims. Defendant planned the armed robbery of a victim's home, solicited the help of others, armed himself, ransacked nearly every part of the house, and stole numerous items from the victims. The jury heard testimony that defendant laughed as he transported the proceeds to his own home and distributed and sold them. Defendant was the instigator of the criminal plan and a principal offender in the unprovoked murder of five victims.

People v. Hilliard, 2023 IL 128186 Defendant sought post-conviction relief on the basis that his 40 year sentence for attempt murder, which included a 25-year firearm enhancement, violated the proportionate penalties clause of the Illinois constitution as applied to him, in part because he was only 18 years old at the time of the offense. His petition was summarily dismissed.

The Supreme Court affirmed. The Court first clarified the limits of its holdings in **People v. Thompson**, 2015 IL 118151, **People v. Harris**, 2018 IL 121932, and **People v. House**, 2021 IL 125124. In each of those cases, the Court had allowed for the possibility that young adult offenders could raise **Miller**-type as-applied proportionate penalties clause challenges to mandatory life sentences. Here, while defendant was a young adult offender, his 40-year sentence was neither a *de facto* life sentence nor mandatory. Under **People v. Buffer**, 2019 IL 122327, only a sentence that exceeds 40 years constitutes a *de facto* life sentence, while a sentence of exactly 40 years does not. And, regardless, Hilliard's sentence was discretionary; the sentencing court could have imposed a total sentence as low as 31 years had it chosen to do so (6-year minimum for Class X attempt murder plus 25-year enhancement for personally discharging a firearm causing great bodily harm during the offense). Thus, **Thompson**, **Harris**, and **House** provided no support for his claim here.

The Court also rejected defendant's proportionate penalties claim under **People v. Leon Miller**, 202 Ill. 2d 328 (2002). There, the Supreme Court found that the 15-year-old defendant's mandatory life sentence violated the proportionate penalties clause where the convergence of several, separate statutes – specifically Illinois's juvenile transfer statute, accountability statute, and multiple-murder sentencing statute – eliminated the trial court's discretion to consider mitigation such as the defendant's age and degree of participation.

Here, on the other hand, defendant acted as the principle, and only, offender, he was an adult, and his sentence was at least partially discretionary.

Finally, the Court rejected defendant's argument that society's evolving standards of decency supported his claim. Defendant pointed to recent legislative changes which allow courts to decline to impose firearm enhancements on juvenile offenders and provide parole review for offenders who were under 21 at the time of their offense. But, as the Court observed, by limiting the reach of those statutes, the legislature made a deliberate judgment that adult offenders, even young adult offenders, should remain subject to the mandatory firearm enhancements and that the youthful offender parole statute should not be applied retroactively. Accordingly, those legislative changes provide no support for defendant's claim here.

While defendant was young at the time of the offense, he deliberately chose to fire multiple shots at the victim, at close range, without provocation, in an attempt to kill him. Accordingly, he failed to state even the gist of a claim that his 40-year sentence was so cruel, degrading, or wholly disproportionate to the offense as to shock the moral sense of the community.

People v. Moore and People v. Williams, 2023 IL 126461 Defendants' successive post-conviction petitions did not sufficiently plead cause, and the supreme court therefore upheld the circuit court's decision to deny leave to file. Defendants alleged in successive petitions that their discretionary life sentences, imposed for murders committed at age 19 in 1997, violated the eighth amendment and the proportionate penalties clause. They argued that their brain development was similar to that of a juvenile and that they were therefore entitled to the sentencing considerations discussed in **Miller v. Alabama**. They argued that, because **Miller** was decided after their sentencing hearings, they could not have brought the claim earlier.

The supreme court found a lack of cause for both claims. **Miller** limited eighth amendment claims to juveniles, but defendants were 19-year-old young adults. Thus, the holding had no bearing on whether defendants could bring an eighth amendment claim prior to the instant petition. As for the proportionate penalties claim, the supreme court has already held that "**Miller**'s announcement of a new substantive rule under the eighth amendment does not provide cause for a [juvenile offender] to raise a claim under the proportionate penalties clause." **People v. Clark**, 2023 IL 127273, ¶ 61, quoting **People v. Dorsey**, 2021 IL 123010, ¶ 74. Thus, "it also does not provide cause for a young adult offender to raise a claim under the proportionate penalties clause."

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

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

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

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

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

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

Illinois Appellate Court

People v. Brewer, 2025 IL App (1st) 240088 The appellate court affirmed the dismissal of a successive post-conviction petition, finding defendant could not show cause. Defendant was convicted of first-degree murder, committed at age 18, and sentenced to an aggregate 80-year term. He sought leave to file a successive post-conviction petition arguing that his sentence violated the proportionate penalties clause because it was imposed without consideration of the characteristics of youth. He asserted that the evolution of caselaw since **Miller** and advances in neuroscience constituted cause for failing to raise the claim earlier and that his age and rehabilitative potential established prejudice. The circuit court denied leave to file.

Although the appellate court previously remanded the case in 2020, finding that defendant met the cause-and-prejudice test, it affirmed the current dismissal because the supreme court in the meantime has made it clear that **Miller** and its progeny do not excuse the failure to raise the claim in earlier proceedings. Both **People v. Dorsey**, 2021 IL 123010, and **People v. Moore**, 2023 IL 126461, foreclosed reliance on **Miller** to establish cause for young adult defendants raising **Miller**-based proportionate penalties claims. Nor did the court agree with defendant's argument that he presented sufficient new factual evidence to

establish cause. Defendant attached a 2022 neuroscientific study to his appellate brief, but neither this document, nor an explanation of how its findings pertained to defendant's specific circumstances, were presented below.

The court also rejected defendant's claim that PC counsel provided unreasonable assistance, finding that counsel had raised and litigated the arguments available under existing law and that the record did not show what material counsel failed to provide.

People v. Hewitt, 2025 IL App (1st) 231294 Defendant was sentenced to natural life, plus 30 years, for two first-degree murders and an attempted third murder that he committed when he was 19 years old. He filed a post-conviction petition over 20 years later, alleging that his sentence violates the proportionate-penalties clause of the Illinois Constitution. Defendant based his claim on his status as an emerging adult who suffered from "severe mental illness" at the time of his crimes.

The appellate court upheld the dismissal of the petition. (The circuit court erroneously denied leave to file under the mistaken impression that the petition was successive; it was an initial petition, so the appellate court reviewed it as a first-stage dismissal).

First, defendant forfeited the claim by failing to raise it at sentencing or on appeal. Although some confusion has persisted on this point due to language in **People v. Harris**, 2018 IL 121932, suggesting a freestanding proportionate-penalties claim could be raised for the first time in a post-conviction petition, the primary holding of **Harris** was that the claim was forfeited. Subsequent holdings, such as **People Dorsey**, 2021 IL 123010, confirmed this, even where the claim cites **Miller.** Here, all relevant information to a proportionate-penalties challenge based on defendant's status as an emerging adult was available at these prior proceedings. Therefore the claim is forfeited. Defendant's only recourse was to raise trial and appellate counsel's ineffectiveness for failing to raise the claim earlier, but defendant did not do so here.

Additionally, the appellate court found the claim without merit. Despite a difficult childhood and some mental health issues, defendant's sentence was not grossly disproportionate to his culpability. Defendant was the principal shooter in a double murder, which he planned in advance, motivated by revenge, and he admitted he intended to kill as many people as possible. In short, his case "falls on the wrong side of every significant line the law has drawn in this area."

People v. Green-Hosey, 2025 IL App (2d) 240284 Following a post-conviction evidentiary hearing, the trial court granted defendant a new sentencing hearing on the basis that he made a substantial showing of a constitutional violation under the proportionate penalties clause as applied to him. Specifically, the court found that defendant's individual characteristics required the application of **Miller** principles where he was 18 years old at the time of the offenses and subject to a mandatory minimum *de facto* life sentence and that his original sentencing hearing was not **Miller** compliant. The State appealed, and the appellate court affirmed.

The post-conviction court's decision was not manifestly erroneous. Defendant presented expert testimony from Dr. Garabino to support his claim. And, while Dr. Garabino's conclusions were based on defendant's self-reported, unverified information, there was no basis to suggest that information was incorrect simply because defendant provided it. Indeed, defendant had provided much of the same information during the original presentence investigation, thus corroborating the basis for Dr. Garabino's opinion. Likewise, the fact that other courts in other cases had found Dr. Garabino's testimony unconvincing

was irrelevant to the credibility assessment made here, at the conclusion of a full evidentiary hearing. The State's disagreement with the court's credibility findings does not render them improper.

A proportionate penalties claim may succeed if the defendant shows that the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community. As society evolves, so do concepts of decency and fairness that shape the moral sense of a community. In **People v. Clark**, 2023 IL 127273, the Illinois supreme court recognized that an emerging adult may be able to make out a proportionate penalties claim based on the concerns articulated in **Miller**. Where a defendant subject to a mandatory *de facto* life sentence demonstrates both that his individual circumstances required application of **Miller** and that his sentencing hearing lacked **Miller** safeguards, he has met his burden. It is not necessary that the court separately make an explicit finding that defendant's sentence shocks the moral sense of the community.

Finally, while the court here exercised discretion at sentencing, the judge did not have discretion to consider a sentence less than *de facto* life, which is the kind of discretion contemplated by **Miller**.

People v. Masters, 2024 IL App (4th) 230370 Defendant filed a post-conviction petition alleging that his 70- and 45-year consecutive sentences for murder and attempted murder, committed at age 18, violated the proportionate penalties clause of the Illinois constitution, as applied to him. The circuit court denied the petition after an evidentiary hearing. The appellate court affirmed.

At the hearing, defendant called Dr. Garbarino, who testified that the brain of an 18-year-old is under development, much like that of a juvenile's, and there is no justification for treating an 18-year-old like an adult. He further testified that several of the considerations about youth detailed in **Miller** applied to defendant's case, including the impetuosity of the offense and the corrupting influences of his childhood, such as absent parents, substance abuse, and exposure to violent video games. Based on defendant's youth, background, and his score on a 10-question ACE test, the doctor concluded that defendant had potential for rehabilitation.

The circuit court denied the petition, finding Garbarino's testimony did not establish that defendant's sentence shocked the moral sense of the community. The court found fault with several aspects of the doctor's testimony. For example, the doctor could not recall details about the defendant's juvenile record. The doctor relied on the ACE test, but never revealed the questions. He failed to offer factual support for his conclusion that defendant couldn't appreciate the consequences of his behavior or that violent video games influence behavior. The court also pointed to several factual discrepancies between Garbarino's testimony and the record, including defendant's relationship with his mother.

Defendant criticized several of these findings on appeal, but the appellate court held that they were not against the manifest weight of the evidence. The circuit court's findings were generally supported by the record, and while defendant established that many of the findings were arguable, the standard of review applicable to third-stage hearings requires deference to the circuit court. Despite defendant's youth and other mitigating characteristics, it was not manifestly erroneous to find defendant's sentence constitutional, and to reject his as-applied challenge, given the weaknesses in Gabarino's testimony and the seriousness of the offense.

A concurring justice agreed with the holding because of the standard of review, but wrote separately to point out that the circuit court did inject speculation into its findings

regarding defendant's sophistication, and showed an unfair resistance to the idea that an emerging adult could make an as-applied proportionate penalties claim centered on youth and its attendant characteristics.

People v. Garcia, 2024 IL App (2d) 210488-B Defendant filed a *pro se* post-conviction petition raising an emerging adult proportionate penalties claim. Defendant had been sentenced to 62 years of imprisonment for a murder committed when he was 18 years old. Attached to defendant's petition was a report from a developmental psychologist who had reviewed documents concerning defendant's social history and who opined that defendant "appear[ed] to be the embodiment of the developmental issues that constitute the focal points of the Supreme Court's decision in *Miller v. Alabama*." The circuit court summarily dismissed that petition.

In a prior opinion in this matter, the appellate court reversed and remanded, relying on **People v. Holman**, 2017 IL 120655. **People v. Garcia**, 2022 IL App (2d) 210488. Subsequently, however, the Supreme Court decided **People v. Wilson**, 2023 IL 127666, which held that **Holman** was no longer good law. The Supreme Court then ordered the appellate court to vacate its original judgment in this case and reconsider in light of **Wilson**.

On reconsideration, the appellate court again reversed and remanded for further proceedings. In **Wilson**, the Supreme Court acknowledged that Illinois's proportionate penalties clause is a viable alternative for sentencing challenges predicated on **Miller**'s concerns about the immaturity of young adult offenders. That is, a young adult may make out a proportionate penalties challenge to his sentence where he can show that his own specific characteristics place him in the same category as a juvenile offender and that his sentence was imposed without proper consideration of his youth and its attendant characteristics.

Here, the psychologist's report was sufficient to substantiate defendant's claim that he was developmentally equivalent to a juvenile and thus entitled to **Miller**-type protections under the proportionate penalties clause of the Illinois constitution. And, defendant's claim was not foreclosed under **Wilson** because the statutory scheme under which he was sentenced mandated that he receive a *de facto* life sentence of at least 45 years (20-year minimum for first degree murder plus a 25-year firearm enhancement). While the sentencing court had the discretion to consider defendant's youth and its attendant characteristics, it had no discretion to impose anything less than a *de facto* life sentence. Thus, while the sentencing court imposed a sentence in excess of the 45-year minimum, any discretion that the court exercised was meaningless under **Miller**'s principles where it had no choice but to impose a term greater than *de facto* life.

People v. Horshaw, 2024 IL App (1st) 182047-B Defendant argued in a successive post-conviction petition that his aggregate 66-year prison term for a murder and attempted murder committed at age 18 violated the eighth amendment and the Illinois proportionate penalties clause. The circuit court denied leave to file. The appellate court originally held that defendant demonstrated both cause and prejudice with respect to his proportionate penalties claim. The State filed a petition to leave to appeal, and the supreme court remanded the case for reconsideration in light of its opinion in **People v. Moore**, 2023 IL 126461.

The appellate court held that defendant's claim must now fail because **Moore** held that **Miller** and its progeny did not provide cause for the failure to raise a proportionate penalties claim in an initial petition. Defendant argued that **Moore** was distinguishable because it involved a discretionary life sentence, while defendant received a mandatory-

minimum life sentence. The appellate court held that **Moore** did not limit its holding to discretionary sentences.

The appellate court did express reservations about **Moore**. The court suggested that it was unrealistic to expect a *pro se* young adult to put together a comprehensive proportionate penalties argument before **People v. Thompson,** 2015 IL 118151, and **People v. Harris**, 2018 IL 121932, opened the door to such claims. **Moore** leaves defendant in "no-man's land" – his "proportionate penalties claim was raised too late, but he was also sentenced too early to benefit from the legislature's recent enactment that is derived from these very same principles about the culpability of emerging adults and evolving neuroscience about brain development." Nevertheless, the appellate court was bound by the decisions of the supreme court, and the denial of leave to file was affirmed.

People v. Leach, 2024 IL App (4th) 230298 The trial court did not err in denying leave to file defendant's successive post-conviction petition arguing that his 60-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution where he was 20 years old at the time of the offense. Defendant could not establish cause for his proportionate penalties claim by relying on **Miller** and its progeny. He could have brought his youth-based proportionate penalties claim under the law as it existed previously. And, regardless, defendant's sentence did not violate the proportionate penalties clause where the record showed that the trial court was aware of, and considered, defendant's young age and rehabilitative potential at sentencing.

People v. Gates, 2023 IL App (1st) 211422 In 2021, defendant, who was 18 years old at the time of the offense, was sentenced to a term of 48 years of imprisonment for first degree murder committed in 2017. Accordingly, he is eligible to seek parole after serving 20 years of that sentence, pursuant to 730 ILCS 5/5-4.5-115(b).

At the sentencing hearing, defendant presented evidence of his tragic upbringing, including the sudden death of his mother when defendant was just 12 years old, the subsequent violent deaths of a cousin and a close friend, and his father's incarceration for a gun offense. The court rejected application of the proportionate penalties clause to defendant because he was the principal and not an accomplice, and the court noted that defendant's eligibility for parole in 20 years meant that his sentence was not a *de facto* life term pursuant to **People v. Dorsey**, 2021 IL 123010.

On appeal, defendant argued that the 48-year sentence was an unconstitutional *de facto* life sentence under the proportionate penalties clause of the Illinois constitution. The appellate court acknowledged that **Dorsey** held that good conduct credit must be considered in determining whether a prison sentence amounts to a *de facto* life term. Such credit can be readily determined, and generally it is within an inmate's control whether he or she earns it. "In contrast to good conduct credit, under the parole scheme, inmates do not have control over their shortened term and minimal chance for review." Parole is not a right, and the appellate court held here that the youthful offender parole statute does not afford a meaningful opportunity for release. Thus, defendant's 48-year sentence was a *de facto* life term despite the possibility of his being paroled before serving 40 years. A dissenting justice would have followed **People v. Elliott**, 2022 IL App (1st) 192294, which held that a sentence where an offender is eligible for parole after 40 or fewer years is not a *de facto* life sentence.

As the law on sentencing youthful offenders continues to evolve, Illinois courts have allowed emerging adults to bring proportionate penalties challenges to *de facto* life sentences. Defendant's trial counsel was ineffective for not making such an argument here. Instead,

counsel at sentencing simply acknowledged that defendant was not a juvenile and failed to advance any proportionate penalties challenge to either the mandatory minimum or the firearm enhancement. Accordingly, the court vacated defendant's sentence and remanded the matter for resentencing.

People v. Buford, 2023 IL App (1st) 201176 The appellate court affirmed the summary dismissal of a post-conviction petition challenging a discretionary 90-year sentence imposed for a murder defendant committed at age 22. Defendant argued that his sentence was unconstitutional under the proportionate penalties clause of the Illinois Constitution because his intellectual disabilities rendered him similar to a juvenile. He alleged that his IQ was between 52 and 62, he was unable obtain his GED while incarcerated due to "his lack of intellect and short attention" span, and he was addicted to PCP and wine from the age of 17 until his incarceration.

Defendant's *de facto* life sentence was discretionary, and in **People v. Clark**, 2023 IL 127273, the supreme court held that the reasoning in **Miller** does not apply to discretionary sentences. Nor does it apply to those with intellectual disabilities. **People v. Coty**, 2020 IL 123972.

Moreover, defendant had a death penalty hearing, at which the sentencing court was able to consider a wide range of aggravating and mitigating evidence before choosing to impose an extended term. Finally, the court was skeptical that anyone 21 or older could be afforded the protections of **Miller**; the only case to find a such a claim to be non-frivolous, **People v. Savage**, 2020 IL App (1st) 173135, has become an "outlier," and the legislature has since limited its youthful sentencing reforms to those under 21.

People v. Kendrick, 2023 IL App (3d) 200127 Defendant argued that his 60-year prison sentence violates the proportionate penalties clause of the Illinois Constitution because he was 19 years old at the time of his crimes. However, because defendant was sentenced after June 1, 2019, he is eligible for parole review after serving 20 years of his prison term. See 730 ILCS 5/5-4.5-115(b). Thus, he was not given a *de facto* life sentence without meaningful opportunity for release.

Defendant also argued that the sentencing court abused its discretion when it found defendant lacked rehabilitative potential. In mitigation, defendant presented an expert in psychology who testified that defendant's violence stemmed from adversity he faced growing up, but that given his youth he had a good rehabilitative potential. The appellate court found no abuse of discretion given the seriousness of the offense, defendant's criminal history, and his prior failure to complete substance-abuse treatment. The sentencing court, which presided over the case for eight years, was in the best position to weigh defendant's chances for rehabilitation, and was not required to accept the opinion of a psychologist who interviewed defendant for two hours.

People v. French, 2022 IL App (1st) 220122 The trial court did not err in denying defendant leave to file a successive post-conviction petition arguing that his 70-year sentence violated the proportionate penalties clause of the Illinois constitution. Defendant was 20 years old in August 2010 when he committed the offense. He was sentenced in 2014, and filed his initial post-conviction petition in 2019. In **People v. Dorsey**, 2021 IL 123010, the Illinois Supreme Court held that **Miller**'s announcement of a new substantive rule under the eighth amendment did not provide cause for a defendant to raise a claim under the proportionate penalties clause. The court concluded that under **Dorsey**, defendant could not establish

cause for not raising his claim in his initial petition. The court also rejected defendant's argument that he lacked evidentiary support for the claim when he filed his initial petition and only obtained such support in June 2021, when he received a doctor's report. Defendant had ample time to develop the necessary evidentiary support sooner, and his delayed investigation of the claim did not satisfy the cause requirement.

People v. Herring, 2022 IL App (1st) 210355 Defendant, convicted of a double murder committed at age 19, filed a post-conviction petition alleging his mandatory natural life sentence violated the proportionate penalties clause of the Illinois Constitution. He alleged that the mandatory sentence precluded the court from considering youth as a mitigating factor, which he claimed was constitutionally necessary because he suffered from "impulse control disorders and possibly attention deficit disorder," and research showed the brain immaturity of emerging adults.

A majority of the appellate court reversed the summary dismissal of the petition, finding the allegations sufficient to state an arguable claim under the proportionate penalties clause. In **People v. Harris,** 2018 IL 121932 and **People v. Thompson**, 2015 IL 118151, the supreme court held that an emerging adult may argue in a post-conviction petition that a life sentence imposed without adequate consideration of youth violates the proportionate penalties clause as applied. Defendant here alleged he was immature and had diminished capacity relating to risk-taking and impulse control. These were not mere conclusory allegations, but even if they were, a first stage dismissal is appropriate only where defendant "can prove no set of facts to support a claim entitling him [or her] to relief." And while no documentation supported the claims about his intellectual disabilities, it would be unreasonably burdensome to require an inmate to obtain the type of expert opinion required to support these claims. Finally, while the sentencing court claimed to consider all mitigating factors, and knew defendant's age, this was arguably insufficient given the mandatory nature of the sentence and trial counsel's concession that the court could not consider defendant's age.

The dissent would have affirmed, because defendant's references to his diminished capacity, immaturity, and intellectual disability came in the context of a claim that he could not understand the charges. The dissent also would have found the absence of supporting documentation fatal to the petition.

People v. Searles, 2022 IL App (1st) 210043 An appellate court majority remanded defendant's post-conviction petition for second-stage proceedings. Defendant argued that his 75-year *de facto* life sentence, imposed for a murder and robbery he committed at age 20, violated the proportionate penalties clause.

At his original sentencing hearing, defendant submitted evidence of the abusive nature of his upbringing, leading to drug abuse by age 11, and two stays at a mental health facility starting at age 12. In his successive petition, defendant alleged that his mental capacity at age 20, coupled with his history of mental illness and drug abuse, would have caused him to have the same impetuosity, level of maturity, susceptibility to peer pressure, and potential for rehabilitation as a minor. In arguing that the *de facto* life sentence violated the proportionate penalties clause, defendant cited **People v. Othman**, 2019 IL App (1st) 150823 (Truth in Sentencing Act unconstitutional as applied to juvenile defendants), **People v. Buffer**, 2019 IL 122327, and 730 ILCS 5/5-4.5-115(b), the recently enacted under-21 parole statute, which guarantees a parole hearing after 20 years for anyone under 21 who is sentenced after June 1, 2019.

The court found that the petition made a sufficient showing of cause based on the fact that the law defendant cited, including the under-21 parole statute, was unavailable at prior proceedings. Defendant also made a *prima facie* showing of prejudice because the record showed the sentencing court focused primarily on the crime itself and the age of the victim, with only a passing mention of mitigating evidence. Moreover, the crime involved relevant factors such as peer pressure and "juvenile thinking" in that three young people planned to scare an adult into giving them money so that they could throw a hotel party. Where the sentencing court did not consider defendant's youth or potential for rehabilitation prior to imposing a life sentence, and where a similarly situated defendant would now be offered the chance at parole after 20 years, remand for second-stage proceedings was required.

People v. Guerrero, 2022 IL App (1st) 210400 The trial court did not err when it summarily dismissed defendant's *pro se* post-conviction petition, which argued that a 45-year sentence for a murder committed at age 22 violates the Illinois Constitution's proportionate penalties clause as applied to him.

Defendant's petition cited a single case, **People v. Savage**, 2020 IL App (1st) 173135, which held that a proportionate penalties claim involving someone over the age of 21 could advance to the second stage. The petitioner in **Savage**, however, detailed facts about his personal life which justified treating him as a minor, including cognitive deficiencies likely stemming from a drug addiction which began at age 9. Defendant here, on the other hand, merely cited studies about the cognitive development of young adults in general, and provided no personal information about his background that would support treating him as a minor despite his age. Defendant was raised by two parents, was described as smart, and had no history of cognitive issues. Moreover, unlike the petitioner in **Savage**, defendant offered no remorse or evidence of rehabilitative potential, having committed another serious offense after the murder.

Finally, the court noted that two years after its holding, **Savage** continues to be the only case suggesting **Miller** protections may apply to a person over 21, while several other cases since then have rejected the argument. The holdings of these subsequent cases have gained support from the legislature, which has drawn a line at 21 when codifying **Miller** protections.

People v. Walker, 2022 IL App (1st) 201151 Defendant, who was 20 years old at the time he committed first degree murder, was properly denied leave to file successive post-conviction petition challenging his 53-year sentence as unconstitutional as applied under the proportionate penalties clause of the Illinois constitution. Defendant failed to establish cause for not raising this claim in his initial post-conviction petition, which had been filed in 2015. The court relied on **People v. Dorsey**, 2021 IL 123010, in support of its conclusion that while the law and science supporting defendant's claim has continued to evolve since 2015, that evolution does not provide a new basis to challenge his sentence. Denial of leave to file was affirmed.

People v. Everett, 2022 IL App (1st) 201169 The circuit court properly denied defendant's motion for leave to file a successive post-conviction petition. Defendant argued that his 51-year sentence, imposed for a murder and attempted murder committed at age 23, violated the proportionate penalties clause of the Illinois Constitution. Defendant asserted that the clause extends the protections of **Miller** to young adults whose brains have not fully developed.

Although cases such as **House** and **Harris** support the theory that the proportionate penalties clause may extend the protections of **Miller** to young adults, the defendants in those cases were under 21. The Appellate Court here found "no legal, societal, or penological support exists for extending the juvenile protections set forth in **Miller** to young adults over the age of 21." Because a 51-year sentence – the statutory minimum – does not otherwise offend the proportionate penalties clause in a case involving murder and attempted murder, defendant could not satisfy the prejudice prong of the cause-and prejudice test.

People v. Thomas, 2022 IL App (1st) 200164 An Appellate Court majority affirmed the summary dismissal of defendant's post-conviction petition. Defendant alleged that his 80-year sentence violated the proportionate penalties clause because he was 18 years-old at the time of the offenses. While defendant cited a doctor's opinion that the brain of an 18 year-old is not fully developed, the petition failed to allege how the specific circumstances of his background entitled him to the protections granted to juveniles pursuant to **Miller**.

A dissenting justice agreed that the petition lacked the requisite factual details to warrant relief, but pointed out that a first stage petition need only set forth the gist of a constitutional claim. The dissent believed that the majority erred in relying on cases upholding the denial of successive petitions. And it failed to consider that the necessary factual details could be developed at the second stage.

People v. Thompson, 2022 IL App (1st) 200463 An Appellate Court majority affirmed the summary dismissal of defendant's post-conviction petition. Defendant alleged that his 80-year sentence for first-degree murder violated the proportionate penalties clause because he was 18 years-old at the time of the offense. But defendant committed the offense before the enactment of truth-in-sentencing laws, so he was eligible for day-for-day sentencing credit and release after 40 years. Because **Buffer** held that a *de facto* life sentence is any term greater than 40 years, defendant here could not complain that he did not receive a meaningful opportunity for release. Nor would the majority consider the three-year term of MSR a part of the sentence. The majority noted that in **Buffer** the defendant received an MSR term as well, but the Supreme Court there did not consider that term in determining the length of defendant's sentence for purposes of **Miller**.

The defendant asked for a remand to the second stage in order to develop additional details in support of his proportionate penalties claim, citing the supreme court's decisions in **People v. Harris**, 2018 IL 121932, and **People v. House**, 2021 IL 125124. The majority refused, noting that in both cases the defendants had received a life sentence. Defendant countered that a 40-year sentence imposed on a young adult has a greater chance of being a life sentence than a 40-year sentence imposed on a juvenile, citing **People v. Ruiz**, 2020 IL App (1st) 163145, but the majority declined to follow **Ruiz** and held that it would adhere to **Buffer** even in young adult cases, until the Supreme Court says otherwise.

A dissenting justice pointed out that defendant had already committed an infraction while in prison which could prohibit the awarding of day-for-day credit, meaning he will like spend more than 40 years in prison. In light of this fact, and the contents of the petition, which included several documents demonstrating the neurological differences between young adult brains and adult brains and a mitigation report which detailed specific circumstances and details of defendant's life and upbringing, the dissent would have found an arguable proportionate penalties claim and remanded for second-stage proceedings.

People v. Hemphill, 2022 IL App (1st) 201112 The trial court did not err in denying defendant leave to file a successive post-conviction petition raising an emerging-adult proportionate penalties claim. Defendant was 21 years old at the time he committed a murder. He was sentenced to 40 years of imprisonment. Defendant's 40 year sentence was not a *de facto* life term under **Buffer** because a sentence must exceed 40 years to fit within **Buffer**'s rule. And, even if it was a *de facto* life sentence, defendant was not entitled to **Miller**-like protections. While **Miller**'s protections have been extended under the proportionate penalties clause to some individuals who were 18 or 19 years old at the time of their offenses, the overwhelming majority of courts have refused to extend those same protections to those 21 and older. And, much of the evidence upon which defendant relied in support of his successive petition had already been presented and considered at sentencing. Defendant could not establish cause or prejudice, and thus the denial of leave to file was affirmed.

People v. Aceituno, 2022 IL App (1st) 172116 Because defendant pled guilty, the circuit court properly denied his post-conviction as-applied challenge to his 48-year sentence imposed for a murder committed shortly after his 18th birthday. Defendant alleged that his claim met the cause-and-prejudice test because he pled guilty before **Miller** and its progeny rendered life sentences inappropriate for most juveniles. The Appellate Court found **People v. Jones**, 2021 IL 126432, dispositive.

In **Jones**, the Supreme Court held that a knowing and voluntary guilty plea waives any constitutional challenge based on subsequent changes in the applicable law. Here, the record showed a voluntary and knowing plea, and defendant did not allege otherwise. And while defendant's plea here was only partly negotiated, **Jones** does not delineate between open and negotiated pleas. Finally, **Miller** held only that a sentencing court must exercise discretion before imposing a life sentence. As in **Jones** the trial court here exercised discretion when deciding whether to accept the plea, and in sentencing defendant, thus satisfying the **Miller** standard.

People v. Green, 2022 IL App (1st) 200749 Defendant committed murder and attempt murder at age 21 and was sentenced to 100 years in prison, with day-for-day credit. He alleged in a successive post-conviction petition that his sentence violated the eighth amendment and proportionate penalties clause because it did not adequately account for his age and intellectual disabilities. Defendant pointed to testimony from his sentencing hearing about two head injuries he suffered before age 11 and a third head injury when he was 18, which led to moderate brain damage, an IQ of 74, significant deficits in attention and concentration, and impaired mental flexibility.

While the State conceded cause because the caselaw defendant cited was unavailable at the time he filed his previous petition, the Appellate Court found defendant failed to show prejudice. Defendant did not present sufficient evidence to support his general statement that **Miller** and its progeny applied to him. He cited studies on the brains of young adults, but did not provide any details connecting those studies to his own brain beyond his alleged intellectual disabilities. In light of **People v. Coty**, 2020 IL 123972, defendant could not rely on those intellectual disabilities to establish diminished culpability. Nor did he assert how his youth impacted his actions in shooting two police officers, particularly where he admitted at the time that his decision was a calculated attempt to escape arrest and avoid prison time.

People v. Wilson, 2022 IL App (1st) 192048 Defendant's petition made a substantial showing of an as-applied proportionate penalties violation where he presented sufficient evidence that the 65-year sentence he received for a crime committed at age 19 was cruel, degrading, or so disproportionate as to shock the moral sense of the community.

In **People v. House**, 2021 IL 125124, the supreme court remanded a similar proportionate penalties claim to the second stage so that defendant could present "evidence relating to how the evolving science on juvenile maturity and brain development applie[d] to [the defendant's] specific facts and circumstances." Here, in addition to the evolving science on juvenile maturity, defendant's petition included various assessments and reports of his mental health, educational performance, and behavioral issues throughout his childhood. Therefore, the petition made a sufficient connection between the applicable science and his own characteristics as a 19-year-old offender.

The dissenting justice would have affirmed the sentence because defendant was the principal offender, and because the sentencing court considered sufficient characteristics of youth at the original sentencing hearing. The majority noted, however, that **House** stated that the focus should be on development of the record as to defendant's level of brain development, not whether he was the principal or accomplice. The majority also found that the postconviction petition contained additional information not considered by the sentencing court.

People v. Howard, 2021 IL App (2d) 190695 Defendant failed to establish cause and prejudice for filing a successive post-conviction petition challenging his discretionary life sentence imposed for an offense committed in 1983 when he was 20 years old. Defendant's claim was predicated on the proportionate penalties clause of the Illinois constitution and could have been raised in his initial post-conviction petition given that it was well-established even then that youth was relevant to sentencing. The later emergence of additional support for such a claim, in **Miller** and its progeny, did not establish cause for failing to bring the claim earlier.

Further, defendant's claim, while premised on the proportionate penalties clause, was not a constitutional claim but rather an argument that the court abused its discretion by not giving greater weight to defendant's youth at sentencing. Thus, it was not cognizable in a post-conviction petition. And, regardless, defendant's claim would fail where the sentencing judge considered defendant's youth and rehabilitative potential in imposing a discretionary life sentence. Thus, defendant could not establish prejudice. The court noted that it had rejected similar claims in **People v. LaPointe**, 2018 IL App (2d) 160903, and **People v. Hoover**, 2019 IL App (2d) 170070.

People v. Hilliard, 2021 IL App (1st) 200112 Defendant failed to state the gist of a claim that application of a mandatory 25-year firearm enhancement to him violated the proportionate penalties clause of the Illinois constitution. Defendant was 18 years old at the time of the offense, and therefore was not a juvenile. Further, defendant received a 40-year sentence (15 years for attempt murder coupled with the 25-year firearm enhancement), which was not a *de facto* life sentence under **Buffer**.

And, the court rejected defendant's argument that the absence of discretion as to the firearm enhancement, alone, was enough to violate **Miller** and its progeny. Nothing in **Miller** suggests that a mandatory sentence imposed on a juvenile offender violates the eighth amendment where that sentence does not constitute *de facto* life. Thus, even if defendant was

a juvenile, he would not be entitled to **Miller**-type protections. The summary dismissal of defendant's post-conviction petition was affirmed.

People v. Washington, 2021 IL App (4th) 200196 The Appellate Court rejected several constitutional attacks on a 32-year sentence imposed pursuant to a negotiated guilty plea for a murder committed at age 19.

Defendant agreed to plead guilty in exchange for a sentencing cap of 35 years. The trial court admonished defendant that he faced a term of 20-60 years that could be extended to natural life if the crime was found brutal and heinous. Defendant received 32 years. He filed a post-conviction petition alleging that: (1) his plea was involuntary given recent changes in jurisprudence concerning the sentencing of emerging adults; (2) the truth-in-sentencing laws violate the proportionate penalties clause; and (3) the trial court's threat of a life sentence rendered the plea involuntary. The circuit court summarily dismissed.

The Appellate Court affirmed. The recent changes in juvenile and emerging adult sentencing laws did not apply to defendant's case. These cases clearly state that the eighth amendment does not apply to 19-year-old defendants. And defendant did not receive a *de facto* life sentence. As for the truth-in-sentencing provision, defendant again cited only cases involving juveniles with life sentences. Although the legislature has recently created parole opportunities for those who commit murder prior to age 21, the statute applies prospectively.

Finally, the court rejected the idea that the threat of a life sentence rendered the plea involuntary. None of the cases cited by defendant, including **People v. Parker**, 2019 IL App (5th) 150192, involved a non-juvenile or any defendant sentenced to less than a *de facto* life sentence.

People v. Horshaw, 2021 IL App (1st) 182047 Defendant, who was 18 years old at the time he committed first degree murder and attempt murder, should have been granted leave to file successive post-conviction petition challenging constitutionality of his mandatory minimum 66-year aggregate sentence under the proportionate penalties clause of the Illinois constitution.

In reaching its decision, the court noted that **People v. House**, 2019 IL App (1st) 110580-B, was currently pending in the Illinois Supreme Court but concluded that **House** was unlikely to impact the outcome here because it involved a second-stage dismissal, while the instant case involved denial of leave to file a successive post-conviction petition. Instead, the court looked to similar Appellate Court decisions, those involving denial of leave to file a successive petition by a young adult (18-21 years of age) who received a natural life sentence (actual or *de facto*) and alleged it was imposed without consideration of the **Miller** factors making the sentence unconstitutional as applied under the proportionate penalties clause. What the court found was a clear split of authority on the question.

Ultimately, the court concluded that defendant made a *prima facie* showing of cause for not raising this claim in his original petition, which was filed in 2013. The instant successive petition was based on **Miller**, which was not made retroactive on collateral review until 2014 in **People v. Davis**, 2014 IL 115595. Further, not until 2019, in **Buffer**, was it established that a sentence over 40 years constituted a *de facto* life sentence.

With regard to prejudice, the court rejected the State's reliance on defendant's status as a principal offender, rather than an accountable co-defendant. Such a consideration may be relevant to whether defendant can ultimately establish that he should be treated similarly to a juvenile with regard to the **Miller** factors, but it is not relevant at the leave-to-file stage. Here, defendant's pleadings were sufficiently specific to meet the prejudice requirement

where defendant cited "previously unavailable science and social science research that has brought about a 'change in law' regarding sentences of youthful offenders." It is not necessary for a defendant to present his own expert opinion to satisfy the pleading requirements of the Act. It was sufficient that defendant alleged that he could establish the existence of facts personal to him which warranted consideration of the **Miller** factors.

People v. Haines, 2021 IL App (4th) 190612 The Appellate Court affirmed the denial of leave to file a successive petition which alleged that a 55-year sentence for a murder committed at age 18 was unconstitutional. First, the claim was forfeited where defendant did not file a post-sentencing motion in the trial court. Second, defendant could not show cause for failing to raise the issue in his first petition.

While defendant argued that **Miller** had not been decided at the time of his initial petition, defendant's claim did not depend on **Miller**. Defendant was 18 at the time of the murder, and **Miller** applies only to those under age 18. Nor could defendant show cause by relying on **People v. Harris**, 2018 IL 121932. **Harris** found that an 18 year-old may be able to raise a proportionate penalties challenge to a life-sentence based on the discussion of youth and brain research cited in **Miller**. But Illinois courts have long held that a proportionate penalties challenge may be based on inadequate consideration of youth. Although **Harris** made this argument easier, the claim was available at the time of his first petition.

People v. Haywood, 2021 IL App (1st) 190809 The trial court did not err in summarily dismissing defendant's post-conviction petition. Defendant was 20 years old at the time he committed a murder, and he received a 50-year sentence after pleading guilty to that offense. In his petition, defendant raised a proportionate penalties challenge to his sentence, relying on **Miller v. Alabama**, 567 U.S. 460 (2012) and **People v. Harris**, 2018 IL 121932. The Appellate Court concluded that defendant had failed to adequately support his claim.

Under **Harris**, an emerging adult defendant bears the burden of demonstrating that his particular circumstances fall under **Miller**; his young age, alone, is not enough. Here, defendant cited his young age as well as the fact that his co-defendant, who was also his 17-year-old brother, had been granted a new sentencing hearing after **Miller**. While defendant claimed as additional support that he had no felony criminal history and that his brother was equally culpable for the offense, those claims were clearly refuted by the record and prior Appellate Court decisions. Accordingly, given the scarcity of support for defendant's proportionate penalties claim, dismissal of his petition was appropriate.

People v. Kruger, 2021 IL App (4th) 190687 The Appellate Court affirmed the denial of defendant's third motion for leave to file a successive post-conviction petition which alleged that his natural life sentence violated the proportionate penalties clause of the Illinois constitution based, in part, on **Miller** and its progeny where defendant was 21 years old at the time he committed the offense of murder. In reaching its decision, the Appellate Court agreed with the State that defendant could not show prejudice because **Miller**-based proportionate penalties claims are limited to young adults between the ages of 18 and 20, relying on **People v. Humphrey**, 2020 IL App (1st) 172837.

People v. Mauricio, 2021 IL App (2d) 190619 Defendant, who was 20 years old at the time of his offense, challenged his 55-year sentence for one count of first degree murder, arguing it was unconstitutional under both the Eighth Amendment and the proportionate penalties

clause of the Illinois Constitution and that it was excessive. The Appellate Court rejected those challenges.

The court declined to extend the reasoning of **Miller v. Alabama**, 567 U.S. 460 (2012) to individuals over the age of 18, noting that the Second District had consistently refused to do so. Accordingly, defendant's Eighth Amendment challenge failed. Likewise, a recent change to the Code of Corrections [730 ILCS 5/5-4.5-115(b)], providing parole opportunities for persons under 21 years old when they committed first degree murder, did not support defendant's claim that his sentence was unconstitutional as applied under the proportionate penalties clause. The statutory change is prospective only, and it specifically excludes cases where the offense was found to be accompanied by brutal or heinous behavior indicative of wanton cruelty under Section 5-8-1. A brutal and heinous finding was made in defendant's case, accordingly his 55-year sentence did not shock the moral sense of the community and was upheld.

Defendant's sentence was not excessive, either. The 55-year sentence was imposed after a multi-day sentencing hearing during which both the State and the defense presented testimony from several witnesses. The sentencing judge's comments demonstrated that he considered defendant's youth, and the court made specific findings in aggravation and mitigation.

People v. Zumot, 2021 IL App (1st) 191743 Defendant, who was 19 year old at the time he committed murder, stated the gist of a claim that his 45-year sentence was a *de facto* life sentence imposed without consideration of his youth and attendant characteristics and thereby violated the proportionate penalties clause of the Illinois constitution as applied to him. Of note, the sentencing judge stated that defendant was eligible for a life sentence, but he did not think such a sentence was appropriate. Defendant's petition also included facts about his post-sentencing conduct, and the Appellate Court found that information relevant to the question of whether defendant possessed rehabilitative potential on par with that of a juvenile. The Appellate Court reversed and remanded for further proceedings on defendant's post-conviction petition.

People v. Ortega, 2021 IL App (1st) 182396 The majority affirmed defendant's mandatory life sentence for a second murder committed at age 19. Defendant alleged that the court should have held an evidentiary hearing to consider whether defendant's sentence violated the proportionate penalties clause, as in **People v. Harris**, 2018 121932. Although defendant alleged that the circuit court did not adequately consider his youth prior to finding defendant permanently incorrigible, defendant did not raise a proportionate penalties claim below. Counsel challenged the sentence only under the eight amendment, and the sentencing court provided a thorough analysis of the claim by considering the offense, and evidence of mitigation and aggravation, prior to imposing the mandatory sentence.

The dissent would have remanded for an evidentiary hearing, noting that the sentencing court repeatedly referenced defendant's previous murder conviction despite the fact that the appellate court in that case found repeated prosecutorial misconduct and other trial errors. (The dissent here dissented in that case as well, and would have reversed defendant's conviction, while the majority found harmless error.) The dissent agreed with defendant that the judge did not adequately consider youth, and believed that additional circumstances of the case – the recent death of defendant's father, his use of alcohol and drugs at the time of the offense, the length of time defendant will spend behind bars – warranted a remand for a new sentencing hearing before a different judge.

People v. Ford, 2021 IL App (5th) 170259 An Appellate Court majority rejected as premature defendant's claim that a 55-year sentence for a murder committed at age 18 violated the proportionate penalties clause. The majority reasoned that defendant did not raise an as-applied constitutional challenge or offer any evidence as to the unconstitutionality of the sentence at the sentencing hearing below. The only information regarding the defendant's background was contained in the PSI and its attachments.

Thus, the record did not contain evidence or findings from the trial court as to how the evolving science on juvenile maturity and brain development applied to the defendant's specific facts and circumstances. As in **People v. Harris**, 2018 IL 121932, the majority suggested defendant raise the claim anew in a post-conviction petition.

A dissenting justice believed the record was adequate to determine that defendant lacked the maturity of an adult. The record contained substantial evidence not contained in the **Harris** record. This evidence included a history of physical abuse, substance abuse, and mental illness. The facts of the crime also demonstrated the impact of peer pressure. Forcing a young defendant with mental health issues to navigate the post-conviction process, where the protections of counsel are diminished, would be unjust. The dissent would have vacated the sentence and remanded for a new sentencing hearing.

People v. Williams, 2021 IL App (1st) 190535 Defendant's post-conviction petition alleged that his mandatory life sentence, imposed for multiple murders committed at age 22, violated the proportionate penalties clause. The petition included scientific research indicating that the mitigating attributes of youth may persist until one's mid-twenties.

The Appellate Court majority affirmed the first-stage dismissal. The majority held that the petition failed to adequately establish that defendant continued to experience the mitigating attributes of youth at the time of the offense. The majority distinguished **People v. Savage**, 2020 IL App (1st) 173135, where the defendant argued that a lifelong drug addiction made him more readily influenced by peers and more volatile. Unlike the allegations in **Savage**, defendant did not demonstrate how the science of brain development and juvenile maturity applied to his specific circumstances. Defendant did not allege any facts particular to him that rendered him the functional equivalent of a juvenile. He cited only general articles finding that the brain continues to mature into one's mid-twenties. The facts of the case also exhibited none of the impulsivity or reckless decision-making associated with juveniles. Rather, defendant planned and participated in the robbery in which five people were killed.

A dissenting justice believed that while **Savage** is factually distinguishable, it does provide a non-frivolous basis upon which defendant could argue that his sentence was unconstitutional. The dissent would have found the petition met the low threshold for first-stage petitions, which need not set forth the claim in its entirety and need only present a limited amount of detail. The dissent noted that because defendant knew he faced a mandatory life sentence, he made no statement in allocution, did not participate in the PSI process, and waived all arguments in mitigation.

People v. Glinsey, 2021 IL App (1st) 191145 Defendant received a 45-year sentence for a murder committed at age 18. His successive post-conviction petition asserted a proportionate penalties claim. The Appellate Court majority held that the petition satisfied the "very low threshold" for obtaining leave to file a successive petition. Defendant was a mere 11 days past his 18th birthday, was not the main "motivating" actor behind the offense, was convicted

under a theory of accountability, and was a member of a gang since age 12 and, thereby, potentially subject to its peer pressure. Although defendant's sentence was discretionary, the sentencing court did not explicitly consider defendant's age or any age-related factors.

The dissent would have found the petition lacked the necessary specific allegations required for an "as-applied" challenge.

People v. Cortez, 2021 IL App (4th) 190158 The Appellate Court affirmed the summary dismissal of defendant's post-conviction petition challenging his natural life sentence for a murder committed when he was 18 years old. An as-applied constitutional challenge to an emerging adult's life sentence requires that the defendant show (1) that his personal characteristics at the time of the offense were such that he was "in the same category as juvenile offenders" and (2) that his life sentence was imposed without regard for his youth and its attendant characteristics. To survive summary dismissal, defendant's petition need only have an arguable basis in law and fact.

Here, the court found it was not arguable that defendant's sentencing hearing failed to comply with **Miller**, even assuming defendant was on equal footing with juvenile offenders. Defendant presented extensive mitigating evidence at his three-day sentencing hearing, including evidence from experts regarding his immaturity and impaired development. And the sentencing court's finding that the offense was "horrible" and "almost beyond description" were the equivalent of a finding that defendant's conduct showed irretrievable depravity warranting a life sentence.

People v. Evans, 2021 IL App (1st) 172809 The Appellate Court affirmed the circuit court's denial of leave to file a successive post-conviction petition arguing that defendant's 100-year sentence was unconstitutional where he was 18 years old when he committed murder. **People v. Harris**, 2018 IL 121932 provides a mechanism for young adult offenders to demonstrate that the principles of **Miller v. Alabama** and its progeny apply to them. But, while defendant here mentioned the proportionate penalties clause of the Illinois constitution "in passing," the only argument he made was that his sentence violated the eighth amendment – a claim which is not available to him since he was not under 18 at the time. A defendant must plead "specific and individual characteristics" to pursue **Miller**-type relief under the proportionate penalties clause, and the failure to do so here justified denial of leave to file a successive petition.

People v. Chambers, 2021 IL App (4th) 190151 The trial court erred in summarily dismissing 18-year-old defendant's post-conviction petition asserting that his 42-year sentence violated **Miller** and its progeny. While it may ultimately be a close call whether defendant's sentencing hearing and resulting term of imprisonment were proper, it was at least arguable under the "extremely undemanding first stage" of post-conviction proceedings.

People v. Kulpin, 2021 IL App (2d) 180696 Defendant received a 60-year sentence for a murder committed at age 20. He also received a three-year consecutive sentence for concealment of a homicidal death. He was eligible for an extended-term up to 100 years.

Because defendant was not under 18, the sentencing court had no obligation to consider the **Miller/Holman** factors prior to sentencing. Defendant's attempt to extend the **Miller** protections based on scientific studies showing its principles applicable to young adults constituted an as-applied challenge which was not raised below and therefore

forfeited. A similar argument raised under the proportionate penalties clause of the Illinois constitution was also deemed forfeited.

Defendant further argued that the sentencing court violated the proportionate penalties clause by failing to consider rehabilitation. While this claim had been preserved by a reference to rehabilitation in the motion to reconsider sentence, it lacked merit. The sentencing court did consider rehabilitative potential as evidence by its decision not to impose an extended term. Further reduction was not warranted in light of a psychologist's report, and a history of repeated domestic violence, both of which suggested limited rehabilitative potential.

Finally, the Appellate Court rejected defendant's excessive sentence claim. Although the record showed defendant was raised in an abusive household, he had not shown any remorse or responsibility and continued to pose a danger such that a 60-year term for murder was not excessive.

People v. Lenoir, 2021 IL App (1st) 180269 The circuit court erred in denying defendant leave to file his successive post-conviction petition challenging the constitutionality of his life sentence. Defendant received a 48-year sentence for a murder committed at age 18. Defendant established cause because he filed his initial petition prior to **Miller**, and before the Illinois Supreme Court suggested in **People v. Harris**, 2018 IL 121932 that young adults could attempt to raise a **Miller** claim in a post-conviction petition.

As to prejudice, defendant's case was analogous to **People v. House**, 2019 IL App (1st) 110580-B. Defendant was convicted under a theory of accountability and consistently maintained he merely drove the actual shooters to the scene and did not intend to assist them in a murder. While one co-defendant testified that defendant actively participated by pointing out the victim as a rival gang member, this co-defendant received a favorable plea deal for his testimony. Under these circumstances, defendant established prejudice even considering that his life sentence was discretionary.

A majority of the court upheld the denial of leave to file actual innocence and police coercion claims, finding the affidavits in support of those claims were not newly discovered. The partial dissent disagreed, noting that one of the alibi witnesses explained he was afraid of gang repercussions if he had come forward earlier, and that this is an acceptable explanation for not coming forward earlier under Supreme Court precedent. The partial dissent would have also found the witness who could corroborate the police coercion claim to be newly discovered despite that witnesses' averment that defendant saw him at the police station. The partial dissent believed the court should have taken as true the defendant's assertion that he did not discover this witness until a later FOIA request.

People v. Harris, 2020 IL App (5th) 160454 18-year-old defendant's proportionate penalties challenge to his *de facto* life sentence was not raised below. Accordingly, there was no evidentiary record to support the as-applied constitutional claim. The court declined to consider the claim suggesting it instead could be advanced in a collateral proceeding.

People v. Ross, 2020 IL App (1st) 171202 The trial court erred in denying defendant leave to file a successive post-conviction petition challenging his 50-year sentence for murder and attempt armed robbery committed when he was 19 years old. Defendant demonstrated cause for not raising his claim in his original petition, filed after the decisions in **Miller** and **House** were issued, but before **Reyes**, because it was not until **Reyes** that **Miller** was extended to *de facto* life sentences in Illinois. And, it was only in **Buffer**, in 2019, that the Supreme Court

clarified that a sentence over 40 years constituted *de facto* life. The court also found that defendant established prejudice given "the recent trend in treating offenders under 21 years old differently than adults" at sentencing. In reaching this conclusion, the court specifically rejected the notion that defendant should be precluded from claiming his sentence is unconstitutional because he acted alone and was not convicted under an accountability theory. The matter was remanded for further post-conviction proceedings.

People v. Franklin, 2020 IL App (1st) 171628 A majority of the Appellate Court held that the trial court erred when it denied defendant leave to file a successive post-conviction petition alleging his life sentence, imposed for a murder committed at age 18, violated the proportionate penalties clause of the Illinois Constitution.

Defendant had no prior criminal history and suffered from mental illness at the time he killed his six-month old son. He also had an abusive upbringing and suffered multiple incidents of head trauma. The sentencing court cited unspecified mitigating factors when it declined to impose the death penalty, but never mentioned defendant's age. Under these circumstances, defendant should have been granted leave to file a successive petition to either show that he was the "functional equivalent" of a juvenile due to mental illness and other circumstances, such that his sentence violated the proportionate penalties clause.

In dissent, Justice Burke wrote that she would find the **Miller** claim foreclosed by the fact that defendant was over age 18, and reject the proportionate penalties claim based on the fact that defendant was over 18, acted as principal, and received a discretionary life sentence.

People v. Savage, 2020 IL App (1st) 173135 The trial court erred in summarily dismissing a post-conviction petition alleging a proportionate-penalties violation. Defendant was 21 years-old at the time he committed murder and attempt murder, for which he received an aggregate 85-year sentence. The sentencing hearing revealed that defendant had an abusive upbringing, had been addicted to drugs since age 9, and had fallen in with older gang members at a young age. The sentencing court described the crime as a bungled robbery spurred by drug addiction, and explicitly found defendant had rehabilitative potential.

The Appellate Court held that these allegations were sufficient to advance the petition to the second stage. Although an adult, the circumstances of defendant's life may have left him with the emotional and mental development of a much younger person. Defendant's claim that he could show a lessened level of culpability due to his age and background was not frivolous or patently without merit.

People v. Carrion, 2020 IL App(1st) 171001 The trial court did not err in denying defendant leave to file successive post-conviction petition alleging **Miller** violation. Defendant was 19 years old at the time he committed residential burglary and murder. Defendant was the sole offender, and the evidence showed that he killed the victim with a knife after she confronted him burglarizing her apartment.

The Appellate Court concluded that defendant's 55-year sentence did not shock the moral sense of the community and therefore was not cruel or degrading under a proportionate penalties analysis. Defendant was not entitled to **Miller**'s protections because he was an adult at the time of the offenses. And, even if **Miller** were extended to him, defendant's sentencing hearing was compliant where the court heard and considered evidence of defendant's young age, problems with alcohol use, history of being abused, and absence of criminal history. The trial court's comments at sentencing suggested it found defendant

irretrievably depraved and beyond the possibility of rehabilitation. And, defendant did not cite any additional facts in his petition that had not already been considered by the trial court.

People v. Bland, 2020 IL App (3d) 170705 Defendant established cause for not raising a **Miller** claim on direct appeal or in an earlier post-conviction petition. **Miller** was not decided until 10 years after defendant was convicted, there had been no suggestion that **Miller** could be applied to individuals 18 years of age and older until 2015, and **Miller** was only extended to *de facto* life sentences in 2016. Defendant, who was 19 years old at the time of the offense, thus had cause for not challenging his 71-year sentence until he sought leave to file a successive post-conviction petition in 2017.

Defendant also established prejudice where his petition alleged he was 19 years old at the time of the offense, was found guilty under a theory of accountability, and had been diagnosed with antisocial personality disorder which included symptoms similar to characteristics of juveniles. The record also failed to show that the trial court considered defendant's youth and its attendant characteristics at sentencing. Accordingly, defendant should have been granted leave to file his successive post-conviction petition.

People v. Gomez, 2020 IL App (1st) 173016 The Appellate Court majority affirmed the denial of leave to file a successive post-conviction petition containing an "emerging adult" proportionate penalties claim. Defendant received a discretionary *de facto* life sentence of 50 years for a murder committed at age 18. The Court found that **People v. Harris**, 2018 IL 121932 does not automatically require an evidentiary hearing in emerging-adult cases, only the opportunity to file a post-conviction petition. Defendant attempted to file one here, but failed to establish cause and prejudice. Even if only accountable (the evidence was disputed as to whether or not defendant was the gunman), defendant was with a fellow gang member "hunting down" rivals before killing someone in a "cruel and cold-blooded" fashion. A 50-year sentence under these circumstances was not so cruel or disproportionate so as to shock the moral conscience of the community.

The dissent would have allowed defendant the opportunity to file the petition and attempt to show that his youth, abusive upbringing, and attempts at rehabilitation could amount to a substantial showing of a proportionate penalties claim.

People v. Jackson, 2020 IL App (1st) 143025-B In a successive post-conviction petition, defendant argued his 50-year sentence for murder committed at age 16 violated **Miller**. Upon remand from the Illinois Supreme Court in light of **Buffer**, the Appellate Court held that defendant was entitled to a new sentencing hearing at which the court would be required to consider the **Miller** factors.

People v. Daniels, 2020 IL App (1st) 171738 Defendant did not waive a proportionate penalties challenge to his sentence by virtue of his having entered a negotiated guilty plea in 1995. Defendant could not have known at the time of his plea that he could argue that the natural life sentence to which he agreed in order to avoid the death penalty was potentially constitutionally disproportionate as applied to him where he was just 18 years old at the time of the offense. The court declined to apply the waiver principles enunciated in **People v. Jackson**, 199 Ill. 2d 286 (2002) to non-**Apprendi** claims.

Defendant established cause for not raising his proportionate penalties challenge previously because the law regarding sentencing of juvenile and young adult offenders has

evolved significantly in the time since he was sentenced and filed his original post-conviction petition. Defendant established prejudice where he was 18 years old at the time of the offense, had a history of mental health issues, and had an unusually harsh childhood. Because he had "not yet had the opportunity to ask a court to consider" the fundamental question of whether his life sentence was unconstitutional as applied under recent developments in sentencing youthful offenders, the court reversed the denial of leave to file defendant's successive post-conviction petition and remanded for further proceedings.

People v. Humphrey, 2020 IL App (1st) 172837 The trial court denied defendant leave to file a successive post-conviction petition alleging that his life sentence for offenses committed in 1982, when he was 21 years old, violated the eighth amendment and proportionate penalties clause, and the Appellate Court affirmed. To date, no case has extended **Miller** protections to an individual 21 or older. Further, defendant here was the principal offender rather than an accomplice, and the sentencing judge made a finding that the defendant was beyond rehabilitation.

People v. Minniefield, 2020 IL App (1st) 170541 Trial court erred in denying defendant leave to file successive post-conviction petition alleging that his 50-year sentence for first degree murder violated the proportionate penalties clause where defendant was 19 years old at the time of the offense. Defendant's claim was grounded in the **Miller** line of cases, which established cause for his not having raised it in his original post-conviction petition filed in 2007, several years prior to the decision in **Miller**. And, defendant met the prejudice prong for filing a successive petition where the law presently treats those younger than 21 as minors in a variety of circumstances, including a recent statutory amendment which allows a person convicted of first degree murder to seek parole after 20 years if he or she was under 21 at the time of the offense and was sentenced after that amendment took effect. Further, the Juvenile Court Act allows persons under 21 to be considered "minors," and the State treats those under 21 as minors in other circumstances, including the sale of alcohol and cigarettes, ownership of firearms, and limitations on Class X recidivist sentencing. Accordingly, the court reversed the denial of defendant's motion for leave to file successive petition and remanded the matter for further post-conviction proceedings.

People v. McClurkin, 2020 IL App (1st) 171274 The Appellate Court upheld the circuit court's denial of leave to file a successive petition raising a proportionate penalties claim. Defendant was 24 years-old when he murdered two people, triggering a mandatory life sentence. Because he was an adult and personally murdered the victims, his case was distinguishable from **People v. House**, 2019 IL App (1st) 110580-B, who was still a teenager and found guilty under a theory of accountability. Nor did the fact that defendant had a diagnosed personality disorder alter the analysis, where the disorder was aggravating in the sense that it was not transient.

People v. Johnson, 2020 IL App (1st) 171362 The circuit court erred in denying defendant leave to file his successive post-conviction petition containing an "emerging adult" proportionate penalties claim. Defendant was convicted of murder and given a discretionary life sentence for a crime committed in 1999 at age 19. The Appellate Court first found that defendant established cause. His previous post-conviction petition did raise a **Miller** issue, but the instant petition was filed only after **People v. House** 2015 IL App (1st) 110580 offered support for the extension of **Miller** beyond those under 18 through the Illinois

proportionate penalties clause. Thus, defendant's current argument was not yet available until after he already filed his initial petition.

As to prejudice, defendant's eighth amendment challenge could not succeed pursuant to federal authority restricting its protections to juveniles. But his proportionate penalties argument had potential merit. The court refused to distinguish defendant's case from **House** on the basis of his discretionary sentence, finding no relevant distinction between mandatory and discretionary life sentences. The court further found that it would be premature to decide whether the **Miller** factors had already been considered at his sentencing hearing, as defendant at this stage should only be required to plead that the facts of his case warrant their consideration in the first place. Defendant's petition met this standard, and at further post-conviction proceedings the defendant will have to prove both that the **Miller** protections applied to him and that he did not receive them at the initial sentencing hearing.

People v. Ruiz, 2020 IL App (1st) 163145 The circuit court erred in denying defendant leave to file his successive post-conviction petition challenging the constitutionality of his life sentence. Defendant received a 40-year sentence for a murder committed at age 18. The Appellate Court first found that defendant established cause. Defendant was sentenced years before the United States Supreme Court decided **Miller**, and even longer before the Illinois Supreme Court suggested in **People v. Harris**, 2018 IL 121932. that young adults could attempt to show **Miller**'s application to them in post-conviction proceedings.

As to prejudice, defendant's eighth amendment challenge could not succeed pursuant to federal authority restricting its protections to juveniles. But his proportionate penalties argument had potential merit. The court refused to distinguish defendant's case from **People v. House**, 2019 IL App (1st) 110580-B on the basis of his discretionary sentence, finding no relevant distinction between mandatory and discretionary life sentences, or on his greater participation in the offense, noting participation is not a primary focus of **Miller**. The court also rejected the argument that because the 40-year sentence would be permissible on a juvenile without regard to **Miller**, defendant's 40-year sentence could not be unconstitutional. The court reasoned that an 18-year-old defendant who receives a 40-year sentence will not be released until age 58.

Finally, the court refused to consider whether the sentencing court had already sufficiently considered the **Miller** factors, holding that this query is premature and that defendant must first establish that he deserved the protections of **Miller** via the Illinois proportionate penalty clause. Defendant's petition met this pleading standard by setting forth a detailed, well-cited legal argument for why the protections in **Miller**, and in the Illinois cases applying it, should benefit young adults such as himself.

People v. White, 2020 IL App (5th) 170345 Court did not err in denying leave to file successive post-conviction petition raising **Miller** and proportionate penalties claims. Defendant was 20 years old when he committed two counts of first degree murder and was sentenced to mandatory term of natural life. He was not a juvenile, **Miller** protections do not apply to adult offenders. Defendant did not establish that he was more akin to a juvenile than an adult under the circumstances here.

Likewise, defendant's "flat allegation" regarding evolving science on juvenile maturity and brain development was not enough to support a proportionate penalties claim. Defendant was an adult, was the primary offender, and developed and executed an intricate plan to kill his grandmother and her friend, and also to frame the friend for the murder.

People v. Suggs, 2020 IL App (2d) 170632 The Appellate Court declined to extend the protections of the **Miller** line of cases to a defendant who was convicted of murder, attempt murder, and attempt armed robbery, and sentenced to a total of 110 years of imprisonment, for offenses committed when he was 23 years old. While acknowledging that there is support for extending **Miller** to young adults, the court was not willing to do so here. Society draws lines at 18 and 21 for various purposes, and the legislature has endorsed special considerations up to age 21 when it enacted Public Act 100-1182 providing for parole review for certain offenses committed by persons under 21, but the court was not willing to extend those considerations even further.

People v. Carrasquillo, 2020 IL App (1st) 180534 The circuit court erred when it denied defendant leave to file his successive post-conviction petition alleging a *de facto* life sentence imposed on an 18 year-old violated the proportionate penalties clause of the Illinois Constitution.

In 1978, defendant was sentenced to 200 to 600 years in prison, with opportunity for parole after 20 years. Because defendant could not have anticipated the **Miller** line of cases at the time of his first post-conviction petition in 1987, he established cause. Defendant also established prejudice. He has already served a *de facto* life sentence under **Buffer**. There was no evidence the trial court considered his youth. Nor was there recourse for defendant to challenge the parole board's repeated denials, and defendant presented sufficient evidence – including the intimidating presence of police officers at his parole hearings – that he would never be paroled. For these reasons, defendant deserved a chance to develop his claim through post-conviction proceedings.

People v. Handy, 2019 IL App (1st) 170213 The trial court did not err in denying defendant leave to file successive post-conviction petition. Defendant could not demonstrate prejudice where his petition alleged that his 120-year aggregate sentence for crimes committed when he was 18.5 years old was unconstitutional as applied. Defendant was an adult and therefore was not entitled the same Eighth Amendment protections afforded to juveniles under **Miller**. And, defendant could not make out a proportionate penalties claim because he was an active participant in the armed robbery, home invasion, kidnaping and sexual assault, rather than a lookout, and because the sentence here was discretionary and not mandatory, both factors which distinguished the case from **People v. House**, 2019 IL App (1st) 110580-B. The appellate court concluded that although defendant's sentence was "harsh," the trial court properly denied leave to file his successive post-conviction petition.

People v. Ramsey, 2019 IL App (3d) 160759 Defendant pled guilty to several criminal offenses and received the death penalty. The governor commuted his sentence to life imprisonment when the death penalty was abolished. Defendant alleged that his commuted sentence violated **Miller** because he was 18 at the time of the offense and the governor did not consider his youth and its attendant characteristics.

The Appellate Court affirmed the second-stage dismissal of the petition. It first held that defendant was not precluded from challenging the governor's decision because while commutations are politically unfettered, these decision are still constrained by the constitution. Therefore, a defendant can bring a **Miller** challenge when the sentence is imposed by the governor. Here, however, the defendant's **Miller** challenge lacked merit. Defendant was not a juvenile, and unlike the 19 year-old in **People v. House**, 2019 IL App

(1st) 110580-B, the defendant here acted as the principal and committed acts of violence against multiple minors.

People v. Branch, 2018 IL App (1st) 150026 The sentencing court did not abuse its discretion in sentencing an 18 year-old defendant to 40 years in prison for attempted murder with a firearm. Although the Appellate Court has held that the United States Supreme Court's juvenile sentencing jurisprudence, such as **Miller v. Alabama**, 567 U.S. 460 (2012), can apply even if the defendant is 18 or 19 years-old, as in **People v. House**, 2015 IL App (1st) 110580 and **People v. Harris**, 2016 IL App (1st) 141744, the sentences in those cases were life or *de facto* life sentences. Here, defendant is not alleging that a 40-year sentence is unconstitutional as applied, and defendant received neither a *de facto* life sentence nor a mandatory minimum. Rather, because of the 25-year firearm enhancement, the sentence in this case was only nine years above the minimum, and not an abuse of discretion in light of the severity of the offense. But, the Appellate Court did urge the legislature to promulgate new sentencing guidelines for offenders between 18 and 20 years of age.

People v. Pittman, 2018 IL App (1st) 152030 The Appellate Court refused to invalidate defendant's mandatory life sentence under Miller v. Alabama, 567 U.S. 460 (2012), because defendant was not a juvenile where he was 18 years old at the time he killed his girlfriend, her mother, and her younger sister. Nor did the sentence violate the proportionate penalties clause of the Illinois Constitution. Defendant's natural life sentence did not shock the moral sense of the community, and the record would have supported a natural life sentence here even if it was not mandatory.

People v. Rodriguez, 2018 IL App (1st) 160030 The Appellate Court majority held, over dissent, that a mandatory minimum sentence of 45 years for first-degree murder committed by a 15-year-old juvenile, required to run consecutively to an unrelated 20-year sentence for attempted murder committed when defendant was 19, violated **Miller**. The defendant would not be released from prison until age 80, rendering the sentence a *de facto* natural life sentence. Even though the offenses were not part of a single course of conduct, the effect – a mandatory *de facto* life sentence – is the same. Similarly, the fact that defendant was 19 when he committed the attempt murder does not change the fact that the defendant's murder sentence amounted to *de facto* natural life. On remand, the sentencing court will have the discretion to impose or not impose the 25-year firearm enhancement.

People v. LaPointe, 2018 IL App (2d) 160903 The trial court properly denied leave to file a successive post-conviction petition alleging that defendant's discretionary life sentence violated **Miller v. Alabama**, 567 U.S. 460 (2012). Defendant turned 18 about a month before he committed the murder, and **Miller** applies only to those under 18, as made clear by its reliance on **Roper v. Simmons,** 543 U.S. 551 (2005), where the court expressly drew a line between adults and those under 18.

For purposes of a standalone proportionate penalties attack on his sentence, defendant could not rely on the timing of the **Miller** decision to show cause and to avoid the *res judicata* effect of previous attacks on his sentence. His claim that the sentencing court did not consider youth in mitigation could have been raised before **Miller**.

People v. Williams, 2018 IL App (1st) 151373 Mandatory natural life sentence was unconstitutional as applied to 19-year-old defendant's 1994 conviction of two counts of

murder on an accountability theory. The trial court erred in denying leave to file a successive post-conviction petition raising a challenge under **Miller v. Alabama** because **Miller** was not decided until 2012, providing cause for not raising the claim in earlier proceedings. And, defendant established prejudice because his mandatory life sentence violated the proportionate penalties clause of the Illinois Constitution as applied to him.

The Court found defendant's case analogous to **People v. House**, 2015 IL App (1st) 110580, which also involved a 19-year-old defendant. The Court looked at scientific studies and concluded there is "no scientific evidence to support the conclusion that at age 18 a defendant's brain is magically transformed to maturity such that it is different than it was the day before his eighteenth birthday. In fact, the scientific evidence suggests the opposite conclusion." The Court continued, "there is no bright line of demarcation regarding brain maturity between a 17-year-old and an 18- or 19-year-old."

While defendant should have been granted leave to file his successive petition, the Appellate Court found remand for further post-conviction proceedings unnecessary because defendant was entitled to relief on his claim. Defendant's natural life sentence was vacated, and the matter was remanded for resentencing.

People v. McKee, 2017 IL App (3d) 140881 Defendant's sentence of mandatory natural life imprisonment for the first degree murder of two people did not violate the Eighth Amendment or the proportionate penalties clause of the Illinois constitution. Defendant, who was 18 years old at the time of the offense and was guilty based on accountability, argued that her sentence was unconstitutional as applied to her. The court held that defendant was an adult at the time of the offense, actively participated in the robbery that led to the murders, helped conceal the offense from a nearby witness, accepted proceeds from the robbery, and asked her father to help dispose of the bodies. Under these facts, a mandatory sentence of natural life imprisonment was not unconstitutional as applied.

People v. Thomas, 2017 IL App (1st) 142557 Defendant, who was 18 years old at the time of the offense, was convicted of first degree murder of one victim, attempt first degree murder of another, and attempt armed robbery. Defendant used a firearm that proximately caused the death of the murder victim and proximately caused great bodily harm to the attempt victim. The court sentenced defendant to the minimum sentence of 45 years for murder (20 years plus a 25-year firearm enhancement), a minimum consecutive term of 31 years for attempt murder (six year plus a 25-year firearm enhancement), and a minimum consecutive term of four years for attempt armed robbery, for a total of 80 years. The parties agreed that defendant would have to serve at least 73 years of imprisonment.

The court, with one dissenting justice, held that defendant's sentence did not violate the eighth amendment or the proportionate penalties clause (the dissenting justice would have found that it violated the proportionate penalties clause). The court first held that cases involving an adult defendant are not comparable to cases involving juveniles, and thus even a lengthy "sentence that approaches the span of a defendant's lifetime," does not violate the eighth amendment when it is imposed on an adult.

People v. Barnes, 2017 IL App (1st) 143902 In sentencing defendant to consecutive 18- and 5-year sentences for home invasion and robbery, the trial court did not abuse its discretion by deeming the complainant's injuries as the "most significant" aggravating factor. Contrary to defendant's claim that the trial court considered only this factor, the court specifically stated that it considered all statutory factors in aggravation and mitigation. The court was

not required to specify on the record all of the reasons for the sentence imposed. **Miller** does not mandate a sentence reduction where it applies only to the most severe criminal penalties and regardless, defendant was 19 at the time of the offense.

People v. Ybarra, 2016 IL App (1st) 142407 The proportionate penalties clause of the Illinois Constitution requires all penalties to "be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art I, § 11. A statute may be deemed unconstitutional under this clause if the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

Defendant, age 20 at the time of the offense, was convicted of the first degree murder of three people and as such was subject to a mandatory sentence of natural life imprisonment. 730 ILCS 5/5-8-1(a)(1)(c)(ii). Despite the mandatory sentence, defendant introduced substantial mitigating evidence at his sentencing hearing. The trial court acknowledged the mandatory sentence, but also indicated that it reviewed the mitigating evidence. In imposing a natural life sentence, the court stated that even if it had discretion it would still have imposed a life sentence.

The Appellate Court held that defendant's sentence did not violate the proportionate penalties clause as applied to him. Defendant was a legal adult who was convicted of being the actual shooter in the death of three unarmed teenagers. Under these circumstances, a mandatory natural life sentence did not shock the moral sense of the community.

People v. Brown, 2012 IL App (1st) 091940 Both the Eighth Amendment of the federal constitution and the proportionate-penalties clause of the state constitution incorporate the concept of proportionality in criminal sentencing. A proportionality analysis under either provision involves a consideration of evolving standards of decency and fairness to determine the validity of any particular sentence.

Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825(2010), for the first time recognized a categorical limitation on a term-of-years sentence, which had previously been recognized only in the death-penalty context. A categorical challenge requires that a court first consider objective indicia of society's standards, as expressed in legislative enactments and state practice, to determine whether there is a national consensus against the sentencing practice at issue.

Next, guided by the standards elaborated by controlling precedents and by the court's own understanding and interpretation of the constitution's text, history, meaning, and purpose, the court must determine in the exercise of its own independent judgment whether the punishment in question violates the constitution. Community consensus, while entitled to great weight, is not determinative. The court must consider the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. The court also considers whether the challenged sentencing practice serves legitimate penological goals.

Relying on **Graham**, the defendant challenged the constitutionality of his mandatory sentence of life without parole when imposed on mentally-retarded 19-year-old adults, guilty only by accountability of multiple murders. The Appellate Court dismissed the argument that age should be considered as part of the categorical analysis on the ground that defendant did not "identify why, at age 19, his 'youthfulness' should be considered. In any case, defendant was 19 at the time of the murders and was thus not a minor or a 'youth.'"

Finding no evidence of a national consensus against a mandatory sentence of life

without parole for a mentally-retarded adult convicted of multiple murders on an accountability theory, the Appellate Court turned to the second step of the analysis. With respect to defendant's mental retardation, the Appellate Court acknowledged in accordance with **Atkins v. Virginia**, 536 U.S. 304 (2002), that mentally-retarded persons have diminished personal culpability. But, "[d]espite such concerns . . . , this court has previously upheld the mandatory sentencing scheme at issue here in the face of a constitutional challenge brought by a mentally retarded defendant."

While defendant was convicted of the "highest crime[s] known to the law," he was convicted on a theory of "accountability, for which a somewhat lower sense of moral culpability attaches." "Despite this fact, we again note that the very sentence imposed here has previously survived similar constitutional challenges brought by defendants convicted on an accountability theory."

The Appellate Court also considered the fact that defendant was an admitted gang member with a significant criminal history and was aware of the robbery plan, that the co-defendant's gun was loaded, and that the co-defendant intended to kill one of the victims. Although the goal of rehabilitation would not be served by defendant's sentence, the fact that this one goal is not served by the sentence did not render it invalid. The sentence did serve the legitimate goals of retribution for defendant's actual culpability, deterrence, and incapacitation.

§44-1(c)(5)
Illinois Proportionate Penalties Challenges

Illinois Supreme Court

People v. Spencer, 2025 IL 130015 Defendant received an aggregate 100-year sentence for murder, attempt murder, and home invasion, committed when he was 20 years-old. He argued his sentence violated the proportionate penalties clause of the Illinois Constitution because the sentencing court failed to adequately consider youth and its attendant characteristics before imposing a *de facto* life sentence.

The supreme court agreed with the appellate court that the recently enacted parole statute, which grants a chance at parole after 20 years for those convicted of murder committed before they were 21 years-old, offered a meaningful opportunity for release. See 730 ILCS 5/5-4.5-115(j). Therefore defendant did not receive a *de facto* life sentence.

A defendant can raise an as-applied proportionate penalties claim against any sentence, not just a *de facto* or *de jure* natural life sentence. Thus, the appellate court erred when held that, because defendant did not receive a *de facto* life sentence, he could not establish that his sentence violated the proportionate penalties clause.

An as-applied challenge does, however, require a fully developed record. Here, defendant argued that the sentencing court did not adequately consider the goal of rehabilitation in light of defendant's youth and the evolving science of brain development. Based on this general principle that as-applied constitutional claims cannot ultimately succeed absent a sufficiently developed evidentiary record, the supreme court concluded that the proper venue for this as-applied challenge is in a post-conviction proceeding.

People v. White, 2025 IL 129767 Defendant entered an open guilty plea to one count of first degree murder and received a 40-year sentence. More than 20 years later, he filed a *pro se* 2-1401 petition alleging his sentence violated the eighth amendment, and the proportionate penalties clause of the Illinois Constitution. The State did not file a response and the circuit

court denied the petition. Defendant raised the proportionate penalties claim on appeal, arguing defendant was a 20-year-old emerging adult at the time of the crime, and that the sentencing court did not consider his youth at sentencing. The appellate court affirmed, holding petitioner's guilty plea waived his sentencing claim.

The supreme court accepted the State's concession that an open guilty plea did not waive the proportionate penalties claim. Prior cases, such as **People v. Jones**, 2021 IL 126432, that have found a guilty plea waived a constitutional challenge to a sentence, did so because the defendant entered in to a fully negotiated plea, which is essentially a contract. While a defendant cannot unilaterally alter a fully negotiated plea without violating contract principles, these principles don't apply to open pleas. This distinction is further evidenced by Rule 604(d), which allows a defendant to file a motion to reconsider the sentence imposed following an open plea. Here, the State did dismiss charges pursuant to the defendant's agreement to enter in to the plea, but he received no assurances as to the sentence. Thus, he did not waive his right to challenge the sentence.

Defendant asked the court to remand to the appellate court so that it could reach the merits. The State asked the court to affirm based on the fact that a 2-1401 petition is not a proper vehicle for a proportionate penalties claim, the claim is meritless, and defendant did not show due diligence.

The supreme court held that the State forfeited its procedural challenge because it failed to respond to the petition in the circuit court. As for the merits, rather than remand to the appellate court, the supreme court chose to decide the issue in the interest of judicial economy.

The supreme court first held that, although defendant did not receive a *de facto* life sentence, he could still raise an as-applied proportionate penalties claim. However, his could not show a 40-year sentence was disproportionate in this case. Defendant argued that a near *de facto* life sentence was disproportionate given his youth and rehabilitative potential, which, he contended, the sentencing court did not adequately consider. The supreme court disagreed. Defendant was not a juvenile, but 20, when he fatally shot an unarmed victim at close range because he would not comply with defendant's demand to tell him the location of another man defendant was chasing. The sentencing court properly reviewed the PSI and heard testimony from defendant's grandmother as well as defendant's statement in allocution. Given the serious offense, the court held a 40-year sentence was not disproportionate.

People v. Williams, 2024 IL 127304 Defendant filed a post-conviction petition alleging that his mandatory natural life sentence violated the proportionate penalties clause, because he was 22 years-old at the time of he committed multiple murders. The petition alleged that, based on **Miller** and its progeny, plus developments in brain science, defendant's age, maturity and culpability levels at the time of the offense were similar to that of a juvenile.

The supreme court affirmed the summary dismissal of the petition. The claim may have had a rational basis in law, because the court has previously held that it has not foreclosed emerging adults between 18 and 19 years-old from raising as-applied proportionate penalties challenges to life sentences based on the evolving science on juvenile maturity and brain development. But without deciding whether a 22 year-old could make such a claim, the court held the claim here lacked a rational basis in fact.

Defendant alleged that given his age, criminal history, involvement in the crime, and the "hallmark features of youth" that make him less culpable, his sentence was excessive. But nowhere in the petition did defendant detail the hallmark features of his youth, besides

his age, that might explain why he was less mature and less culpable. Section 122-2 of the Post-Conviction Hearing Act requires petitioners to provide factual support for their claims. "An emerging adult postconviction petitioner who simply cites his age at the time of the offense and the evolving science on juvenile maturity and brain development does not state the gist of an as-applied claim that a mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution."

While defendant pointed out that the trial record contains some detail in support of the claim, including assertions made during closing argument by defense counsel that defendant was an immature "kid" who was manipulated by others, the supreme court found these allegations contradicted by the record:

> [A]ll five victims died from gunshot wounds to the head, three of the victims were shot at close range, and defendant personally shot at least two of the victims. Defendant planned the armed robbery of a victim's home, solicited the help of others, armed himself, ransacked nearly every part of the house, and stole numerous items from the victims. The jury heard testimony that defendant laughed as he transported the proceeds to his own home and distributed and sold them. Defendant was the instigator of the criminal plan and a principal offender in the unprovoked murder of five victims.

People v. Hilliard, 2023 IL 128186 Defendant sought post-conviction relief on the basis that his 40 year sentence for attempt murder, which included a 25-year firearm enhancement, violated the proportionate penalties clause of the Illinois constitution as applied to him, in part because he was only 18 years old at the time of the offense. His petition was summarily dismissed.

The Supreme Court affirmed. The Court first clarified the limits of its holdings in **People v. Thompson**, 2015 IL 118151, **People v. Harris**, 2018 IL 121932, and **People v. House**, 2021 IL 125124. In each of those cases, the Court had allowed for the possibility that young adult offenders could raise **Miller**-type as-applied proportionate penalties clause challenges to mandatory life sentences. Here, while defendant was a young adult offender, his 40-year sentence was neither a *de facto* life sentence nor mandatory. Under **People v. Buffer**, 2019 IL 122327, only a sentence that exceeds 40 years constitutes a *de facto* life sentence, while a sentence of exactly 40 years does not. And, regardless, Hilliard's sentence was discretionary; the sentencing court could have imposed a total sentence as low as 31 years had it chosen to do so (6-year minimum for Class X attempt murder plus 25-year enhancement for personally discharging a firearm causing great bodily harm during the offense). Thus, **Thompson**, **Harris**, and **House** provided no support for his claim here.

The Court also rejected defendant's proportionate penalties claim under **People v. Leon Miller**, 202 Ill. 2d 328 (2002). There, the Supreme Court found that the 15-year-old defendant's mandatory life sentence violated the proportionate penalties clause where the convergence of several, separate statutes – specifically Illinois's juvenile transfer statute, accountability statute, and multiple-murder sentencing statute – eliminated the trial court's discretion to consider mitigation such as the defendant's age and degree of participation. Here, on the other hand, defendant acted as the principle, and only, offender, he was an adult, and his sentence was at least partially discretionary.

Finally, the Court rejected defendant's argument that society's evolving standards of decency supported his claim. Defendant pointed to recent legislative changes which allow courts to decline to impose firearm enhancements on juvenile offenders and provide parole review for offenders who were under 21 at the time of their offense. But, as the Court observed, by limiting the reach of those statutes, the legislature made a deliberate judgment

that adult offenders, even young adult offenders, should remain subject to the mandatory firearm enhancements and that the youthful offender parole statute should not be applied retroactively. Accordingly, those legislative changes provide no support for defendant's claim here.

While defendant was young at the time of the offense, he deliberately chose to fire multiple shots at the victim, at close range, without provocation, in an attempt to kill him. Accordingly, he failed to state even the gist of a claim that his 40-year sentence was so cruel, degrading, or wholly disproportionate to the offense as to shock the moral sense of the community.

People v. Clark, 2023 IL 127273 Defendant sought leave to file a successive post-conviction petition challenging his 90-year sentence for murder under the proportionate penalties clause of the Illinois Constitution. Defendant committed the offense in 1993 when he was just 24 years old, and, at sentencing, there was extensive evidence that defendant suffered from fetal alcohol syndrome, antisocial personality disorder, and borderline personality disorder, and that he had the intellectual ability of a 13- or 14-year-old. In his successive petition, defendant asserted that the circuit court failed to give sufficient weight to his intellectual disabilities and his young age as mitigating factors before imposing a *de facto* life sentence.

The Post-Conviction Hearing Act contemplates the filing of a single post-conviction petition unless the petitioner can establish "cause and prejudice" for filing a successive petition. "Cause" is defined as an objective factor that impeded the petitioner's ability to raise the claim at issue in his initial post-conviction proceeding. And, "prejudice" requires a showing that the claim at issue so infected the proceedings that the resulting conviction or sentence violated due process.

Defendant failed to demonstrate cause. He previously raised a challenge to his sentence on direct appeal, where he argued that his sentence was excessive in light of his mental conditions, and he cited the proportionate penalties clause in support of that argument at the time. While defendant relied on the more recent **Miller** line of cases in support of his successive post-conviction claim, the Supreme Court rejected that argument, citing its recent holding from **People v. Dorsey**, 2021 IL 123010, that those cases were based on the Eighth Amendment and do not provide cause for a proportionate penalties claim. Further, Illinois law has long recognized the reduced culpability of persons with intellectual disabilities, such that defendant's claim was previously available.

And, defendant's claim would fail as a matter of law even if he could establish cause. Defendant's sentence was discretionary, not mandatory, and the record showed that defendant's intellectual disabilities were the focus of the sentencing hearing. As noted in **People v. Coty**, 2020 IL 123972, evidence of intellectual disabilities can present a "two-edged sword" at sentencing. On the one hand, such evidence may diminish an individual's culpability for his criminal conduct, while on the other hand it may serve to confirm his future dangerousness. Here, the court properly exercised its discretion in sentencing defendant to 90 years after considering extensive evidence of his intellectual disabilities. Accordingly, defendant could not show prejudice.

Defendant also argued that his status as an emerging adult warranted leave to file his successive post-conviction petition. The court rejected that claim because, as with the intellectual disability claim, defendant had argued on direct appeal that his youth and background warranted a lesser sentence, the **Miller** line of cases did not render his claim "new" for purposes of post-conviction purposes, and he could not establish prejudice where the court imposed a discretionary *de facto* life sentence upon giving considerable weight to

the seriousness of the offense and Clark's future dangerousness as a function of his intellectual disabilities.

People v. Miller, 202 Ill.2d 328, 781 N.E.2d 300 (2002) The proportionate penalties clause was violated by the operation of three statutes, which mandated a life sentence for a 15-year-old who was convicted of first degree murder as an accomplice, but who had only a moment to contemplate whether to participate in the offense and who acted only as a lookout. See also, **People v. McCoy**, 337 Ill.App.3d 518, 786 N.E.2d 1052 (2d Dist. 2003) (distinguishing **Miller** and holding that the mandatory natural life term for multiple murder does not violate the proportionate penalties clause of the Illinois Constitution, even where defendant was convicted only on the basis of accountability).

Illinois Appellate Court

People v. Murbarger, 2026 IL App (5th) 230430 Defendant was 18 years old at the time of the murder offense for which he was convicted, but was not arrested until he was 24, and not tried until he was 26. On appeal, defendant argued that he was more like a juvenile than an adult at the time of the offense and that his case should be remanded for a hearing pursuant to **People v. Harris**, 2018 IL 121932, to determine whether the sentencing protections established in **Miller** should apply to him under the proportionate penalties clause of the Illinois constitution. The appellate court disagreed.

Defendant was subject to a term of between 20 and 60 years of imprisonment, and was ultimately sentenced to 50 years. Because he was 18 at the time of the offense, he is eligible for parole under 730 ILCS 5/5-4.5-115. Thus, he has the opportunity to be released before he serves more than 40 years in prison, and accordingly he did not receive a *de facto* life sentence. And, the record was insufficient to consider defendant's further as-applied constitutional challenge because, while defendant also raised an as-applied challenge below, he did not adequately develop the record to support that claim. Accordingly, it is better raised in a post-conviction petition.

People v. Arnold, 2026 IL App (1st) 232350 The court rejected the argument that the 72-year-old defendant's natural life sentence for two counts of murder violated the proportionate penalties clause because defendant suffered from mental illness. In **People v. Coty**, 2020 IL 123972, ¶ 46, the court found that a mandatory natural life sentence imposed upon an intellectually disabled adult was constitutional as applied. Similarly, the court here found the life sentence proportionate, and thus constitutional, given that defendant's behavior was not excused by his mental illness and that his mental illness had been a life-long issue, negating any meaningful rehabilitative potential. Given defendant's age, his mental illness appears to be a "permanent fixture" of his character.

People v. Holman, 2026 IL App (5th) 230139 After granting defendant leave to file a fourth successive post-conviction petition, the court ultimately advanced the matter to the third stage for an evidentiary hearing. Following that hearing, the parties presented argument and filed additional pleadings in support of their respective positions. The court then revisited its order granting leave to file and reversed that decision, concluding that defendant had failed to establish cause and prejudice. Defendant appealed.

Agreeing with the reasoning set forth in **People v. Canizalez-Cardena**, 2020 IL App (4th) 180212, the appellate court held that the circuit court erred in vacating its order granting leave to file the successive petition. Determinations of cause and prejudice are to be

made without input from the State. Thus, it was improper to reverse course on the issue of leave-to-file after the State filed a motion to dismiss and after a full evidentiary hearing had been held. The appellate court reversed the portion of the court's order vacating denial of leave to file.

Rather than remanding, however, the court went on to affirm, finding that defendant was not entitled to relief as a matter of law. Defendant's petition raised a proportionate penalties challenge to his discretionary sentence of natural life imprisonment for an offense committed when he was 17 years old. In prior post-conviction proceedings, defendant had challenged his sentence under **Miller** and its progeny. The appellate court concluded that defendant could have raised the instant proportionate penalties claim in those proceedings, as well, and thus he failed to establish cause and therefore was not entitled to relief.

People v. Masters, 2024 IL App (4th) 230370 Defendant filed a post-conviction petition alleging that his 70- and 45-year consecutive sentences for murder and attempted murder, committed at age 18, violated the proportionate penalties clause of the Illinois constitution, as applied to him. The circuit court denied the petition after an evidentiary hearing. The appellate court affirmed.

At the hearing, defendant called Dr. Garbarino, who testified that the brain of an 18-year-old is under development, much like that of a juvenile's, and there is no justification for treating an 18-year-old like an adult. He further testified that several of the considerations about youth detailed in **Miller** applied to defendant's case, including the impetuosity of the offense and the corrupting influences of his childhood, such as absent parents, substance abuse, and exposure to violent video games. Based on defendant's youth, background, and his score on a 10-question ACE test, the doctor concluded that defendant had potential for rehabilitation.

The circuit court denied the petition, finding Garbarino's testimony did not establish that defendant's sentence shocked the moral sense of the community. The court found fault with several aspects of the doctor's testimony. For example, the doctor could not recall details about the defendant's juvenile record. The doctor relied on the ACE test, but never revealed the questions. He failed to offer factual support for his conclusion that defendant couldn't appreciate the consequences of his behavior or that violent video games influence behavior. The court also pointed to several factual discrepancies between Garbarino's testimony and the record, including defendant's relationship with his mother.

Defendant criticized several of these findings on appeal, but the appellate court held that they were not against the manifest weight of the evidence. The circuit court's findings were generally supported by the record, and while defendant established that many of the findings were arguable, the standard of review applicable to third-stage hearings requires deference to the circuit court. Despite defendant's youth and other mitigating characteristics, it was not manifestly erroneous to find defendant's sentence constitutional, and to reject his as-applied challenge, given the weaknesses in Gabarino's testimony and the seriousness of the offense.

A concurring justice agreed with the holding because of the standard of review, but wrote separately to point out that the circuit court did inject speculation into its findings regarding defendant's sophistication, and showed an unfair resistance to the idea that an emerging adult could make an as-applied proportionate penalties claim centered on youth and its attendant characteristics.

People v. Leach, 2024 IL App (4th) 230298 The trial court did not err in denying leave to file defendant's successive post-conviction petition arguing that his 60-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution where he was 20 years old at the time of the offense. Defendant could not establish cause for his proportionate penalties claim by relying on **Miller** and its progeny. He could have brought his youth-based proportionate penalties claim under the law as it existed previously. And, regardless, defendant's sentence did not violate the proportionate penalties clause where the record showed that the trial court was aware of, and considered, defendant's young age and rehabilitative potential at sentencing.

People v. Gates, 2023 IL App (1st) 211422 In 2021, defendant, who was 18 years old at the time of the offense, was sentenced to a term of 48 years of imprisonment for first degree murder committed in 2017. Accordingly, he is eligible to seek parole after serving 20 years of that sentence, pursuant to 730 ILCS 5/5-4.5-115(b).

At the sentencing hearing, defendant presented evidence of his tragic upbringing, including the sudden death of his mother when defendant was just 12 years old, the subsequent violent deaths of a cousin and a close friend, and his father's incarceration for a gun offense. The court rejected application of the proportionate penalties clause to defendant because he was the principal and not an accomplice, and the court noted that defendant's eligibility for parole in 20 years meant that his sentence was not a *de facto* life term pursuant to **People v. Dorsey**, 2021 IL 123010.

On appeal, defendant argued that the 48-year sentence was an unconstitutional *de facto* life sentence under the proportionate penalties clause of the Illinois constitution. The appellate court acknowledged that **Dorsey** held that good conduct credit must be considered in determining whether a prison sentence amounts to a *de facto* life term. Such credit can be readily determined, and generally it is within an inmate's control whether he or she earns it. "In contrast to good conduct credit, under the parole scheme, inmates do not have control over their shortened term and minimal chance for review." Parole is not a right, and the appellate court held here that the youthful offender parole statute does not afford a meaningful opportunity for release. Thus, defendant's 48-year sentence was a *de facto* life term despite the possibility of his being paroled before serving 40 years. A dissenting justice would have followed **People v. Elliott**, 2022 IL App (1st) 192294, which held that a sentence where an offender is eligible for parole after 40 or fewer years is not a *de facto* life sentence.

As the law on sentencing youthful offenders continues to evolve, Illinois courts have allowed emerging adults to bring proportionate penalties challenges to *de facto* life sentences. Defendant's trial counsel was ineffective for not making such an argument here. Instead, counsel at sentencing simply acknowledged that defendant was not a juvenile and failed to advance any proportionate penalties challenge to either the mandatory minimum or the firearm enhancement. Accordingly, the court vacated defendant's sentence and remanded the matter for resentencing.

People v. Carrasquillo, 2023 IL App (1st) 211241 In his post-conviction petition, defendant contended that his sentence of 200 to 600 years for first degree murder, committed when he was 18 years old, violates the proportionate penalties clause because it amounts to a *de facto* life sentence, entered without consideration of his youth and its attendant characteristics. Although he committed the crime prior to 1977, and was therefore eligible for parole after serving 20 years, defendant argued this was an "illusory" opportunity for release, because the board had rejected more than 30 consecutive parole requests. He alleged that certain

board members did so automatically because the victim was a police officer. The circuit court denied the petition after an evidentiary hearing, finding defendant's eligibility for parole took his sentence outside the ambit of **Miller**.

An appellate court majority reversed. It first found that while the mere opportunity for parole may suffice under the eighth amendment and **Miller**, the proportionate penalties clause offers additional protections. The majority endorsed defendant's claim that by denying over 30 consecutive requests for parole, the board had effectively proven that defendant had no meaningful opportunity for release. In support, the appellate court noted that the enormity of the initial sentence sent a signal that defendant should never be paroled, and the fact that both the parole board and the circuit court heard ample evidence of maturity and rehabilitation.

Because defendant was 18 at the time of the offense, he also had to establish that he was entitled to the protections afforded to juveniles. He did so by providing testimony at his evidentiary hearing from a doctor who testified about brain development and others who knew the conditions of his family life and childhood. This testimony established that he was functioning at a maturity level equal to that of a juvenile. Because the record also showed the sentencing court did not consider defendant's youth and its attendant characteristics, a new sentencing hearing was required.

A dissenting justice would have found the circuit court's decision was not manifestly erroneous, where it was not so apparent that defendant would never be granted parole.

People v. French, 2022 IL App (1st) 220122 The trial court did not err in denying defendant leave to file a successive post-conviction petition arguing that his 70-year sentence violated the proportionate penalties clause of the Illinois constitution. Defendant was 20 years old in August 2010 when he committed the offense. He was sentenced in 2014, and filed his initial post-conviction petition in 2019. In **People v. Dorsey**, 2021 IL 123010, the Illinois Supreme Court held that **Miller**'s announcement of a new substantive rule under the eighth amendment did not provide cause for a defendant to raise a claim under the proportionate penalties clause. The court concluded that under **Dorsey**, defendant could not establish cause for not raising his claim in his initial petition. The court also rejected defendant's argument that he lacked evidentiary support for the claim when he filed his initial petition and only obtained such support in June 2021, when he received a doctor's report. Defendant had ample time to develop the necessary evidentiary support sooner, and his delayed investigation of the claim did not satisfy the cause requirement.

People v. Brock, 2022 IL App (3d) 200430 The sentencing judge did not err in considering "incident reports" attached to defendant's PSI, even though no witness testified to their content at sentencing. Ordinary rules of evidence are relaxed at sentencing. Evidence may be considered so long as it is relevant and reliable. There was no question that the incident reports were relevant to sentencing, as they reflected on defendant's behavior while incarcerated. And, the fact that the PSI is prepared by "a neutral third party," specifically the probation department, is *prima facie* evidence of the reliability of information contained therein. Finally, defendant offered no objection or correction to the PSI at the time it was presented to the court, thereby waiving any claims of inaccuracy.

The appellate court also rejected defendant's argument that his aggregate 60-year sentence for two counts of murder violated the proportionate penalties clause of the Illinois constitution. The sentencing judge complied with the requirements of **Miller** and 730 ILCS 5/5-4.5-105(a) in fashioning that sentence, considering both defendant's youth and its

attendant characteristics. The court, in its discretion, declined to impose the 25-year-to-life firearm enhancements at sentencing. And, at a hearing on defendant's motion to reconsider, the judge stated that the sentence would have been higher were it not for defendant's youth. Under the facts here, defendant's sentence was not so wholly disproportionate to the offense as to shock the moral sense of the community.

People v. Peacock, 2022 IL App (1st) 170308-B In a successive post-conviction petition, defendant challenged as an unconstitutional *de facto* life sentence his 80-year sentence for a 1995 murder, committed when he was 17 years old. Defendant is eligible for day-for-day credit against his sentence, which means he may be released after serving only half of his sentence, or 40 years. In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that a sentence of 40 years or more imposed on a juvenile is a *de facto* life sentence.

Initially, the Appellate Court found that defendant's 80-year sentence constituted a *de facto* life sentence and remanded for a new sentencing hearing. The State sought leave to appeal, and the Illinois Supreme Court issued a supervisor order directing the Appellate Court to reconsider its decision in light of **People v. Dorsey**, 2021 IL 123010. In **Dorsey**, the defendant was subject to a day-for-day sentencing credit scheme which allowed some meaningful opportunity for release before serving more than 40 years in prison.

On reconsideration, the Appellate Court noted that the defendant here is also entitled to day-for-day credit and could be released after serving 40 years, just short of a *de facto* life sentence. While defendant ultimately may serve more than 40 years, the Court held that under **Dorsey**, the relevant consideration is whether the statutory scheme under which he was sentenced allows the opportunity for release before serving more than 40 years.

The Court also rejected defendant's Illinois proportionate penalties claim, concluding that defendant had not established cause for not raising that claim in his initial post-conviction petition. In reaching this conclusion, the Court followed **Dorsey** and several other cases that have rejected such an argument. The proportionate penalties clause was in existence at the time defendant filed his initial petition, and Illinois has long recognized that sentencing youthful offenders requires consideration of their emotional maturity.

People v. Kuehner, 2022 IL App (4th) 200325 Defendant could not establish cause-and-prejudice by alleging that his guilty plea to attempted murder and home invasion, committed at age 17, was not knowing and voluntary. Defendant reasoned that before he pled guilty and received his 35-year sentence, the court told him he faced a 12 to 120-year extended-term sentence. In reality, defendant urged, he faced at most 40 years under the eighth amendment as interpreted by subsequent cases such as **Miller** and **Buffer**. The Appellate Court disagreed. **Miller** and **Buffer** did not impose a sentencing cap of 40 years. Defendant could have been sentenced to 120 years, as long as the sentencing court first considered his youth and attendant circumstances. In any event, the Illinois Supreme Court recently rejected the notion that a guilty plea can be invalidated based on subsequent changes in applicable law. **People v. Jones**, 2021 126432.

Additionally, defendant failed to establish cause for his proportionate penalties claim. Although the eighth amendment jurisprudence in the years since defendant's plea has reshaped juvenile sentencing law, a claim of inadequate consideration of youth under the proportionate penalties clause predated defendant's plea. **Miller** and its progeny may have made such a claim easier, but availability, not ease, is the relevant standard. Regardless, defendant could not show prejudice because a 35-year sentence for being accountable for the

severe beating and robbery of a 98-year-old blind and deaf woman is far from disproportionate and does not shock the conscience of the community.

Finally, defendant's argument that he was prejudiced by his automatic transfer to adult court under a since-repealed law "is too speculative to be of any use" because he would still be subject to discretionary transfer.

People v. Ford, 2022 IL App (1st) 172581 Defendant, who was 18 years old and was sentenced to a term of 46-years of imprisonment for first degree murder, argued that his sentence was an improper *de facto* life term imposed in violation of the proportionate penalties clause. The proper vehicle for a young adult between the ages of 18 and 21 to raise an as-applied challenge to a *de facto* life sentence is in a post-conviction proceeding. Defendant here had not developed the record below to support consideration of the issue on direct appeal. Defense counsel was not ineffective for failing to develop this issue at defendant's sentencing hearing, however, because most of the cases supporting the issue were not decided until after defendant had been sentenced. Defendant's sentence was affirmed.

People v. Watson, 2022 IL App (1st) 192182 Defendant, who was 17 years old at the time of his offense, filed a post-conviction petition arguing that truth in sentencing was unconstitutional as applied to juvenile offenders like him and that, accordingly, his 32-year sentence for first degree murder violated the proportionate penalties clause of the Illinois constitution. The circuit court summarily dismissed defendant's petition, and the Appellate Court affirmed.

The Appellate Court first found that defendant had waived his claim by entering a negotiated plea of guilty, relying on **People v. Jones**, 2021 IL 126432. Additionally, the court held that the truth in sentencing requirement that defendant serve 100% of his sentence for murder did not violate the eighth amendment or **Miller v. Alabama**, 567 U.S. 460 (2012). Defendant's 32-year sentence, even if served at 100%, is not a life sentence under any constitutional measure. Requiring a juvenile offender to serve the full term of a non-life sentence for murder does not violate **Miller**. The court also noted that defendant's reliance on the now-vacated truth-in-sentencing portion of the decision in **People v. Othman**, 2019 IL App (1st) 150823, was misplaced. The reasoning in **Othman** was, at best, *dicta*, even before it was vacated.

People v. Figueroa,2022 IL App (1st) 172390-B Defendant filed a successive post-conviction petition alleging his 75-year sentence, imposed for a crime committed at age 17, violated the Eighth Amendment and the proportionate penalties clause. The circuit court denied leave to file. The Appellate Court, in its previous opinion, remanded for a new sentencing hearing. The Supreme Court vacated that opinion, and ordered reconsideration based on **People v. Dorsey**, 2021 IL 123010. In light of **Dorsey**, the Appellate Court affirmed the circuit court's dismissal of the Eighth Amendment claim, because defendant did not receive a *de facto* life sentence where he was eligible for day-for-day credit and he therefore had a meaningful opportunity for release after 37.5 years.

The Appellate Court also affirmed the circuit court's dismissal of the proportionate penalties claim. Although defendant cited **People v. Meneses**, 2022 IL App (1st) 191247-B, which remanded for second-stage proceedings in a case involving a similar claim, the Appellate Court here distinguished **Meneses**. There, the court found no procedural bars to the claim, while here, defendant failed to raise the claim on direct appeal or in two previous

post-conviction petitions. Defendant's petition therefore failed to establish cause. As **Dorsey** held, a proportionate penalties claim was available to defendants prior to **Miller**, and while **Miller** may have provided support, it did not sufficiently alter the claim so as to constitute cause for failing to raise it earlier.

People v. Thornton, 2022 IL App (1st) 170677 Defendant's eighth amendment claim, challenging a 70-year sentence imposed for a murder committed at age 17, was properly dismissed at the first stage in light of **People v. Dorsey**, 2021 IL 123010, because defendant was eligible for day-for-day sentencing credit that would give him an opportunity for release after 35 years. Defendant's proportionate penalties claim was likewise without merit. The appellate court noted the crime was considered brutal and heinous, involving abduction, torture, and murder. In light of these facts, and the sentencing court's consideration of a wide range of mitigation evidence, a 70-year sentence with a potential for release after 35 years does not shock the moral sense of the community.

People v. Hill, 2022 IL App (2d) 200416 The truth-in-sentencing provisions, requiring defendant to serve 100% of his 40-year sentence for a murder committed at age 17, did not violate the proportionate penalties clause of the Illinois Constitution.

Defendant argued that the truth-in-sentencing provision limited the sentencing court's discretion to such an extent that it interfered with the rehabilitation requirements of the proportionate penalties clause. But the sentencing court had sufficient discretion in this case. It already exercised discretion when it reduced the sentence from 48 to 40 years in light of **Buffer**, and declined to impose the firearm enhancement. If the court felt constrained by truth-in-sentencing, it could have simply reduced the sentence to 20 years. Instead, the sentencing court properly concluded that a 40-year term was appropriate for defendant, who was the principal offender in the murder of an innocent cab driver.

People v. Howard, 2021 IL App (2d) 190695 Defendant failed to establish cause and prejudice for filing a successive post-conviction petition challenging his discretionary life sentence imposed for an offense committed in 1983 when he was 20 years old. Defendant's claim was predicated on the proportionate penalties clause of the Illinois constitution and could have been raised in his initial post-conviction petition given that it was well-established even then that youth was relevant to sentencing. The later emergence of additional support for such a claim, in **Miller** and its progeny, did not establish cause for failing to bring the claim earlier.

Further, defendant's claim, while premised on the proportionate penalties clause, was not a constitutional claim but rather an argument that the court abused its discretion by not giving greater weight to defendant's youth at sentencing. Thus, it was not cognizable in a post-conviction petition. And, regardless, defendant's claim would fail where the sentencing judge considered defendant's youth and rehabilitative potential in imposing a discretionary life sentence. Thus, defendant could not establish prejudice. The court noted that it had rejected similar claims in **People v. LaPointe**, 2018 IL App (2d) 160903, and **People v. Hoover**, 2019 IL App (2d) 170070.

People v. Hilliard, 2021 IL App (1st) 200112 Defendant failed to state the gist of a claim that application of a mandatory 25-year firearm enhancement to him violated the proportionate penalties clause of the Illinois constitution. Defendant was 18 years old at the

time of the offense, and therefore was not a juvenile. Further, defendant received a 40-year sentence (15 years for attempt murder coupled with the 25-year firearm enhancement), which was not a *de facto* life sentence under **Buffer**.

And, the court rejected defendant's argument that the absence of discretion as to the firearm enhancement, alone, was enough to violate **Miller** and its progeny. Nothing in **Miller** suggests that a mandatory sentence imposed on a juvenile offender violates the eighth amendment where that sentence does not constitute *de facto* life. Thus, even if defendant was a juvenile, he would not be entitled to **Miller**-type protections. The summary dismissal of defendant's post-conviction petition was affirmed.

People v. Kruger, 2021 IL App (4th) 190687 The Appellate Court affirmed the denial of defendant's third motion for leave to file a successive post-conviction petition which alleged that his natural life sentence violated the proportionate penalties clause of the Illinois constitution based, in part, on **Miller** and its progeny where defendant was 21 years old at the time he committed the offense of murder. In reaching its decision, the Appellate Court agreed with the State that defendant could not show prejudice because **Miller**-based proportionate penalties claims are limited to young adults between the ages of 18 and 20, relying on **People v. Humphrey**, 2020 IL App (1st) 172837.

People v. Mauricio, 2021 IL App (2d) 190619 Defendant, who was 20 years old at the time of his offense, challenged his 55-year sentence for one count of first degree murder, arguing it was unconstitutional under both the Eighth Amendment and the proportionate penalties clause of the Illinois Constitution and that it was excessive. The Appellate Court rejected those challenges.

The court declined to extend the reasoning of **Miller v. Alabama**, 567 U.S. 460 (2012) to individuals over the age of 18, noting that the Second District had consistently refused to do so. Accordingly, defendant's Eighth Amendment challenge failed. Likewise, a recent change to the Code of Corrections [730 ILCS 5/5-4.5-115(b)], providing parole opportunities for persons under 21 years old when they committed first degree murder, did not support defendant's claim that his sentence was unconstitutional as applied under the proportionate penalties clause. The statutory change is prospective only, and it specifically excludes cases where the offense was found to be accompanied by brutal or heinous behavior indicative of wanton cruelty under Section 5-8-1. A brutal and heinous finding was made in defendant's case, accordingly his 55-year sentence did not shock the moral sense of the community and was upheld.

Defendant's sentence was not excessive, either. The 55-year sentence was imposed after a multi-day sentencing hearing during which both the State and the defense presented testimony from several witnesses. The sentencing judge's comments demonstrated that he considered defendant's youth, and the court made specific findings in aggravation and mitigation.

People v. Robinson, 2021 IL App (1st) 192289 Defendant's mandatory life sentence for a second aggravated criminal sexual assault, imposed when he was 24 years old, was not unconstitutional despite his mental illnesses. Defendant alleged that his sentence, as applied to a young offender with mental illness, violated the Eighth Amendment and the proportionate penalties clause.

The Appellate Court found only the proportionate penalties claim viable, as the Eighth Amendment as interpreted by **Miller** and its progeny does not apply to defendants

older than 17. The Appellate Court further found that defendant presented adequate documentation of his background, including DCFS records, mental illness treatment records, and family history, to warrant review of his as-applied challenge.

The Appellate Court affirmed the sentence, however, relying on **People v. Coty**. 2020 IL 123972. As in **Coty**, where the court affirmed a life sentence imposed on a defendant with severe intellectual disabilities, the Appellate Court here found defendant's mental illness is not inherently mitigating. Given the nature of the crimes, where defendant deceived and lured women to abandoned locations in order to sexually assault them, a sentencing court could reasonably conclude that the risk of future dangerousness outweighs any lessened culpability. Although defendant sought to distinguish **Coty** by pointing out that mental illness, unlike intellectual disability, is treatable, making defendant's prospects for rehabilitation greater than in **Coty**, the record failed to show that he was capable of being treated. The Appellate Court noted that after defendant's first sexual assault, he did not use his time in prison to treat his mental illness or his predilection for violent sexual behavior, but rather received 50 citations for various offenses, including violent altercations.

Regardless, despite the mandatory nature of the sentence, the trial court adequately considered the relevant factors regarding defendant's upbringing, mental illnesses, culpability, future dangerousness, and rehabilitative potential before imposing the sentence.

People v. Glinsey, 2021 IL App (1st) 191145 Defendant received a 45-year sentence for a murder committed at age 18. His successive post-conviction petition asserted a proportionate penalties claim. The Appellate Court majority held that the petition satisfied the "very low threshold" for obtaining leave to file a successive petition. Defendant was a mere 11 days past his 18th birthday, was not the main "motivating" actor behind the offense, was convicted under a theory of accountability, and was a member of a gang since age 12 and, thereby, potentially subject to its peer pressure. Although defendant's sentence was discretionary, the sentencing court did not explicitly consider defendant's age or any age-related factors.

The dissent would have found the petition lacked the necessary specific allegations required for an "as-applied" challenge.

People v. Villalobos, 2020 IL App (1st) 171512 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less" provides a juvenile some meaningful opportunity for release. Thus, for purposes of juvenile sentencing, a *de facto* life sentence is *more* than 40 years. A period of mandatory supervisory release is not counted, because the question is when the defendant will be released from prison, not when he completes the totality of his sentence. Therefore, where defendant received exactly 40 years (plus three years of MSR), he could not raise an eighth amendment claim under **Miller**.

The Appellate Court further rejected a proportionate penalties claim, finding the trial court adequately balanced the defendant's youth against the severity of the offense. A 40-year sentence on a 16 year-old did not shock the conscience where defendant participated in a gang-related beating and, after his fellow gang members left the scene, returned to the prone victim and fired several shots into his back. The notion that the court did not adequately consider mitigating factors was further belied by the fact that the court refused to impose the mandatory firearm enhancements, and reduced the initial 50-year sentence by 10 years upon reconsideration.

People v. Franklin, 2020 IL App (1st) 171628 A majority of the Appellate Court held that the trial court erred when it denied defendant leave to file a successive post-conviction

petition alleging his life sentence, imposed for a murder committed at age 18, violated the proportionate penalties clause of the Illinois Constitution.

Defendant had no prior criminal history and suffered from mental illness at the time he killed his six-month old son. He also had an abusive upbringing and suffered multiple incidents of head trauma. The sentencing court cited unspecified mitigating factors when it declined to impose the death penalty, but never mentioned defendant's age. Under these circumstances, defendant should have been granted leave to file a successive petition to either show that he was the "functional equivalent" of a juvenile due to mental illness and other circumstances, such that his sentence violated the proportionate penalties clause.

In dissent, Justice Burke wrote that she would find the **Miller** claim foreclosed by the fact that defendant was over age 18, and reject the proportionate penalties claim based on the fact that defendant was over 18, acted as principal, and received a discretionary life sentence.

People v. Savage, 2020 IL App (1st) 173135 The trial court erred in summarily dismissing a post-conviction petition alleging a proportionate-penalties violation. Defendant was 21 years-old at the time he committed murder and attempt murder, for which he received an aggregate 85-year sentence. The sentencing hearing revealed that defendant had an abusive upbringing, had been addicted to drugs since age 9, and had fallen in with older gang members at a young age. The sentencing court described the crime as a bungled robbery spurred by drug addiction, and explicitly found defendant had rehabilitative potential.

The Appellate Court held that these allegations were sufficient to advance the petition to the second stage. Although an adult, the circumstances of defendant's life may have left him with the emotional and mental development of a much younger person. Defendant's claim that he could show a lessened level of culpability due to his age and background was not frivolous or patently without merit.

People v. Carrion, 2020 IL App(1st) 171001 The trial court did not err in denying defendant leave to file successive post-conviction petition alleging **Miller** violation. Defendant was 19 years old at the time he committed residential burglary and murder. Defendant was the sole offender, and the evidence showed that he killed the victim with a knife after she confronted him burglarizing her apartment.

The Appellate Court concluded that defendant's 55-year sentence did not shock the moral sense of the community and therefore was not cruel or degrading under a proportionate penalties analysis. Defendant was not entitled to **Miller**'s protections because he was an adult at the time of the offenses. And, even if **Miller** were extended to him, defendant's sentencing hearing was compliant where the court heard and considered evidence of defendant's young age, problems with alcohol use, history of being abused, and absence of criminal history. The trial court's comments at sentencing suggested it found defendant irretrievably depraved and beyond the possibility of rehabilitation. And, defendant did not cite any additional facts in his petition that had not already been considered by the trial court.

People v. Gomez, 2020 IL App (1st) 173016 The Appellate Court majority affirmed the denial of leave to file a successive post-conviction petition containing an "emerging adult" proportionate penalties claim. Defendant received a discretionary *de facto* life sentence of 50 years for a murder committed at age 18. The Court found that **People v. Harris**, 2018 IL 121932 does not automatically require an evidentiary hearing in emerging-adult cases, only

the opportunity to file a post-conviction petition. Defendant attempted to file one here, but failed to establish cause and prejudice. Even if only accountable (the evidence was disputed as to whether or not defendant was the gunman), defendant was with a fellow gang member "hunting down" rivals before killing someone in a "cruel and cold-blooded" fashion. A 50-year sentence under these circumstances was not so cruel or disproportionate so as to shock the moral conscience of the community.

The dissent would have allowed defendant the opportunity to file the petition and attempt to show that his youth, abusive upbringing, and attempts at rehabilitation could amount to a substantial showing of a proportionate penalties claim.

People v. Daniels, 2020 IL App (1st) 171738 Defendant did not waive a proportionate penalties challenge to his sentence by virtue of his having entered a negotiated guilty plea in 1995. Defendant could not have known at the time of his plea that he could argue that the natural life sentence to which he agreed in order to avoid the death penalty was potentially constitutionally disproportionate as applied to him where he was just 18 years old at the time of the offense. The court declined to apply the waiver principles enunciated in **People v. Jackson**, 199 Ill. 2d 286 (2002) to non-**Apprendi** claims.

Defendant established cause for not raising his proportionate penalties challenge previously because the law regarding sentencing of juvenile and young adult offenders has evolved significantly in the time since he was sentenced and filed his original post-conviction petition. Defendant established prejudice where he was 18 years old at the time of the offense, had a history of mental health issues, and had an unusually harsh childhood. Because he had "not yet had the opportunity to ask a court to consider" the fundamental question of whether his life sentence was unconstitutional as applied under recent developments in sentencing youthful offenders, the court reversed the denial of leave to file defendant's successive post-conviction petition and remanded for further proceedings.

People v. Woods, 2020 IL App (1st) 163031 Trial court did not err in denying leave to file successive post-conviction petition alleging proportionate penalties violation where 17-year-old defendant had received 33-year sentence for attempt murder. Sentence was not *de facto* life, and mandatory firearm enhancement did not shock the conscience of the community. At sentencing, the court acknowledged defendant's youth and minimal criminal record but found that his actions warranted a serious sentence. The 33-year sentence allows a meaningful opportunity for rehabilitation and did not violate the proportionate penalties clause.

People v. Gunn, 2020 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Minniefield, 2020 IL App (1st) 170541 Trial court erred in denying defendant leave to file successive post-conviction petition alleging that his 50-year sentence for first degree murder violated the proportionate penalties clause where defendant was 19 years old at the time of the offense. Defendant's claim was grounded in the **Miller** line of cases, which established cause for his not having raised it in his original post-conviction petition filed in 2007, several years prior to the decision in **Miller**. And, defendant met the prejudice prong for filing a successive petition where the law presently treats those younger than 21 as minors in a variety of circumstances, including a recent statutory amendment which allows a person convicted of first degree murder to seek parole after 20 years if he or she was under 21 at the time of the offense and was sentenced after that amendment took effect. Further, the Juvenile Court Act allows persons under 21 to be considered "minors," and the State treats those under 21 as minors in other circumstances, including the sale of alcohol and cigarettes, ownership of firearms, and limitations on Class X recidivist sentencing. Accordingly, the court reversed the denial of defendant's motion for leave to file successive petition and remanded the matter for further post-conviction proceedings.

People v. Womack, 2020 IL App (3d) 170208 Defendant committed attempt murder with a firearm at age 16. In a successive post-conviction petition, he alleged that under **Miller** and recent Illinois cases, the 20-year firearm enhancement added to his 18-year sentence violated the proportionate penalties clause of the Illinois Constitution as applied to him.

Over a dissent, the Appellate Court agreed with recent cases, such as **People v. Barnes**, 2018 IL App (5th) 140378 and **People v. Aikens**, 2016 IL App (1st) 133578, which held that the mandatory imposition of firearm enhancements for juveniles no longer reflects Illinois's evolving standard of decency. Under the proportionate penalties clause, the juvenile status of defendant at the time of the offense and the circumstance surrounding the incident should have some relevance in determining whether to impose the mandatory 20-year firearm enhancement. Thus, defendant's petition met the cause-and-prejudice test and the court remanded for second-stage proceedings.

People v. White, 2020 IL App (5th) 170345 Court did not err in denying leave to file successive post-conviction petition raising **Miller** and proportionate penalties claims. Defendant was 20 years old when he committed two counts of first degree murder and was sentenced to mandatory term of natural life. He was not a juvenile, **Miller** protections do not apply to adult offenders. Defendant did not establish that he was more akin to a juvenile than an adult under the circumstances here.

Likewise, defendant's "flat allegation" regarding evolving science on juvenile maturity and brain development was not enough to support a proportionate penalties claim. Defendant was an adult, was the primary offender, and developed and executed an intricate plan to kill his grandmother and her friend, and also to frame the friend for the murder.

People v. Carrasquillo, 2020 IL App (1st) 180534 The circuit court erred when it denied defendant leave to file his successive post-conviction petition alleging a *de facto* life sentence imposed on an 18 year-old violated the proportionate penalties clause of the Illinois Constitution.

In 1978, defendant was sentenced to 200 to 600 years in prison, with opportunity for parole after 20 years. Because defendant could not have anticipated the **Miller** line of cases at the time of his first post-conviction petition in 1987, he established cause. Defendant also established prejudice. He has already served a *de facto* life sentence under **Buffer**. There

was no evidence the trial court considered his youth. Nor was there recourse for defendant to challenge the parole board's repeated denials, and defendant presented sufficient evidence – including the intimidating presence of police officers at his parole hearings – that he would never be paroled. For these reasons, defendant deserved a chance to develop his claim through post-conviction proceedings.

People v. Johnson, 2020 IL App (2d) 170646 The circuit court properly denied defendant's motion for leave to file successive post-conviction petition. While the petition raised both a **Miller** challenge and a proportionate penalties challenge to his 27-year sentence for first degree murder, on appeal defendant argued that the truth-in-sentencing statute – requiring him to serve 100% of his sentence – was unconstitutional on its face and as applied to him.

The Appellate Court rejected the State's argument that defendant's truth-in-sentencing claim was both waived and forfeited. A sentence which violates the constitution can be challenged at any time, and defendant's claim on appeal was that his sentence was unconstitutional based on the reasoning in **Miller**. The court also concluded that the record here was sufficient to review defendant's as-applied challenge even though such challenges generally should be presented in the trial court first.

Ultimately, though, the Appellate Court rejected defendant's claim on the merits. Defendant's 27-year sentence did not bring him under the protections of **Miller** because it was not a *de facto* life term. Further, the record established that the sentencing judge considered defendant's youth and its attendant characteristics, as well as the fact that he was an accomplice and not the principal offender. Finally, the court noted that **People v. Othman**, 2019 IL App (1st) 150823, on which defendant's truth-in-sentencing challenge was based, had since been vacated.

People v. Handy, 2019 IL App (1st) 170213 The trial court did not err in denying defendant leave to file successive post-conviction petition. Defendant could not demonstrate prejudice where his petition alleged that his 120-year aggregate sentence for crimes committed when he was 18.5 years old was unconstitutional as applied. Defendant was an adult and therefore was not entitled the same Eighth Amendment protections afforded to juveniles under **Miller**. And, defendant could not make out a proportionate penalties claim because he was an active participant in the armed robbery, home invasion, kidnaping and sexual assault, rather than a lookout, and because the sentence here was discretionary and not mandatory, both factors which distinguished the case from **People v. House**, 2019 IL App (1st) 110580-B. The appellate court concluded that although defendant's sentence was "harsh," the trial court properly denied leave to file his successive post-conviction petition.

People v. Gunn, 2019 IL App (1st) 170542 In **People v. Buffer**, 2019 IL 122327, the Supreme Court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the Eighth Amendment." Here, defendant received 40 years in prison, plus three years' MSR, for a murder committed at age 17. The Appellate Court rejected his claim that he received a *de facto* life sentence in light of the above language from **Buffer**, and notwithstanding the three years of MSR, which are not included as part of the "prison sentence" for purposes of a **Miller** challenge. The court also rejected defendant's proportionate penalties argument, finding no plain error. The court did not believe that failing to mention mitigating factors contained in the PSI rose to the level of plain error, and held that 40 years for a "premeditated, gangland-style execution" does not "shock the moral sense of the community"

People v. Hoover, 2019 IL App (2d) 170070 The trial court properly denied leave to file a successive post-conviction petition raising a proportionate penalties challenge to defendant's natural life sentence for first degree murder committed when he was 22 years old. Following **People v. LaPointe**, 2018 IL App (2d) 160903, the Appellate Court found that defendant could not establish cause because he could have raised the claim in a prior post-conviction petition. The claim was not dependent on **Miller** and its progeny because youth has always been a pertinent factor in sentencing. Defendant also could not show prejudice because a claim that the court failed to consider youth at sentencing is not a claim of constitutional deprivation under the proportionate penalties clause. A proportionate penalties claim requires that the sentence be wholly disproportionate to the offense, and on the facts here such a claim would fail on its merits.

People v. Aikens, 2016 IL App (1st) 133578 The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

Noting that no one was injured in the offense, the court concluded that as applied to defendant the sentencing scheme violated the proportionate penalties clause because defendant had no prior criminal history, was described by the mitigation specialist as full of potential and able to fully rehabilitate as a contributing member of society, and was sentenced to the statutory minimum by the trial court who noted that defendant was young, had no criminal history, and had a "quite troubling" background. The court stressed that recent changes to the Juvenile Court Act, while inapplicable to this case, illustrate a "changing moral compass in our society when it comes to trying and sentencing juveniles as adults."

Defendant's sentence was reversed and the cause remanded for resentencing.

People v. Aikens, 2016 IL App (1st) 133578 The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

An "as applied" constitutional challenge requires defendant to show that the statute at issue violates the Constitution as applied to his or her particular case. A challenge under

the proportionate penalties clause contends that the penalty in question was not determined according to the seriousness of the offense. A violation may be shown where the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

The Illinois Supreme Court has not defined what kind of punishment is cruel, degrading, or wholly disproportionate to the offense, because concepts of elemental decency and fairness evolve as society evolves. Thus, to determine whether a penalty shocks the moral sense of the community, courts must consider objective evidence as well as the community's changing standards of moral decency.

Noting that no one was injured in the offense, the court concluded that as applied to defendant the sentencing scheme violated the proportionate penalties clause because defendant had no prior criminal history, was described by the mitigation specialist as full of potential and able to fully rehabilitate as a contributing member of society, and was sentenced to the statutory minimum by the trial court who noted that defendant was young, had no criminal history, and had a "quite troubling" background. The court stressed that recent changes to the Juvenile Court Act, while inapplicable to this case, illustrate a "changing moral compass in our society when it comes to trying and sentencing juveniles as adults."

Defendant's sentence was reversed and the cause remanded for resentencing.

In re Shermaine S., 2015 IL App (1st) 142421 Habitual Juvenile Offender statute does not violated the Eighth Amendment even though it precludes the court from considering individualized factors about the minor, including his youth and attendant circumstances, as required by **Miller v. Alabama**, 132 S.Ct. 2455 (2012). It also does not violate the proportionate penalties clause of the Illinois Constitution which requires a court to consider rehabilitation in imposing sentence.

The Eighth Amendment and the proportionate penalties clause do not apply to juvenile proceedings since they only apply to the criminal process and juvenile proceedings are not criminal in nature. **In re Rodney H.**, 223 Ill. 2d 510 (2006). But even if they did apply, the statute would not violate either constitutional provision.

In **People ex rel. Carey v. Chrastka**, 83 Ill. 2d 67 (1980), the Illinois Supreme Court held that sentencing a habitual juvenile offender until the age of 21 did not violate the Eighth Amendment. **Miller** does not change this result because unlike this case, **Miller** involved juveniles who were tried as adults.

The statute also does not violate the proportionate penalties clause. Although the Illinois Supreme Court stated in **People v. Clemons**, 2012 IL 107821, that the language of the clause requiring all penalties to have "the objective of restoring the offender to useful citizenship," indicated that it goes beyond the Eighth Amendment, elsewhere, both before and after **Clemons**, the court has held that the clause is co-extensive with the Eighth Amendment. **In re Rodney H.**; **People v. Patterson**, 2014 IL 115102. Since the court held in **Chrastka** that the statute did not violate the Eighth Amendment, it similarly cannot violate the co-extensive proportionate penalties clause.

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired

shots at the other victim, hitting him several times.

The 20-year enhancement applied to both of defendant's convictions under 720 ILCS 5/8-4(c)(1)(C), requiring that 20 years be added to the sentence where the defendant "personally discharged a firearm" during the commission of the offense. The court imposed the minimum sentence of 26 years (including the 20-year firearm enhancement) for both convictions, to be served consecutively for a total of 52 years.

Defendant argued that the automatic transfer statute combined with the sentencing provisions violated the Eighth Amendment as applied to him. The Court rejected this argument, holding that defendant's 52-year sentence was not a *de facto* sentence of life imprisonment. Taking into account available sentencing credit, the Court determined that defendant could be released from prison at age 60, while the average life expectancy for someone in his position was 67.8 years. Defendant thus could, and likely would, spend the last several years of his life outside of prison. The Court found that, strictly speaking, defendant's sentence did not constitute life imprisonment and thus did not violate the Eighth Amendment.

The Court agreed, however, that the statutory scheme was unconstitutional as applied to defendant under the proportionate penalties clause of the Illinois Constitution. The Illinois Constitution states 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." Ill. Const. 1970, art. I, § 11. To show a violation of the clause, a defendant must show that the penalty is degrading, cruel "or so wholly disproportionate to the offense that it shocks the moral sense of the community." The clause provides a limitation on punishment beyond the eighth amendment.

The Court found that defendant's penalty shocked the moral sense of the community. Although this was a serious offense, and one of the victims suffered severe injuries, there were numerous factors that diminished "the justification for a 52-year prison term." The incident was not planned long before it occurred, but was instead the result of rash decision making. Defendant was a mentally ill juvenile who was prone to impulsive behavior, and wanted to impress his older co-defendant. And defendant did not personally inflict serious harm, even though that was primarily the result of bad aim.

The court found it meaningful that defendant had been found unfit to stand trial and thus was clearly not "at his peak mental efficiency" when the offense occurred. Defendant's inability to process information may have affected his judgment, which diminished his culpability and the need for retribution. At the same time, defendant's mental health had improved in the recent past, showing he may yet be rehabilitated. And the trial judge clearly would have imposed a shorter sentence if that had been possible. The Court found it "unsettling" that the trial court's discretion in sentencing a juvenile was frustrated by the mandatory minimum in the case. "Under these circumstances, defendant's sentence shocks the conscience and cannot pass constitutional muster."

As a remedy, the court ordered the trial court on remand to impose any appropriate Class X sentence without the mandatory firearm enhancement.

§44-2
Change in Sentencing Provision; Right to Election

United States Supreme Court

Ellingburg v. United States, 607 U.S. ___ (2026) The federal Mandatory Victims Restitution Act of 1996 requires defendants convicted of certain federal crimes to pay monetary restitution to victims. Defendant committed his crime before the MVRA's enactment, but he was sentenced after it went into effect. The judge imposed $7,567.25 in restitution pursuant to the MVRA.

Defendant challenged the restitution order, citing the Ex Post Facto Clause. The Eighth Circuit concluded that restitution under the MVRA is not criminal punishment subject to the Ex Post Facto Clause. In the United States Supreme Court, the parties agreed that the Eighth Circuit erred. The supreme court reversed, finding restitution is a criminal punishment.

To determine whether restitution constitutes criminal punishment, the court considered the statute's text and structure. Several aspects of the MVRA made clear that its restitution provision is criminal in nature. The statute labels restitution a "penalty" for a criminal "offense." A defendant must commit certain crimes before being ordered to pay restitution. Restitution is imposed at sentencing. Although the lower court found that the penalty is civil in nature, the supreme court noted that when restitution is requested and imposed, the State, not the victim, acts as the adverse party. Victims cannot initiate or settle the restitution process as they would if it was a civil proceeding. Thus, the restitution was plainly a criminal penalty, imposed in violation of the Ex Post Facto Clause.

Peugh v. U.S., 569 U.S. 530, 133 S.Ct. 2072, 186 L.Ed.2d 84 (2013) A law may violate the *ex post facto* clause even where it does not affect the maximum sentence for which the defendant is eligible, and even where the sentencing authority retains some sentencing discretion. The touchstone of an *ex post facto* inquiry is whether a given change in the law presents a sufficient risk of increasing the measure of punishment attached to the covered crimes.

The *ex post facto* clause was violated where the trial court applied federal sentencing guidelines which were adopted after the crime was committed. Although federal sentencing guidelines are advisory only, they represent the starting point of an appropriate sentence. Error occurs where the trial court fails to calculate the guideline range correctly or treats the guidelines as mandatory.

Application of the amended guidelines presented a substantial risk that the punishment for the crime would be increased. First, the new guidelines resulted in a sentencing range that was more than double that which would have been suggested by the guidelines in effect at the time of the offense. Second, because the trial court is required to use the guidelines as a starting point in its analysis, the guidelines provide the framework for sentencing even if the trial court ultimately decides to give a sentence outside the guidelines. The court concluded that the guidelines impose a series of requirements that limit the exercise of discretion by sentencing courts and in general "steer" courts to impose sentences that are within the guidelines. Thus, using guidelines which increase the suggested sentence poses a substantial risk that a higher sentence will be imposed.

Bradley v. U.S., 410 U.S. 605, 93 S.Ct. 1151, 35 L.Ed.2d 528 (1973) Narcotic offenses committed under prior law are to be punished as provided under prior law, despite the fact that sentencing was subsequent to effective date of new law.

Illinois Supreme Court

People v. Clark, 2024 IL 127838 Defendant was convicted of two counts of aggravated battery arising out of a gang-related shooting and was sentenced to a total of 32 years of

imprisonment, consisting of two consecutive 16-year terms. He was 17 years old at the time of the shooting and was convicted on the theory that he acted as the lookout.

On appeal, defendant argued that the circuit court erred in sentencing him without considering the juvenile sentencing factors contained in 730 ILCS 5/5-4.5-105(a). The court agreed with defendant that the statute applied to him where he committed his offense prior to its effective date, but was sentenced after. But, the court concluded that the circuit court had adequately considered the statutory factors, even though the judge did not specifically reference the statute.

People v. Reyes, 2016 IL 119271 Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed mandatory minimum sentences totaling 97 years. The Illinois Supreme Court held that defendant's sentence was a *de facto* mandatory life sentence that was unconstitutional under **Miller v. Alabama**, 567 U.S. 470, 132 S.Ct. 2455 (2012).

The court vacated defendant's sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile.

People v. Gancarz, 228 Ill.2d 312, 888 N.E.2d 48 (2008) If the applicable sentencing provisions have been changed by an amendment which took effect after the offense was committed but before the sentencing hearing, defendant may elect to be sentenced under the law in effect at the time of sentencing. See also, **People v. Jackson**, 99 Ill.2d 476, 459 N.E.2d 1362 (1984); **People v. Hillenbrand**, 121 Ill.2d 537, 521 N.E.2d 900 (1988); **People v. West**, 142 Ill.App.3d 876, 492 N.E.2d 566 (1st Dist. 1986). There is no such right to elect where a new statute changes the substance of the existing offense instead of merely mitigating the punishment.

Where a defendant has the right to choose between sentencing provisions, due process requires that he be advised of that right. See **People v. James**, 46 Ill.2d 71, 263 N.E.2d 5 (1970) (the failure to admonish defendant of his right to elect sentencing under the law at the time of the offense, which provided for sentencing by the jury, denied due process); **People v. Strebin,** 209 Ill.App.3d 1078, 568 N.E.2d 420 (4th Dist. 1991) (because the trial court failed to advise defendant of his right to elect the sentencing law in effect at the time of the offense or sentencing, defendant's sentence of 24 months' periodic imprisonment (which was improper under an amendment to the statute that was made after defendant was sentenced) was improper; the issue was not waived for appeal). But see **People v. Gonzales**, 56 Ill.2d 453, 308 N.E.2d 587 (1974) (the trial judge's failure to admonish defendant concerning his right to be sentenced under the statute in effect at the time of the offense did not deny due process or equal protection; whether defendant would have benefitted under the prior law is merely speculative, and defendant's delay in filing a post-conviction petition prejudiced the possibility of a trial); **People v. Crooks**, 78 Ill.App.3d 711, 397 N.E.2d 561 (3d Dist. 1979) (defendant's election to be sentenced under the statute in effect at the time of the offense was not invalid because the record failed to show his counsel advised him about the effects of his election). See also, **People v. Peoples**, 71 Ill.App.3d 842, 390 N.E.2d 554 (3d Dist. 1979) (a trial judge is not required to advise defendant of the specific sentences he would impose under the alternative sentencing laws).

Here, the public act (Public Act 93–213), which removed parts of the reckless homicide statute and added and amended parts of the aggravated DUI statute, resulted in substantive

changes to the reckless homicide statute, not merely a mitigation of the sentence for reckless homicide. Therefore, defendant was not entitled to be sentenced under the reckless homicide statute as it existed at the time of his sentencing.

People v. Gersch, 135 Ill.2d 284, 553 N.E.2d 281 (1990) Where a sentencing statute or statutory amendment has been struck down as unconstitutional, that statute or statutory amendment is void *ab initio* and the previous sentencing statute or statutory provision applies to defendant. See also, **People v. Tellez-Vallencia**, 295 Ill.2d 122, 692 N.E.2d 407 (1998).

Roth v. Yackley, 77 Ill.2d 423, 396 N.E.2d 520 (1979) Where the legislature disagrees with the judicial interpretation of a statute, it may amend the statute to apply prospectively. But, any legislative attempt to apply such an amendment to events occurring before the effective date represents an improper attempt to annul or overrule a judicial decision.

People v. Grant, 71 Ill.2d 551, 377 N.E.2d 4 (1978) The provision of the Sentencing Act of 1977 under which a defendant sentenced under the Unified Code of Corrections before that date "shall not have the right to election [to be sentenced under the Unified Code or the new Sentencing Act] even though his case has not been finally adjudicated on appeal," was upheld.

Illinois Appellate Court

People v. Luna, 2025 IL App (2d) 240382 Defendant was charged with a murder and aggravated battery committed at age 15. The offense occurred in 2010, when the Juvenile Court Act automatically excluded 15-year-olds charged with murder, so defendant was convicted in adult court and sentenced to 61 years in prison. Defendant appealed, arguing his sentence was unconstitutional. The appellate court upheld his sentence. Defendant filed a petition for leave to appeal, during which time the Juvenile Court Act was amended such that a murder committed at age 15 was now adjudicated in juvenile court, though the State could petition for adult sentencing within 10 days of the judgment. 705 ILCS 5/5-130(1)(c)(ii).

The supreme court remanded the case to the appellate court to reconsider the sentencing issue in light of **People v. Buffer**. The appellate court did so, and determined that defendant's mandatory *de facto* life sentence was unconstitutional, vacated the sentence, and remanded for a new sentencing hearing.

On remand, defendant asked to be sentenced under the amended juvenile jurisdiction law. He argued he must be sentenced as a juvenile, because the State did not petition for adult sentencing under section 5-130(1)(c)(ii). The State conceded that the amendment might apply, but argued it should have the opportunity to file the transfer petition. The trial court rejected these arguments, finding that it was limited by the appellate court's mandate to impose a constitutional sentence, not litigate the applicability of the amended provisions to defendant's case. It imposed a 33-year term.

On appeal, defendant asked for remand for a hearing in compliance with section 5-130(1)(c)(ii). The appellate court agreed. While a trial court is bound by a mandate on remand, it is also well established that a mandate limits a court only to questions the reviewing court addressed and answered. If an issue arises on remand that was not decided on the merits in the appellate court, the trial court should rule on that issue. See **People v. Martinez**, 2018 IL App (1st) 132670-U. The sentencing court should have ruled on the defense motion for juvenile sentencing and allowed the State to petition for adult sentencing.

The appellate court then rejected the State's "stunning" argument that the amendments to the Juvenile Court Act were not "retroactive" under **People v. Hunter**, 2017 IL 121306. In **Hunter**, the amendments at issue also arose while the case was on appeal, but there, defendant offered no substantive reasons for remand other than the amendments themselves. Here, the case was remanded because the sentence was unconstitutional. Therefore there are "ongoing proceedings" to which the amendments may apply. See 5 ILCS 70/4. While **Hunter** also held that it would be "impractical" to apply amendments to the Juvenile Court Act to a defendant who was now over 21, it did so in the context of discretionary transfer, meaning a ruling in favor of defendant would result in an adult proceeding in juvenile court, which does not have jurisdiction over adults. In this case, the only question is whether a juvenile or adult sentence should apply, and the fact that defendant is an adult does not make either outcome impractical.

People v. Stevenson, 2023 IL App (3d) 220055 The right to elect to be sentenced under a new statute does not apply when the new statute takes effect after sentencing but before the timely filing of a motion to reconsider sentence. Section 4 of the Statute on Statutes allows for mitigating provisions of new laws to apply to "any judgment pronounced after the new law takes effect." Here, the judgment occurred when defendant was sentenced, before the new law went into effect. The sentencing court properly denied his request to be re-sentenced under a new, non-retroactive provision that had taken effect while his motion to reconsider sentence was pending. In so holding, the appellate court declined to follow **People v. Spears**, 2022 IL App (2d) 210583, and instead followed **People v. Foster**, 2022 IL App (3d) 210342-U.

People v. Brown, 2023 IL App (4th) 220400 2023 WL 2470983 In 2019, defendant was convicted of DWLR and sentenced to 9 years of imprisonment. The DWLR offense was a Class 2 felony because defendant's driver's license was revoked for a DUI violation and defendant had at least 14 prior DWLR violations. And, defendant was sentenced as a Class X offender pursuant to 730 ILCS 5/5-4.5-95(b), based on his having two prior Class 2 or greater felony convictions. Subsequently, in 2021, and while post-plea proceedings were pending in the trial court pursuant to an earlier appellate court remand, the sentencing statute was amended to require Class X sentencing only for Class 1 or 2 forcible felonies. Defendant's conviction would not have qualified under the amended statute. On appeal, defendant sought a remand for resentencing in light of the amendment.

The appellate court held that defendant was not entitled to resentencing due to the amendment of Section 5-4.5-95(b). The court concluded that not only did defendant not raise such a claim in post-plea proceedings in the circuit court, but he invited any error in not applying the amended version of the statute below because post-plea counsel had explicitly stated that the amendment was not retroactive.

The appellate court also rejected defendant's argument on the merits, holding that the amended version of Section 5-4.5-95(b) was not applicable to defendant's case regardless of counsel's failure to assert the issue. The appellate court cited **People v. Hunter**, 2017 IL 121306, in support of its conclusion that statutory amendments which mitigate punishment cannot be applied to defendants who were sentenced before the amendment took effect, regardless of whether their case remained pending in the trial court. In so holding, the court rejected defendant's argument that **Hunter** was distinguishable on the basis that the amendment there took effect while the defendants' cases were pending on appeal and not in the trial court.

People v. Spears, 2022 IL App (2d) 210583 Defendant was entitled to elect sentencing under amended statute, which narrowed the types of felonies eligible for Class X sentencing, and which took effect while his case was on remand for compliance with Rule 604(d).

The appellate court had vacated the original denial of defendant's motion to reconsider the sentence for noncompliance with Rule 604(d) and remanded the matter for the filing of a valid Rule 604(d) certificate and the opportunity to file a new motion to withdraw the guilty plea and/or reconsider the sentence. Where remand occurred on February 19, 2020, and the case remained pending in the trial court beyond July 1, 2021, the defendant was entitled to the provisions of section 5-4.5-95(b) of the Code which took effect on July 1, 2021. Unlike **People v. Hunter**, 2017 IL 121306, where the supreme court held a statute amended while a case was on direct appeal would not apply, here the case was pending in the trial court. The amended version of the statute should have applied, and the trial court erred in denying defendant's amended motion to reconsider the sentence on that ground.

People v. Delgado, 2022 IL App (2d) 210008 Defendant, through counsel, filed a post-conviction petition alleging that the trial court incorrectly applied a 20-year firearm enhancement to his sentence for attempt murder where, because defendant was a juvenile at the time of the offense, the imposition of the enhancement was discretionary rather than mandatory. Defendant's petition was summarily dismissed because post-conviction counsel failed to frame the issue as a claim of constitutional deprivation, failed to allege ineffective assistance of appellate counsel in order to avoid forfeiture, and failed to provide support for the claims in the petition.

Privately retained post-conviction counsel must provide a reasonable level of assistance at the first stage of post-conviction proceedings. Here, the appellate court agreed with defendant that his counsel rendered unreasonable assistance by failing to allege ineffective assistance of appellate counsel where the sentencing claim could have been raised on direct appeal. And, a claim of ineffective assistance of appellate counsel is a claim of constitutional deprivation properly brought in a post-conviction petition.

Here, it was arguable that appellate counsel rendered deficient performance by not challenging defendant's sentencing where defendant should have had the right to elect sentencing under 730 ILCS 5/5-4.5-105(b), which was enacted after he committed the offense but prior to his sentencing, and which allows the sentencing court to decline to impose an otherwise mandatory firearm enhancement. And, it was arguable that defendant was prejudiced by appellate counsel's failure where this issue appears to have merit which, if ultimately established, would require a new sentencing hearing. Thus, post-conviction counsel performed unreasonably by failing to frame defendant's claim as one of ineffective assistance of appellate counsel, and the appellate court remanded the matter for further post-conviction proceedings.

People v. Mason, 2020 IL App (1st) 172124 The indictment alleged that defendant committed a series of sexual assaults beginning in May, 2005, through March, 2007. An amendment to the MSR statute, effective July 11, 2015, changed the term applicable to defendant's offense from three years, to three-years-to-life. Defendant received the three-to-life term. Defendant alleged that this violated **Apprendi**, because the State did not prove that he committed any of the acts after July 11, 2015.

When a defendant is charged in an indictment with a date range, and a sentencing statute is amended on a date within that range, the amended version applies at sentencing

if the State proves beyond a reasonable doubt that some acts occurred after the effective date. If the indictment alleges a continuous course of conduct, courts will presume that the State proved conduct occurred beyond the date of amendment. But if the indictment alleges discrete acts occurring over a date range, the evidence must prove that at least one of the acts occurred after the date of amendment.

Here, the sentence could stand because the trial court's guilty finding, coupled with its imposition of the amended statute, implies that it found some acts occurred after the effective date, as the trial court is presumed to know and follow the law. Furthermore, the evidence supported an inference that the conduct occurred after July 11, 2015 based on the complainant's description of her age and the number of encounters with defendant.

People v. Balle, 379 Ill.App.3d 146, 882 N.E.2d 1275 (1st Dist. 2008) The trial court's failure to advise defendant of his right to choose under which version of the Habitual Criminal Act he wanted to be sentenced constituted harmless error.

People v. Rea, 80 Ill.App.3d 77, 399 N.E.2d 302 (5th Dist. 1979) After defendant's conviction was reversed on direct appeal, defendant, at his second trial, was entitled to elect to be sentenced under the pre-1978 or post-1978 sentencing law. Compare, **People v. Cretton**, 86 Ill.App.3d 182, 407 N.E.2d 1025 (5th Dist. 1980) (no right to election where conviction affirmed on appeal but sentence vacated). See also, **People v. Lowther**, 85 Ill.App.3d 735, 407 N.E.2d 1038 (2d Dist. 1980).

People v. Perkins, 67 Ill.App.3d 911, 385 N.E.2d 184 (4th Dist. 1979) Where defendant was placed on probation before February 1, 1978, but his probation was revoked after that date, he was not entitled to elect to be sentenced under the sentencing statute effective on February 1, 1978. See also, **People v. Denier**, 76 Ill.App.3d 214, 394 N.E.2d 1073 (2d Dist. 1979).

People v. Johnson, 133 Ill.App.2d 818, 263 N.E.2d 901 (4th Dist. 1970) Statutory amendment that increases punishment after offense is *ex post facto* law. Where a statutory sentencing amendment can result to the disadvantage of a previously sentenced defendant, its application to defendant would violate the proscription against *ex post facto* laws.

§44-3
Sentencing Hearing

§44-3(a)
General Considerations

Illinois Supreme Court

People v. Terrell, 132 Ill.2d 178, 547 N.E.2d 145 (1989) A sentencing judge is presumed to have considered only proper evidence unless the contrary is affirmatively shown on the record. See also, **People v. Phillips**, 127 Ill.2d 499, 538 N.E.2d 500 (1989); **People v. Beyah**, 102 Ill.App.3d 434, 430 N.E.2d 83 (1st Dist. 1981); **People v. Sawyer**, 139 Ill.App.3d 383, 487 N.E.2d 662 (3d Dist. 1985) (a judge is presumed to have considered mitigating evidence absent some indication to the contrary).

People v. LaRocco, 123 Ill.App.2d 123, 260 N.E.2d 52 (1st Dist. 1970) The right to a sentencing hearing entitles a defendant to a reasonable time to prepare for the hearing and

to present mitigating evidence as to his moral character, life, family, occupation, and criminal record.

People v. Ramirez, 98 Ill.2d 439, 457 N.E.2d 31 (1983) The Fifth Amendment privilege against self-incrimination applies at sentencing hearings. See also, **People v. Iseminger**, 202 Ill.App.3d 581, 560 N.E.2d 445 (4th Dist. 1990) (a trial judge may properly make inquiries of a defendant at a sentencing hearing, regardless whether he testifies or exercises his right of allocation; here, the judge should have held a hearing on defendant's Fifth Amendment claim, which he made after being held in direct civil contempt for refusing to answer the judge's questions); **People v. Moman**, 201 Ill.App.3d 293, 558 N.E.2d 1231 (1st Dist. 1990); **People v. Anderson**, 284 Ill.App.3d 708, 672 N.E.2d 1314 (4th Dist. 1996) ("defendant has no right to refuse to answer the trial court's questions at the sentencing hearing except - perhaps - when fifth amendment concerns are legitimately implicated").

People v. Jones, 94 Ill.2d 275, 447 N.E.2d 161 (1982) A defendant does not have the right to cross-examine all sources of information presented at sentencing.

People v. Hobbs, 86 Ill.2d 242, 427 N.E.2d 558 (1981) At the sentencing hearing, the trial judge did not specifically offer defendant an opportunity to make a statement prior to imposition of sentence. Because defendant did not request an opportunity to speak and was represented by counsel who spoke at length on his behalf, "formal, but not reversible" error was committed.

Illinois Appellate Court

People v. Goods, 2016 IL App (1st) 140511 The federal constitution guarantees a public trial as a restraint on the possible abuse of judicial power. But the presumption of openness may be overcome where closure is essential to preserve higher values.

At his sentencing hearing, defendant asked to present certain mitigating evidence regarding his cooperation with the State *in camera* since he feared for his safety if he were to be labeled a "snitch." The trial court denied the request, stating that it could not hear such evidence *in camera* unless there was a statute permitting it.

In a case of first impression in Illinois. the Appellate Court held that the trial court erred in not allowing defendant to present his mitigation *in camera*. The court held that a defendant should be allowed to present mitigation *in camera* when he shows good cause for doing so. Here defendant's concern for his safety showed good cause. The trial court was essentially asking defendant to choose between his safety and his ability to present mitigation. Defendant was thus denied a fair hearing.

People v. Burnett, 385 Ill.App.3d 610, 897 N.E.2d 827 (1st Dist. 2008) Under 730 ILCS 5/5-3-2(b) and 730 5/5-3-3, the trial court may order physical and mental examinations before sentencing if the judge desires more information than is available in the presentence report. The failure to order such examinations is reviewed for abuse of discretion.

The trial court did not abuse its discretion by failing to order physical or mental examinations where defendant's hospitalization in a mental health facility occurred more than 20 years earlier, the presentence report adequately recounted defendant's history of drug abuse and present physical condition, and the minor physical problems indicated by the report did not demonstrate any special need for further investigation. Because the record did not indicate that a complete medical and physical examination would have discovered facts

not in the presentence report, additional examinations were unnecessary.

People v. Miller, 58 Ill.App.3d 1019, 374 N.E.2d 1118 (4th Dist. 1978) Where defendant was convicted of separate offenses before separate judges, it was not improper for the judges to hold a joint sentencing hearing with defendant's consent.

§44-3(b)
Admission of Evidence (Hearsay, Polygraph, Suppressed Evidence)

Illinois Supreme Court
People v. Foster, 119 Ill.2d 69, 518 N.E.2d 82 (1987) Although double hearsay is not necessarily so unreliable that it should be excluded from sentencing hearings, "where this court has approved the admission of double hearsay, at least some parts of the double hearsay have been corroborated by other evidence." See also, **People v. Tigner**, 194 Ill.App.3d 600, 551 N.E.2d 304 (1st Dist. 1990) (providing that hearsay is not *per se* inadmissible at a sentencing hearing and that double hearsay should be corroborated at least in part by other evidence); **People v. Spears,** 221 Ill.App.3d 430, 582 N.E.2d 227 (2d Dist. 1991) (the trial judge committed prejudicial error by relying on double and triple hearsay allegations in the presentence report; there was a defense objection, and no reliable evidence was introduced to support the allegations).

People v. Szabo, 94 Ill.2d 327, 447 N.E.2d 193 (1983) Polygraph evidence may not be used at sentencing. See also, **People v. Ackerman**, 132 Ill.App.2d 251, 269 N.E.2d 737 (2d Dist. 1971); **People v. Lamkin**, 9 Ill.App.3d 771, 291 N.E.2d 512 (5th Dist. 1972).

People v. Crews, 38 Ill.2d 331, 231 N.E.2d 451 (1967) A sentencing court is not bound by the usual rules of evidence, but may search anywhere within reasonable bounds for facts which tend to aggravate or mitigate the offense. Before relying on such information, the court must determine its accuracy, and it must shield its mind from what might be the prejudicial effect of unreliable or improper evidence. See also, **People v. Adkins**, 41 Ill.2d 297, 242 N.E.2d 258 (1968); **People v. Meeks**, 81 Ill.2d 524, 411 N.E.2d 9 (1980); **People v. Jett**, 294 Ill.App.3d 822, 691 N.E.2d 145 (5th Dist. 1998) (the ordinary rules of evidence are relaxed during a sentencing hearing; the only requirement for admission is that the trial court determine, in its sound discretion, that the evidence is reliable and relevant).

Illinois Appellate Court
People v. Dillard, 2025 IL App (4th) 230739 The sentencing court did not abuse its discretion by considering defendant's school disciplinary records during sentencing, or by imposing a 31-year sentence for aggravated vehicular high jacking with a firearm enhancement.

Regarding the school records, the majority found the defendant affirmatively waived the issue because defense counsel stated "no objection" and defendant signed for their release. A majority of the court went on to find that, contrary to the dissent in **People v. Ferguson**, 2021 IL App (3d) 200041, the consideration of school disciplinary records is not improper. A concurring justice would have simply applied waiver, expressing reservations about the use of school disciplinary records which, in **Ferguson**, was justified by pointing to 730 ILCS 5-5-3.2(a)(3) (allowing sentencing court to consider "prior delinquency"). The concurring justice found this to be a "stretch."

The appellate court also rejected the argument that a 31-year sentence imposed on a 20-year-old defendant constituted an abuse of discretion given defendant's childhood trauma, the fact that his brain was likely not fully developed, and the fact that much of his "school records can be explained, in part, because he attended school in Peoria School District 150 as a black student." He supported these latter two points with school board statistics and law review articles showing a pattern of excess disciplinary issues for black students, the impact of trauma on behavior, and brain underdevelopment in adolescents. The appellate court held that because these secondary sources were not before the trial court, it would "emphatically reject any consideration of the materials" cited for the first time on appeal. It went on to find the sentence well within the 21-45 year range and therefore not an abuse of discretion.

The court did, however, reduce defendant's MSR term from three years to 18 months, because under the relevant statute, three years of MSR could be given only if the crime resulted in great bodily harm.

People v. Brock, 2022 IL App (3d) 200430 The sentencing judge did not err in considering "incident reports" attached to defendant's PSI, even though no witness testified to their content at sentencing. Ordinary rules of evidence are relaxed at sentencing. Evidence may be considered so long as it is relevant and reliable. There was no question that the incident reports were relevant to sentencing, as they reflected on defendant's behavior while incarcerated. And, the fact that the PSI is prepared by "a neutral third party," specifically the probation department, is *prima facie* evidence of the reliability of information contained therein. Finally, defendant offered no objection or correction to the PSI at the time it was presented to the court, thereby waiving any claims of inaccuracy.

The appellate court also rejected defendant's argument that his aggregate 60-year sentence for two counts of murder violated the proportionate penalties clause of the Illinois constitution. The sentencing judge complied with the requirements of **Miller** and 730 ILCS 5/5-4.5-105(a) in fashioning that sentence, considering both defendant's youth and its attendant characteristics. The court, in its discretion, declined to impose the 25-year-to-life firearm enhancements at sentencing. And, at a hearing on defendant's motion to reconsider, the judge stated that the sentence would have been higher were it not for defendant's youth. Under the facts here, defendant's sentence was not so wholly disproportionate to the offense as to shock the moral sense of the community.

People v. Maron, 2019 IL App (2d) 170268 The trial court had discretion to consider defendant's illegally obtained confession at his sentencing hearing. Defendant pled guilty to three offenses. While he was in custody for these offenses, and represented by counsel, detectives asked him about a fourth uncharged offense, then continued to elicit statements concerning the charged offenses. Counsel was not present and not notified.

At sentencing, the State conceded that the statements would not have been admissible had the case proceeded to trial. Nevertheless, the State argued and the sentencing court agreed that the statements could be used at sentencing. The Appellate Court affirmed. It rejected defendant's contention that a statement taken in violation of the Sixth Amendment must always be suppressed at a sentencing hearing, and it found that the trial court properly applied the exclusionary-rule balancing test applicable to the use of such statements at a sentencing hearing. Given the lax evidentiary standards at sentencing, the overriding goal of crafting an appropriate sentence with as much relevant and reliable information as possible, and the minimal deterrent value in excluding the video at sentencing, the trial court did not abuse its discretion in admitting the statements.

People v. Evans, 2018 IL App (4th) 160686 It is not improper for a police officer to testify to a defendant's other criminal conduct at sentencing. While such testimony may be hearsay, it is admissible when it involves the officer's investigation into an offense.

People v. Williams, 2018 IL App (4th) 150759 The sentencing court improperly considered a written report of defendant's fitness examination, in violation of section 104-14 of the Code of Criminal Procedure. Section 104-14 makes such reports admissible only when defendant raises an insanity or intoxication defense. Here, defendant committed disorderly conduct for pulling a fire alarm and, while he requested a fitness examination before trial, he did not raise an insanity or intoxication defense. He received a 68-month prison sentence, four months below the maximum extended term. In imposing the sentence, the court explicitly referenced findings from the fitness report before concluding that defendant required extended periods of incarceration. This denial of the right to a fair sentencing hearing constituted second-prong plain error and required a new sentencing hearing.

People v. Raney, 2014 IL App (4th) 130551 While hearsay evidence is permitted at a sentencing hearing, it should be presented by live testimony rather than by allegations in the pre-sentence report.

People v. Rose, 384 Ill.App.3d 937, 894 N.E.2d 156 (2d Dist. 2008) The trial judge did not err by considering, at defendant's sentencing, evidence which had been suppressed in an unrelated case several years earlier. Evidence which is illegally seized is not inherently unreliable, and there was no reason to believe that the evidence was unreliable in this case. Thus, the evidence was admissible.

People v. Jett, 294 Ill.App.3d 822, 691 N.E.2d 145 (5th Dist. 1998) Hearsay evidence is not *per se* inadmissible - the fact that evidence is hearsay affects only weight and not admissibility, and hearsay evidence may be found relevant and reliable due to corroborating evidence. The trial court properly admitted the non-testifying co-defendant's statement where there was sufficient *indicia* of reliability to overcome the presumption that a co-defendant's confession is unreliable.

§44-3(c)
Victim-Impact Statements

United States Supreme Court
Payne v. Tennessee, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991) The Eighth Amendment does not prohibit a capital sentencing jury from considering victim impact evidence relating to the victim's personal characteristics and the emotional impact of the murder on the victim's family, or precluding a prosecutor from arguing such evidence at a capital sentencing hearing. See also, **People v. Felella**, 131 Ill.2d 525, 546 N.E.2d 492 (1989) (victim impact statements may be used at non-capital sentencing hearings).

Illinois Supreme Court
People v. Richardson, 196 Ill.2d 225, 751 N.E.2d 1104 (2001) Considering multiple victim impact statements during sentencing violates the Rights of Crime Victims and Witnesses Act. But, defendant was not entitled to relief. Article I, §8.1 of the Illinois Constitution, which provides that nothing in the "Crime Victim's Rights" amendment "or any law enacted under

[that amendment] shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case," limits the general grant of appellate jurisdiction in Article VI, §6 of the Illinois Constitution and removes victim's rights "from the spectrum of issues which a criminal defendant may appeal."

The Constitution's prohibition of appellate relief does not relieve the trial court of responsibility to exercise appropriate discretion at sentencing, however. The Crime Victim's Rights Act does not indicate the weight to be given to such evidence, and due process may be violated where victim impact evidence is so prejudicial as to render the trial fundamentally unfair. See also, **People v. Benford**, 295 Ill.App.3d 695, 692 N.E.2d 1285 (1st Dist. 1998) (any error resulting from the consideration of more than one victim impact statement "would have availed defendant nothing"; the Act was "intended as a shield to protect the rights of victims and witnesses," not "as a sword by criminal defendants seeking appellate relief").

People v. Felella, 131 Ill.2d 525, 546 N.E.2d 492 (1989) The statutory provision providing that the sentencing court "shall consider any statements made by the victim," does not violate the separation of powers doctrine. See also, **People v. Young**, 187 Ill.App.3d 977, 543 N.E.2d 986 (1st Dist. 1989).

Illinois Appellate Court

People v. Larson, 2022 IL App (3d) 190482 A new sentencing hearing was required where the sentencing court considered a factor inherent in the offense, and the hearing included inappropriate victim impact statements.

Defendant collided with another car while driving intoxicated, killing the other car's passenger and harming the driver. She was convicted of aggravated DUI for each victim, though the court merged the counts and sentenced her only for the aggravated DUI resulting in death.

During sentencing, the State introduced 16 victim impact statements from the victim and various family members of the deceased. Five of these statements asked the court to impose jail time, including some that asked for a maximum sentence. The sentencing court found several factors in mitigation. In aggravation, the court found only that defendant caused serious harm. The court sentenced defendant to six years in prison.

The Appellate Court held that the causation of serious harm was a fact inherent in the offense. Aggravated DUI as charged here required the death of a victim. Because the death is implicit in the offense, it may not be considered as a factor in aggravation. Although defendant did cause serious harm to the second victim, the record showed that this was not the harm referenced by the court in aggravation. The entire focus of the sentencing hearing was the victim's death. The Appellate Court remanded for a new sentencing hearing, finding plain error under both prongs.

The Appellate Court also agreed that the sentencing court erred in considering all 16 of the victim impact statements. Under the Rights of Crime Victims and Witnesses Act, where a defendant is convicted of a motor vehicle offense resulting in great bodily harm or death, a representative of the deceased person has a right to address the court regarding the impact of the offense. The court has discretion to allow multiple representatives to present an oral impact statement, but a "representative" is defined as an immediate family member. Here, the court erred where 11 of the 16 witnesses did not meet the definition of "representative," those who asked for jail time went beyond the scope of a permissible statements, and the court did not exercise discretion. On remand, the sentencing court should bar any victim statements by non-representatives, exercise discretion with respect to any

additional victim impact statements beyond those specifically provided as a right under the Act, and limit any statements made to the impact of the offense upon the author of the statement.

People v. Raney, 2014 IL App (4th) 130551 Where defendant was sentenced for aggravated battery, battery, unlawful violation of an order of protection and criminal trespass to a residence, the trial court erred by considering a victim impact statement by the son of defendant's ex-wife. The statement was contained in the pre-sentence report and concerned misconduct other than that for which defendant was being sentenced. Had the son been called as a witness at the sentencing hearing, his testimony concerning uncharged crimes could have been considered as reflecting on defendant's character. However, it was error for the trial court to consider a statement that was merely included in the pre-sentence report.

The error did not constitute plain error. Defendant's ex-wife read an extensive victim impact statement that covered many of the same areas and was subject to questioning by defense counsel. The pre-sentence report showed that defendant had eleven convictions over a 20-year period, and that one of the prior convictions involved the same victim as the charge in this case. The State did not rely on the son's statement when making its argument at sentencing, and the record showed that the trial judge would have imposed the same sentence had the son's statement not been considered.

People v. Ellzey, 173 Ill.App.3d 509, 527 N.E.2d 1058 (3d Dist. 1988) Victim may properly testify at the sentencing hearing even though no written impact statement was prepared.

People v. Wallace, 170 Ill.App.3d 329, 524 N.E.2d 677 (2d Dist. 1988) Victim's written statement may be introduced at sentencing, even where the victim is not present in court.

§44-3(d)
Requirement of Presentence Report

Illinois Supreme Court
People v. Sophanavong, 2020 IL 124337 Defendant forfeited his claim of noncompliance with section 5-3-1 by failing to raise the issue in his motion to withdraw the guilty plea. Under Rule 604(d), issues not raised in a motion to withdraw the plea may not be raised on appeal. While previous Supreme Court decisions held that section 5-3-1 imposes a requirement on the circuit court which may not be waived by a party, the majority here distinguished those cases by noting that waiver is different than forfeiture. The court held that the defendant's failure to raise the section 5-3-1 issue in a post-plea motion, in violation of Rule 604(d), went above and beyond the doctrine of waiver. It further held that defendant's agreement to a negotiated plea waived all non-jurisdictional errors, including the violation of section 5-3-1.

The State did not raise forfeiture in the Appellate Court. Nevertheless, the Supreme Court majority entertained and accepted the State's forfeiture argument, noting that forfeiture is a limitation on the parties, not the court.

Justice Burke, specially concurring, would have found that section 5-3-1 is not subject to forfeiture, being a requirement imposed on the court and not the parties, but would have found the error harmless in a case where the parties agreed on a sentence and the judge was apprised of defendant's criminal history.

In dissent, Justice Karmeier noted the absurdity of the majority's holding that the legislature's mandatory requirement could somehow be ignored because a party unintentionally neglected to invoke the requirement, particularly where prior cases held that parties had no ability to intentionally waive that requirement.

In a second dissent, Justice Neville marveled that the majority was willing to overlook forfeiture in order to address the State's forfeiture argument, but did not even consider overlooking forfeiture to review the defendant's section 5-3-1 argument. This disparate treatment of the parties indicates that the majority put its thumb on the scale of justice in favor of the State. Justice Neville further suggested that a sentence, particularly a *de facto* life sentence, imposed with out a PSI, violates Article I, Section 11 of the Illinois Constitution.

People v. Young, 124 Ill.2d 147, 529 N.E.2d 497 (1988) On a remand for resentencing, the trial judge is not required to order a supplemental presentence report. See also, **People v. Brown**, 198 Ill.App.3d 156, 555 N.E.2d 794 (4th Dist. 1990).

People v. Harris, 105 Ill.2d 290, 473 N.E.2d 1291 (1985) A presentence report is required before a defendant can be sentenced on a felony conviction following revocation of probation. See also, **People v. York,** 230 Ill.App.3d 874, 596 N.E.2d 187 (3d Dist. 1992) (unless there is an agreed sentence, a presentence report must be considered prior to sentencing on a felony conviction).

People v. Youngbey, 82 Ill.2d 556, 413 N.E.2d 416 (1980) Statutory provision requiring that a presentence investigation and written report is not an unconstitutional encroachment by the legislature upon either the judicial or executive powers.

The presentence investigation and report requirement is mandatory and cannot be waived. See also, **People v. Childress**, 306 Ill.App.3d 755, 715 N.E.2d 1194 (4th Dist. 1999) (because a criminal defendant is not allowed to waive preparation of a presentence report, he cannot forfeit a presentence report through some sort of procedural default).

People v. Meeks, 81 Ill.2d 524, 411 N.E.2d 9 (1980) The presentence report did not comply with the statutory requirements because it failed to include information relating to special resources available in the community to assist defendant's rehabilitation. But, defendant failed to preserve the issue for review, for defense counsel, who inspected the report and corrected certain errors, did not alert the trial court of the deficiency. Thus, the "requirement that the trial judge consider the presentence report was complied with in the present case; any objections to the sufficiency of the report must first be presented to the trial court."

Illinois Appellate Court

People v. Moran, 2018 IL App (3d) 150754 Defendant entered an open plea, failed to appear at his sentencing hearing, and was sentenced *in absentia*. When he was arrested eight years later, defendant filed a motion to vacate or reconsider sentence pursuant to 725 ILCS 5/115-4.1(e). Because the trial court had imposed sentence without receiving a written presentence investigation report, it violated 730 ILCS 5/5-3-1. The Appellate Court vacated defendant's sentence and remanded for new sentencing proceedings with the trial court to receive a properly prepared PSI.

People v. Sophanavong, 2018 IL App (3d) 170450 In order to waive preparation of a presentence investigation report as part of a fully negotiated guilty plea, the court must be

informed of defendant's criminal history, including the sentences imposed on any prior convictions, prior to accepting the negotiated sentence. Where the court was told of defendant's prior convictions, but not the sentences that had been imposed, the proceedings failed to strictly comply with 730 ILCS 5/5-3-1. Defendant's sentence was vacated and the matter was remanded for a new sentencing hearing, at which the trial court, upon being informed of defendant's prior dispositions, could either accept the agreed upon sentence or reject it and allow defendant to withdraw his plea.

People v. Woods, 2018 IL App (1st) 153323 Defendant's compelled participation in preparation of his presentence investigation report (PSI) was improper. Defendant initially "respectfully declined to answer any questions" during preparation of the PSI, and the trial court then "ordered [defendant] to speak with [the investigator]" to complete the PSI. Defendant was prejudiced by this Fifth Amendment violation where the trial court relied on defendant's compelled statements in the PSI as aggravating evidence at sentencing.

On appeal, the State did not challenge defendant's assertion that his compelled participation violated the Fifth Amendment, arguing only that the error was forfeited. Although defendant did not preserve the error in the trial court, the appellate court found second-prong plain error. The appellate court also found that the forfeiture rule should be relaxed under the **Sprinkle** doctrine because it was the court's conduct that caused the error. The trial court's error deprived defendant of a fair sentencing hearing, and the matter was reversed and remanded for resentencing.

People v. Evans, 273 Ill.App.3d 252, 651 N.E.2d 1143 (5th Dist. 1994) Prosecutor's recitation of defendant's felony record was not a finding of prior criminal history so as to obviate need for written presentence report where statement did not reveal pending and misdemeanor charges; because trial court might not have accepted plea agreement had defendant's full criminal history been known, the cause was remanded for resentencing.

People v. Stuckey, 231 Ill.App.3d 550, 596 N.E.2d 646 (1st Dist. 1992) Defendant's sentence was vacated and the cause was remanded for a new sentencing hearing due to the omission of defendant's adult criminal history from the presentence investigation report.

People v. York, 230 Ill.App.3d 874, 596 N.E.2d 187 (3d Dist. 1992) Defendant was entitled to a new sentencing hearing where the trial judge failed to order a presentence investigation and, at the judge's request, both parties agreed to waive the report. That the trial judge may have been familiar with defendant from sentencing him on another case was insignificant where the prior case was a year before the instant one and the judge did not explicitly consider the old report before imposing sentence.

People v. Andrus, 210 Ill.App.3d 878, 568 N.E.2d 1388 (5th Dist. 1991) A trial judge may not order that the presentence report contain less than the matters statutorily required. Thus, the judge erred by ordering that the presentence report be limited exclusively to defendant's criminal history.

People v. Torres, 146 Ill.App.3d 250, 496 N.E.2d 1060 (1st Dist. 1986) The trial judge properly sentenced defendant based upon a presentence report that had been prepared six weeks earlier for another sentencing hearing. Defense counsel did not object to the timeliness of the earlier report, and stated that there was no need for an updated one. See also, **People**

v. Stinson, 200 Ill.App.3d 223, 558 N.E.2d 642 (4th Dist. 1990) (presentence report filed four months earlier was expressly adopted by defendant); **People v. Burba**, 134 Ill.App.3d 228, 479 N.E.2d 936 (1st Dist. 1985) (trial judge did not err by relying on a 13-month-old presentence report without, *sua sponte*, ordering a more timely report; defendant forfeited this issue by failing to object to the timeliness of the report).

People v. Lynch, 122 Ill.App.3d 121, 460 N.E.2d 817 (1st Dist. 1984) A presentence report is required when a defendant is tried *in absentia*. See also, **People v. Fortune,** 234 Ill.App.3d 531, 600 N.E.2d 501 (2d Dist. 1992) (defendant was tried *in absentia*; most of the deficiencies in defendant's presentence report were caused by defendant's willful absence).

People v. Hemphill, 62 Ill.App.3d 977, 379 N.E.2d 1284 (1st Dist. 1978) Defendant's sentences were vacated and the cause remanded for resentencing because the presentence report was not part of the record and available to the appellate court. Also, the report had not been made available to the defense three days prior to the sentencing hearing, as required, and there was no evidence that defendant waived this requirement. See also, **People v. Spurlark**, 67 Ill.App.3d 186, 384 N.E.2d 767 (1st Dist. 1978) (State's improper failure to tender the presentence report to defendant three days before sentencing was not prejudicial).

People v. Cole, 23 Ill.App.3d 620, 321 N.E.2d 71 (3d Dist. 1974) Presentence reports necessarily contain hearsay and other normally inadmissible evidence.

§44-3(e)
Sentencing Hearing Following Guilty Plea

Illinois Supreme Court
People v. Easley, 119 Ill.2d 535, 519 N.E.2d 914 (1988) Statutory provision requiring that the judge who presided at the trial or guilty plea "shall impose the sentence unless he is no longer sitting as a judge in that court" was not violated where the same judge who presided at defendant's guilty plea did not sentence defendant after his probation was revoked. The statutory language refers to the particular division of the particular county in which the trial was held. Because the judge presiding at defendant's trial was no longer sitting in the Clay County court when the post-probation revocation sentencing hearing occurred, he was not required to conduct the sentencing hearing.

People v. Barto, 63 Ill.2d 17, 344 N.E.2d 433 (1976) When defendant enters a negotiated plea and the trial judge concurs in the recommended disposition, no formal sentencing hearing is required. See also, **People v. Cooper**, 33 Ill.App.3d 367, 342 N.E.2d 413 (5th Dist. 1975). But see, **People v. Bradford**, 1 Ill.App.3d 38, 272 N.E.2d 258 (4th Dist. 1971) (as a minimum requirement for sentencing following a guilty plea, the trial court had the duty to obtain information concerning the commission of the offense and background of defendant, despite the fact that both the prosecution and defense waived the right to present evidence in aggravation and mitigation).

Illinois Appellate Court
People v. Sophanavong, 2018 IL App (3d) 170450 In order to waive preparation of a presentence investigation report as part of a fully negotiated guilty plea, the court must be

informed of defendant's criminal history, including the sentences imposed on any prior convictions, prior to accepting the negotiated sentence. Where the court was told of defendant's prior convictions, but not the sentences that had been imposed, the proceedings failed to strictly comply with 730 ILCS 5/5-3-1. Defendant's sentence was vacated and the matter was remanded for a new sentencing hearing, at which the trial court, upon being informed of defendant's prior dispositions, could either accept the agreed upon sentence or reject it and allow defendant to withdraw his plea.

People v. Gibson, 106 Ill.App.3d 912, 436 N.E.2d 732 (4th Dist. 1982) Where defendant pleaded guilty as part of negotiated plea agreement, and agreed to waive a sentencing hearing, the trial court could properly order restitution.

§44-4
Sentencing Factors – Proper and Improper

§44-4(a)
Generally

Illinois Supreme Court
People v. Heider, 231 Ill.2d 1, 896 N.E.2d 239 (2008) A sentence based on an improper factor will be affirmed if the reviewing court can determine from the record that the weight placed on the improper factor was so insignificant that it did not lead to a greater sentence. Resentencing was required here. The court concluded that defendant's perceived future dangerousness was the primary aggravating factor in the trial court's decision to impose a 10-year-sentence, and that resentencing was therefore required. See also, **People v. Bolyard**, 61 Ill.2d 583, 338 N.E.2d 168 (1975) (where the record shows that the trial judge relied upon an improper factor in imposing sentence, defendant is entitled to a new hearing to determine his sentence based upon the consideration of proper factors); **People v. Kopczick**, 312 Ill.App.3d 843, 728 N.E.2d 107 (3d Dist. 2000) (a trial judge's reliance on an improper aggravating factor impinges upon the fundamental right to liberty, and therefore constitutes plain error; the trial court did not act improperly by considering that defendant was a police officer and was obligated to prevent criminal offenses); **People v. Dowding**, 388 Ill.App.3d 936, 904 N.E.2d 1022 (2d Dist. 2009) (in determining whether the weight placed on the improper factor was so insignificant it did not lead to a greater sentence, the reviewing court should consider whether the trial court made any dismissive or emphatic comments concerning the improper factor and whether the sentence received was less than the maximum authorized; because it was unclear how much weight the trial court placed on the improper factor and the sentence was just four years short of the maximum, it could not be said that only insignificant weight was placed on the improper factor).

People v. Shatner, 174 Ill.2d 134, 673 N.E.2d 258 (1996) No error occurs where the trial court considers as aggravation evidence that was presented as mitigation.

People v. Morgan, 59 Ill.2d 276, 319 N.E.2d 764 (1974) The sentencing judge may consider the seriousness of the crime, the stimuli that motivated defendant's conduct, and defendant's general moral character, mentality, habits, social environments, abnormal or subnormal tendencies, age, and natural inclination or aversion to commit crime. See also, **People v. Sowinski**, 148 Ill.App.3d 231, 498 N.E.2d 650 (1st Dist. 1986) (in addition to the above

factors, a penitent attitude or its absence may be considered).

Illinois Appellate Court

People v. Evans, 2026 IL App (1st) 241368 Defendant was convicted of attempt first degree murder and aggravated criminal sexual assault committed at age 17, and sentenced to an aggregate 90 years in prison. Defendant ultimately filed a post-conviction petition citing **Miller v. Alabama**, 567 U.S. 460 (2012), and **People v. Buffer**, 2019 IL 122327. After dismissal, the appellate ordered defendant resentenced in accordance with changes in juvenile sentencing law. At the 2024 resentencing, the trial court reimposed the same 90-year sentence.

By the time of resentencing, 730 ILCS 5/5-4.5-105(a) required 12 statutory mitigating factors that the court must consider when sentencing juveniles. The statute originally required nine factors, but was amended in 2024, adding three factors (factors 9, 10, and 11) to the previous nine-factor version.

At re-sentencing, the State argued that defendant's parole eligibility left him with no viable claim under **Miller**, and cited the circumstances of the offense, and a poor disciplinary record in prison as reasons to uphold the sentence. Defendant relied on the 12 statutory mitigating factors, noting, in part, his involvement in the child welfare system, past mental health evaluations, his alcoholic and abusive mother, who lost custody of him at age 9, and expressions of remorse.

In re-imposing the 90-year term, the sentencing court stated that it considered the record, all aggravating and mitigating factors, and the fact that defendant maintains a meaningful opportunity for release via parole. However, when reading through the applicable mitigating factors, the court referenced only the original nine. Counsel did not object.

On appeal, defendant argued the sentencing court committed plain error by relying on the prior version of the statute and thereby ignoring three of the 12 factors. The State agreed the court used the wrong version, but argued no plain error occurred because the court "implicitly" considered the missing factors (involvement in the child welfare system, involvement in the community, and outcome of any mental health evaluation).

The appellate court found plain error. While the sentencing court considered upbringing and family background as part of the third factor, factor nine concerns involvement in the child welfare system specifically, a distinct environment outside the family context. Folding this factor into another factor would render the new language superfluous. This constituted a material omission here, where defendant's sentencing memo discussed his involvement in the child welfare system. The sentencing court's omissions also violated section 5-4.5-105(b)'s requirement that the court "specify on the record its consideration of the factors under subsection (a)."

Additionally, the court misapplied several factors it did address. First, it equated planning and a lack of a psychiatric condition with lack of impetuosity and maturity. But "impetuosity" and "maturity" in juvenile sentencing refer to juveniles' tendency to prioritize short-term rewards over longer-term risks, and the fact that adolescent brains are not yet fully mature. The absence of a formal diagnosis did not relieve the court of its obligation to evaluate evidence bearing on defendant's developmental maturity and decision-making capacity. Moreover, planning is addressed separately under factor six, establishing that impetuosity is a distinct consideration.

The sentencing court also focused on defendant's disciplinary infractions from his early years in custody without explaining how it evaluated his subsequent two decades of progress, including obtaining his GED, taking college courses, positive response to therapy,

and working his way from kitchen staff to lawn care. These facts went toward factor ten on communal involvement and factor four on rehabilitation, a key component of **Miller's** central holding that children who commit even heinous crimes are capable of change.

The cumulative effect of these errors rendered the hearing an unreliable method for evaluating mitigating and aggravating evidence. By focusing on defendant's eligibility for parole rather than a comprehensive and accurate review of the statutory factors, the entire framing of the hearing was unreliable. While the supreme court has narrowed circumstances to which **Miller** applies, the Illinois legislature incorporated them in section 5-4.5-105(a) without regard to the availability of parole. Thus, the errors affected the framework of the resentencing hearing under the second prong of the plain error analysis. The appellate court reversed and remanded for new sentencing hearing.

People v. Reyes, 2025 IL App (2d) 210423-B Defendant was convicted of murder and two attempted murders committed at age 16. His initial cumulative sentence of 97 years was vacated and remanded in light of **Miller**, as was the term of 66 years imposed on resentencing. After a third sentence. also of 66 years, was vacated on appeal, the supreme court vacated the appellate court's decision and ordered reconsideration in light of **People v. Wilson**, 2023 IL 127666. After considering **Wilson**, the appellate court again vacated the sentence and remanded for a new hearing before a different judge.

The appellate court held that in sentencing defendant to 66 years, the trial court relied on several improper factors. Specifically, the trial court relied on an "Adult Risk Assessment" that was not appropriate for use on juveniles. The court also erred in considering aggravating factors under Section 5-4.5-105(a), where that provision allows only for the consideration of additional mitigating factors. Additionally, the court improperly gave "great weight" to the aggravating factor that the defendant's conduct caused serious harm, which is a factor inherent in the offense of murder. The court further erred by failing to apply its findings that defendant was a 16 year-old with ADHD and the mental age of a 14 year-old, when considering the statutory mitigating factor regarding a youth's "ability to consider risks and consequences." Instead, the court, against the manifest weight of this evidence, found defendant was able to consider the risks and consequences of his behavior.

A majority of the court further found that in committing these errors, the sentencing court failed to make required findings consistent with the unambiguous direction of the mandate. Thus, re-assignment of the case to a new judge on remand was warranted. The court distinguished **People v. Class**, 2025 IL 129695, noting defendant requested re-assignment in this case as opposed to the *sua sponte* nature of the re-assignment in **Class**, and the fact that this case is a direct appeal while **Class** involved post-conviction proceedings.

People v. Wade, 2025 IL App (1st) 231683 The PSI in defendant's case incorrectly referred to one of his prior convictions as a felony rather than a misdemeanor, and the trial court indicated it was relying on defendant's criminal history in fashioning his sentence. The erroneous classification of one of his prior convictions was not reversible error. The judge's comments indicated that he was concerned with defendant's ongoing criminal activity, including that he committed additional offenses while on probation for the mis-classified offense. Additionally, defendant failed to object to the mis-classification at the time of sentencing, despite being given an opportunity to make corrections to the PSI, and also did not include the issue in his post-sentencing motion. Accordingly, even if there was error, it was forfeited and did not rise to the level of plain error.

Defendant also was not subject to an improper double-enhancement where the trial judge relied on defendant's criminal history in imposing sentence, where two of his prior convictions also served as predicate offenses for the instant conviction of armed habitual criminal. A conviction of AHC is dependent on proof that defendant, in fact, has qualifying predicate convictions. But, the trial court does not err when it also considers, at sentencing, the entirety of defendant's criminal history as a factor impacting the sentence. Here, defendant had 10 convictions in the span of just five years, and the court stated that if defendant kept "catching new offenses" his sentence would be "longer and longer and longer."

People v. Colone, 2024 IL App (1st) 230520 The trial court did not err in imposing a 50-year sentence for a double murder committed at age 16. The defendant forfeited his contention that the trial court erred by improperly relying on the JTDC disciplinary reports without hearing from a live witness.

As for defendant's claim that the court improperly considered mitigating facts as aggravation, the appellate court found no abuse of discretion. The sentencing court detailed its findings as to the factors in section 5-4.5-105(a), and determined that defendant was an intelligent, mature 16-year-old with a difficult family life who committed two murders in a planned, premeditated way. The court found that predicting rehabilitative potential was difficult, but that it did not "see" defendant's potential for rehabilitation. Defendant's issue with the sentencing court's reasoning effectively challenges the weight given to each factor, which is in the court's discretion.

Because the sentencing court based its reasoning on the facts and evidence presented, and considered the appropriate factors, the appellate court held that it did not abuse its discretion, even if it may have weighed some of the factors differently.

People v. Jones, 2024 IL App (1st) 221555 Defendant's sentence was vacated, and the matter was remanded for resentencing. The circuit court considered three improper factors during sentencing when it commented on the personal traits of one of the victims, misstated the facts regarding the threat posed by defendant prior to the shooting, and misstated defendant's status as a resident of the home where the shooting occurred and his right to seek refuge in that home when police arrived.

A victim's personal traits generally are not relevant to questions of guilt or matters of sentencing. Here, the court improperly highlighted the victim's bravery and decision to become a police officer, neither of which were relevant to any proper sentencing factor.

Additionally, the court improperly speculated about the harm that may have come to pass had the officers not responded to a call of a person with a gun on the porch of the home where the shootout with defendant subsequently occurred. Defendant was not the person seen on the porch with the gun, and there was no evidence that he posed a threat to anyone in the home prior to the shooting. The court's improper speculation was wholly unsupported by the record and amounted to clear error.

Finally, the court misstated both law and facts when it said that the residence in question was not defendant's home and that defendant had no right to retreat into the home to avoid police contact. The evidence showed that defendant had been staying at that location for several days, with the permission of the homeowner, and thus had a reasonable expectation of privacy and freedom from governmental intrusion there. It was his home at the time. And, because the officers had no probable cause or even reasonable suspicion to believe defendant was engaged in criminal activity, he had no legal obligation to interact with the police. While another resident consented to the officers' entry, such that they were

lawfully present within the home, it was error for the court to penalize defendant for exercising his right to retreat into the home rather than voluntarily engage with them.

The evidence at sentencing was closely balanced, and thus these errors required remand for resentencing. Defendant had a limited criminal history. The instant offense was his first involving violent conduct. While the offense was seriousness, the court's errors "severely threatened to tip the scales of justice against" defendant and thus amounted to first-prong plain error.

People v. Prather, 2022 IL App (4th) 210609 Defendant forfeited his sentencing claim because the court did not commit plain or obvious error when it found no mitigating factors. On appeal from an eight-year extended-term sentence for DUI, defendant pointed to his mental illness and drug and alcohol addiction as factors improperly ignored by the sentencing court. The appellate court held that the sentencing court was in a better position to judge the credibility of defendant's uncorroborated statements that he suffered from these conditions. Moreover, the Illinois Supreme Court has held that mental illness and addiction are not inherently mitigating.

The sentencing court also had discretion to decline to consider the impact of incarceration on defendant's family (730 ILCS 5/5-5-3.1(a)(18)), where he lived in a different state from his two biological children. Although defendant stated that he took care of his three stepchildren, he did not elaborate or provide financial documents to corroborate this claim. Nor did the sentencing court neglect to consider defendant's work history, where he provided a spotty and vague job record despite being 49 years old. As for defendant's military service, the appellate court found it was not particularly mitigating that he left the service "by way of General under Honorable Conditions," a separation less meritorious than "Honorable Discharge."

People v. Cook, 2021 IL App (3d) 190243 The Appellate Court affirmed a challenge to defendant's 10-year sentences for armed habitual criminal and unlawful possession of a weapon by a felon. Defendant alleged that the sentencing court failed to adequately consider defendant's rehabilitative potential, and placed undue emphasis on other bad acts and prior offenses. The Appellate Court rejected the argument, finding that the sentences were within the ranges and therefore presumptively proper, and that defendant failed to support his allegations with affirmative evidence.

In a special concurrence, Justice McDade noted that while she was bound to affirm under controlling precedent, that precedent created an unfair burden for a defendant on appeal. The caselaw holds that a sentencing court cannot consider improper evidence in aggravation, but it also relieves the sentencing court of any duty to expressly cite the sentencing factors it considers. Yet, to prove reliance on improper factors, a defendant must produce affirmative evidence. Given the lack of a requirement that sentencing courts make a record of its findings, this burden is impossible for any defendant not "blessed with extrasensory perception" or "mental superpowers." The result is a lack of any real appellate review. "Our power to review is limited to presuming—and hoping—that the trial court knew and followed the law."

People v. Ferguson, 2021 IL App (3d) 200041 Sentencing court did not err by considering fact that defendant was on probation at the time he committed the instant offense. The PSI showed that defendant's probation should have ended before the date of the instant offense, but the appellate court took judicial notice of docket entries from the earlier case showing

that the court had extended the probation term during proceedings on a prior petition to revoke. Thus, defendant was still on probation at the time he committed this offense, and it was proper for the court to consider that factor in aggravation at sentencing.

The Appellate Court also rejected defendant's contention that it was improper for the sentencing judge to consider his student disciplinary records under **Miller v. Alabama**, 567 U.S. 460 (2012), because black youths are disproportionately disciplined in school. Disciplinary records are relevant to an individual's history of delinquency, and they were just one of many factors considered in determining the sentence here. And, the **Miller** rationale did not apply because defendant was 23 years old at the time of the offense for which he received an 11-year sentence.

The dissent would have awarded a new sentencing hearing on the basis that the judge erred in considering defendant's student disciplinary records. In addition to the fact such records do not document criminal behavior, the dissent noted that empirical studies show that black students are subject to academic discipline at a disproportionately higher rate than their white peers. And, the dissent found that the judge's comments showed that he gave significant weight to the disciplinary records even though the judge also considered other factors at sentencing.

People v. Wheeler, 2019 IL App (4th) 160937 The Appellate Court upheld the 18-year-old defendant's aggregate 90-year sentence for home invasion and two counts of aggravated criminal sexual assault despite the fact that the State made a 38-year plea offer before trial. While a trial court may consider a defendant's anxiety and depression as mitigation, such psychological impairments are not "inherently mitigating." Likewise, defendant has no right to rehabilitation; the court could properly conclude that his conduct was so abhorrent that he forfeited his right to freedom. And, after trial, the 38-year plea offer was irrelevant to whether a lengthy prison sentence was necessary for protection of the public.

People v. Solis, 2019 IL App (4th) 170084 Defendant was entitled to day-for-day sentencing credit for methamphetamine delivery (more than 15 but less than 100 grams). The 75% provision of 730 ILCS 5/3-6-3(a)(2)(v) (2014), applies only to convictions involving more than 100 grams. The State conceded error and the Appellate Court ordered a correction of the sentencing judgment.

The defendant's 18-year sentence, however, was upheld against a challenge to the fairness of the sentencing hearing. The sentencing court could properly refuse to consider defendant's mental impairment as a mitigating factor where the record shows defendant knew right from wrong. The sentencing court may also properly reject the defense argument that defendant's drug dealing did not cause or threaten harm, by finding that drug delivery causes harm in general. Such a consideration was not inherent in the offense, but rather a response to the defense argument.

People v. Bunning, 2018 IL App (5th) 150114 In fashioning defendant's sentence for aggravated criminal sexual abuse of his seven-year-old step-granddaughter, the trial court did not err in considering the threat of long-term psychological harm. The court observed the complainant's testimony and heard a victim-impact statement from her mother describing the emotional effect of the abuse. Concrete proof that the complainant would suffer future harm isn't required, and the potential for such harm is not implicit in the offense itself.

People v. Williams, 2018 IL App (4th) 150759 The sentencing court improperly considered

a written report of defendant's fitness examination, in violation of section 104-14 of the Code of Criminal Procedure. Section 104-14 makes such reports admissible only when defendant raises an insanity or intoxication defense. Here, defendant committed disorderly conduct for pulling a fire alarm and, while he requested a fitness examination before trial, he did not raise an insanity or intoxication defense. He received a 68-month prison sentence, four months below the maximum extended term. In imposing the sentence, the court explicitly referenced findings from the fitness report before concluding that defendant required extended periods of incarceration. This denial of the right to a fair sentencing hearing constituted second-prong plain error and required a new sentencing hearing.

People v. Daly, 2014 IL App (4th) 140624 The trial court abused its discretion when it rejected probation and imposed a 42-month-sentence for reckless homicide. Amongst other reasons, the Appellate Court noted that the Illinois Supreme Court has found deterrence has little significance where an offense involves unintentional conduct. **People v. Martin**, 119 Ill. 2d 453, 519 N.E.2d 884 (1988). The trial judge also ignored the defendant's history, character and rehabilitative potential and the circumstances of the offense.

People v. Dowding, 388 Ill.App.3d 936, 904 N.E.2d 1022 (2d Dist. 2009) There is a strong presumption that the trial court based its sentencing determination on proper factors, and defendant has the burden to establish that a sentence was based on an improper consideration. In determining whether the trial court used an improper aggravating factor, the reviewing court must consider the record as a whole.

People v. Markiewicz, 246 Ill.App.3d 31, 615 N.E.2d 869 (2d Dist. 1993) Although a sentencing court has discretion to decide the weight to be given to mitigating evidence, it may not refuse to consider such evidence altogether. Cause was remanded for a new sentencing hearing where, after outlining several pieces of mitigating evidence, the court refused to consider the evidence.

People v. Escobar, 168 Ill.App.3d 30, 552 N.E.2d 191 (1st Dist. 1988) The trial judge is not required to impose the minimum sentence if no statutory aggravating factors are present.

People v. Cooper, 146 Ill.App.3d 596, 497 N.E.2d 157 (3d Dist. 1986) In imposing sentence upon revocation of probation, the trial judge erred by finding no factors in mitigation where two mitigating factors found at the original sentencing were still present at the sentencing following revocation. Because the court could not determine what effect the factors might have had, the cause was reversed and remanded for resentencing.

§44-4(b)
Prior Convictions/Adjudications of Delinquency

United States Supreme Court
Descamps v. United States, 570 U.S. 254, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013) Where a statute provides that a prior conviction qualifies a defendant for an enhanced penalty, the fact of the prior conviction can enhance defendant's penalty without the need for judicial fact finding in two circumstances: (1) where the prior conviction is for violation of a statute whose elements are the same as, or narrower than, those of the qualifying offense (the "categorical approach") or (2) where the prior conviction is for violation of a "divisible" statute involving

alternative elements, some of which may match the elements of the generic offense, but others of which may not (the "modified categorical approach"). Under the modified categorical approach, a court may consult a limited class of documents, such as the charging instrument or jury instructions, to determine which of the statute's alternative elements formed the basis for the defendant's conviction. **Shepard v. United States**, 544 U.S. 13 (2005). Both of these approaches focus on the elements, rather than the facts, of a crime and thereby avoid judicial fact finding that would violate the Sixth Amendment.

A prior conviction cannot qualify a defendant for an enhanced penalty without the need for judicial fact finding where the conviction is based on violation of a statute that is "indivisible," in that it does not contain alternative elements but criminalizes conduct that is broader than the qualifying offense. In that circumstance, a court must examine the case's underlying facts to determine whether defendant committed a qualifying offense. This kind of evidence-based inquiry that evaluates the facts that the judge or jury found violates the Sixth Amendment, which does not allow a sentencing court to make findings about non-elemental facts to increase a defendant's sentence.

Defendant was previously convicted under an indivisible statute whose elements were broader than the elements of the qualifying offense. The district court violated the Sixth Amendment when it enhanced defendant's penalty by looking behind the conviction to search for record evidence that defendant actually committed the qualifying offense.

U.S. v. Tucker, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972) Convictions obtained in which defendant did not have, or waive, counsel may not be used at sentencing hearing. See also, **Loper v. Beto**, 405 U.S. 473, 92 S.Ct. 1014, 31 L.Ed.2d 374 (1972); **People v. Martin-Trigona**, 111 Ill.2d 295, 489 N.E.2d 1356 (1986); **People v. Phinnizee**, 92 Ill.App.3d 590, 416 N.E.2d 55 (5th Dist. 1981) (where the trial judge has reason to believe that defendant's prior convictions may be invalid under **Gideon v. Wainwright** and nevertheless considers them in sentencing defendant, the cause must be remanded in order for the judge to determine whether defendant's prior convictions are invalid and, if they are, for the purpose of holding a new sentencing hearing); **People v. Nolan**, 188 Ill.App.3d 251, 543 N.E.2d 1384 (5th Dist. 1989) (it was error to use defendant's prior conviction in aggravation in the absence of a showing that defendant had waived counsel in that case). But see, **Nichols v. U.S.**, 511 U.S. 738, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994) (prior misdemeanor conviction for which defendant was not entitled to counsel because no jail term was imposed could be used to enhance sentence on subsequent offense).

Illinois Supreme Court

People v. Powell, 53 Ill.2d 465, 292 N.E.2d 409 (1973) In determining the sentence, the trial judge may properly consider defendant's prior juvenile record.

People v. Hayes, 55 Ill.2d 78, 302 N.E.2d 37 (1973) Sentencing judge committed reversible error by considering an alleged prior conviction where the sole evidence of the conviction came from an unidentified document that the prosecutor read.

Illinois Appellate Court

People v. Valladares, 2026 IL App (1st) 240576 After successfully vacating a prior conviction for aggravated unlawful use of a weapon as void under **People v. Aguilar**, 2013 IL 112116, defendant sought leave to file a successive post-conviction petition in the instant case arguing that the use of that void prior conviction at his sentencing in this case violated

due process. The circuit court denied leave to file, concluding that the void conviction played little role in the sentencing court's decision and that defendant could not establish cause because he could have raised the issue in any of his prior post-conviction petitions.

The appellate court disagreed. Defendant established cause because, at the time he filed his initial post-conviction petition in 2014, he had not yet been able to obtain an order vacating his void AUUW conviction, and case law did not yet allow for defendant to seek to have that conviction vacated through the instant case. That only became possible after **In re N.G.**, 2018 IL 121939, was decided. Thus, defendant's prior AUUW conviction was "void but not vacated" when he filed his first post-conviction petition in this case, establishing cause for his failure to raise this claim in 2014.

Defendant also established prejudice where the record raised the possibility that the trial court relied on his void conviction when imposing sentence. The trial judge specifically commented at sentencing that defendant was a danger because of his prior history "with guns and violence" and noted that his "prior conviction was for a weapons offense." While the court cited other factors at sentencing, as well, the reliance on a void prior conviction as an aggravating factor demonstrates prejudice. And, here, both the State and the court highlighted the void conviction, impacting the sentence defendant received and thus demonstrating prejudice.

Because defendant's claim was fully established on the face of the record, the appellate court found no need to remand for further post-conviction proceedings. Rather, the court reversed the denial of leave to file, granted defendant's petition, and remanded for a new sentencing hearing.

People v. Irrelevant, 2021 IL App (4th) 200626 Defendant pled guilty to armed habitual criminal. Defendant moved to withdraw his plea, arguing in part that he the factual basis failed to prove his guilt, because he committed one of the predicate felonies at age 17.

The Appellate Court affirmed. The issue of whether AHC (or mandatory Class X sentencing) may rest on a predicate offense that, under current law, would result in a juvenile adjudication, has generated a split in the Appellate Court and is pending before the Supreme Court in **People v. Stewart**, 2020 IL App (4th) 180533. The Appellate Court here sided with the State and other Fourth District decisions, reasoning that the AHC statute merely requires that defendant had the qualifying prior convictions at the time he possessed the firearms, and that age is not an element of the prior convictions. Moreover, defendant's prior conviction – a burglary committed at age 17 – would still be subject to discretionary transfer to adult court under current law, so the argument that it would be treated as a delinquency is speculative.

People v. Branch, 2018 IL App (1st) 150026 The sentencing court did not abuse its discretion in sentencing an 18 year-old defendant to 40 years in prison for attempted murder with a firearm. Although the Appellate Court has held that the United States Supreme Court's juvenile sentencing jurisprudence, such as **Miller v. Alabama**, 567 U.S. 460 (2012), can apply even if the defendant is 18 or 19 years-old, as in **People v. House**, 2015 IL App (1st) 110580 and **People v. Harris**, 2016 IL App (1st) 141744, the sentences in those cases were life or *de facto* life sentences. Here, defendant is not alleging that a 40-year sentence is unconstitutional as applied, and defendant received neither a *de facto* life sentence nor a mandatory minimum. Rather, because of the 25-year firearm enhancement, the sentence in this case was only nine years above the minimum, and not an abuse of discretion in light of the severity of the offense. But, the Appellate Court did urge the legislature to promulgate

new sentencing guidelines for offenders between 18 and 20 years of age.

Nor did the sentencing court err in considering a prior conviction for AUUW that is subject to vactur pursuant to **People v. Aguilar**, 2013 IL 112116. The record is all but silent as to the nature of that conviction, and the court did not rely on criminal history as the primary factor in sentencing, instead finding deterrence to be the biggest factor.

People v. Smith, 2016 IL App (2d) 130997 At defendant's sentencing for armed robbery with a firearm, the trial court erred by considering as aggravation a prior conviction for aggravated unlawful use of a weapon under 720 ILCS 5/24-1.6(a)(3)(A). A sentencing court may not consider, as a factor in aggravation, a prior conviction that was based on a statute which was later declared unconstitutional. Because the prior aggravated unlawful use of a weapon conviction was based on the statute held unconstitutional in **Aguilar** and **Burns**, defendant's sentence was vacated and the cause remanded for re-sentencing.

People v. Billups, 2016 IL App (1st) 134006 Defendant's pre-sentence investigation report listed numerous prior convictions, including three convictions for weapons offenses. Two of the weapons offenses were based on statutes that had been declared unconstitutional in **Aguilar**, 2013 IL 112116. The other weapons offense, unlawful possession by a felon, was not based on an unconstitutional statute, but the underlying felony may have been one of the improper gun offenses. Defense counsel did not object to the information in the PSI and the trial court stated in imposing sentence that defendant had been "in the penitentiary for narcotics and gun cases."

The Appellate Court held that counsel provided ineffective assistance by failing to object to the trial court's consideration of the two improper convictions. **Aguilar** had been decided before the sentencing hearing in this case, and found that competent counsel would have objected to the convictions. The case was remanded for resentencing.

In re Antoine B., 2014 IL App (3d) 110467-B The sentence for theft is elevated from a misdemeanor to a Class 4 felony if the defendant has been previously convicted of theft. 720 ILCS 5/16-1(b)(2). A prior juvenile adjudication for theft does not constitute a prior theft conviction permitting the elevation of the sentence to a felony. **Taylor**, 221 Ill. 2d 157.

People v. Holloman, 304 Ill.App.3d 177, 709 N.E.2d 969 (4th Dist. 1999) In light of the trial court's specific reference to an erroneous conviction listed in defendant's criminal history, the erroneous consideration of the non-existent trafficking conviction was not insignificant. See also, **People v. Whitney**, 297 Ill.App.3d 965, 697 N.E.2d 815 (1st Dist. 1998) (trial court committed plain error by considering non-existent prior conviction) (affirmed 188 Ill.2d 91, 720 N.E.2d 225 (1999)).

§44-4(c)
Convictions That Were Subsequently Reversed

Illinois Supreme Court
People v. Payne, 98 Ill.2d 45, 456 N.E.2d 44 (1983) A new sentencing hearing was not required, even though one of the three convictions for which defendant was convicted and sentenced was reversed after the sentencing hearing, where the record did not show that the judge was influenced by the reversed conviction in sentencing defendant for the other offenses. See also, **People v. Hines**, 105 Ill.App.3d 35, 433 N.E.2d 1137 (1st Dist. 1982)

(defendant was not entitled to resentencing where there was no indication that the trial court considered the reversed conviction when imposing sentence).

People v. Alejos, 97 Ill.2d 502, 455 N.E.2d 48 (1983) In determining whether a sentencing remand is required when a defendant is convicted of two offenses and one of the convictions is later reversed, there are two applicable standards. First, courts have focused on whether it can be affirmatively determined from the record whether the sentence was influenced by consideration of improper factors (i.e., the reversed convictions). Second, courts have required defendant to come forward with convincing evidence that the judge was influenced. The second standard was satisfied here.

See also, **People v. Lopez**, 147 Ill.App.3d 127, 497 N.E.2d 859 (3d Dist. 1986) (when one or more multiple convictions are vacated on appeal, a new sentencing hearing is required when either a single sentence was imposed or it appears from the record that the vacated conviction influenced the sentence for the conviction that is affirmed; here, "defendant was given a single sentence and there is no clear indication whether or not the [trial] court considered the now vacated conviction in determining the length of his sentence"); **People v. McDermott**, 141 Ill.App.3d 996, 490 N.E.2d 1293 (1st Dist. 1986) (sentence for reckless homicide reversed and remanded for resentencing where DUI conviction was reversed); **People v. Hurt**, 175 Ill.App.3d 970, 530 N.E.2d 698 (2d Dist. 1988) (sentences for armed violence, aggravated battery, and aggravated assault remanded for resentencing where convictions on another count of aggravated battery and aggravated assault were reversed); **People v. Mitchell**, 105 Ill.2d 1, 473 N.E.2d 1270 (1984) (defendant was entitled to new sentencing hearing on two counts of aggravated battery where she was convicted of two counts of attempt murder and two counts of aggravated battery and sentenced to concurrent terms of 14 years on each count, where the convictions for the more serious Class X felonies -- attempt murder -- were later reversed and where the judge imposed the maximum extended term for aggravated battery); **People v. Coty**, 105 Ill.App.3d 398, 434 N.E.2d 432 (1st Dist. 1982) (defendant is entitled to a new sentencing hearing where the sentencing court considered a conviction that was subsequently reversed, even where the sentence imposed might otherwise have been warranted); **People v. Woollums**, 143 Ill.App.3d 814, 493 N.E.2d 696 (4th Dist. 1986) (new sentencing hearing required where the judge specifically relied on the reversed conviction in sentencing defendant); **People v. Scott**, 318 Ill.App.3d 46, 740 N.E.2d 1201 (2d Dist. 2000) (same); **People v. Durdin**, 312 Ill.App.3d 4, 726 N.E.2d 120 (1st Dist. 2000) (new sentencing hearing required where the record did not establish that the sentence was uninfluenced by the reversed conviction); **People v. Johnson**, 314 Ill.App.3d 400, 732 N.E.2d 100 (1st Dist. 2000) (resentencing was required where the record failed to show that a reversed conviction had no effect on defendant's sentence for the remaining conviction).

People v. Wunnenberg, 85 Ill.2d 188, 421 N.E.2d 905 (1981) Sentencing judge erred in considering defendant's prior conviction under the Federal Youth Corrections Act where that conviction was subsequently set aside. Under the legislative history of the Act, set-aside convictions should not have subsequent repercussions, either criminal or non-criminal.

Illinois Appellate Court

People v. Hearring, 2022 IL App (1st) 192064 The Appellate Court vacated defendant's 18-year sentence for aggravated battery for spitting on a corrections officer, where the sentencing court relied on two void convictions in aggravation, and misstated defendant's

criminal history. The Appellate Court further found the sentence violated the proportionate penalties clause of the Illinois Constitution.

When the trial court relies on a void conviction when imposing sentence, the sentence may be affirmed only if the record clearly establishes that defendant's void conviction did not affect the trial court's sentencing decision. "[I]t is more prudent to remand for resentencing" than to guess at a conviction's impact. **People v. Bridges**, 2020 IL App (1st) 170129, ¶38.

Here, the sentencing court specifically cited the two voided convictions in detailing defendant's criminal history as part of its justification for the sentence. Following the State's assertion that defendant had nine prior convictions, the sentencing court cited this inflated number despite the fact that defendant had only five valid prior convictions. The State's repeated comments about defendant's "history" and the court's emphasis on defendant's alleged "nine felony convictions" and "two pages" of criminal history, which included void convictions and misdemeanors, left the Appellate Court with no choice but to vacate the sentence.

Although defendant did not object to these errors, the Appellate Court agreed with defendant that the issue constituted second-prong plain error. Alternatively, counsel was ineffective for failing to correct the inaccuracies in the PSI, as well as the State's and sentencing court's misstatements.

Finally, the sentence was disproportionate to the offense. An 18-year sentence for spitting is an oppressive penalty. Given that the proportionate penalties clause offers broader protections than the eighth amendment, the Appellate Court found defendant made a persuasive claim. While the State argued that the bulk of the sentence increase over the six-year minimum could be attributed to a pending (but later dismissed) attempt murder charge, about which the State presented significant evidence in aggravation, the Appellate Court rejected this argument. To excuse a disproportionate sentence by citing uncharged conduct "would effectively eliminate all the guarantees that our constitution provides criminal defendants, such as trial by jury, innocent until proven guilty, and proof beyond a reasonable doubt." It "would allow a prosecutor to proceed on the easiest charge and then ask the trial court to sentence the defendant for all the offenses that the State otherwise could not prove."

People v. Bridges, 2020 IL App (1st) 170129 The Appellate Court agreed with the parties that defendant's prior AUUW conviction was unconstitutional and should be vacated in the instant appeal in accordance with **In re N.G.**, 2018 IL 121939. The court declined to remand for resentencing on the instant armed robbery conviction, however, because the record clearly established that it did not affect the sentencing decision where the trial court explained it was crafting defendant's sentence for armed robbery to be roughly equivalent to the concurrent term it was imposing for aggravated kidnaping, which was also the mandatory minimum for that offense.

People v. Cross, 2019 IL App (1st) 162108 At sentencing for convictions of sexual assault and aggravated kidnaping, the State cited in aggravation defendant's prior convictions of aggravated unlawful use of a weapon and unlawful use of a weapon by a felon. The Appellate Court vacated those prior convictions under **In re N.G.**, 2018 IL 121939, and remanded the matter for resentencing. While the court had conducted a thorough sentencing hearing, the court found it "more prudent" to remand the matter for a new sentencing hearing "where the trial court may impose the same sentence or a different one."

People v. Alexander, 2019 IL App (3d) 170168 Defendant was convicted of murder, aggravated battery with a firearm, and unlawful use of a weapon by a felon. He received 56 years for murder, consecutive to 12 for aggravated battery and three for UUWF.

The Appellate Court agreed to vacate the UUWF pursuant to **N.G.** The record established that defendant's only prior felony was an AUUW conviction under the provision found unconstitutional in **Aguilar**. The court remanded for a new sentencing hearing on the murder and aggravated battery convictions because it was unclear from the record how much weight the sentencing court accorded the unconstitutional convictions.

People v. Morrison, 137 Ill.App.3d 171, 484 N.E.2d 329 (1st Dist. 1985) Three defendants were convicted of seven counts of home invasion and six counts of attempt armed robbery. On appeal, the court vacated six of the seven counts of home invasion because they were all based on a single entry. The court remanded for resentencing as to all defendants on the conviction for home invasion, finding that the total number of counts may have influenced the court in imposing sentence for home invasion. The court did not remand for resentencing on the attempt armed robbery convictions, reasoning that the home invasion conviction did not influence the court when it sentenced defendants for attempt armed robbery.

People v. Fischer, 100 Ill.App.3d 195, 426 N.E.2d 965 (1st Dist. 1981) The trial judge abused his discretion at sentencing by considering defendant's 1965 conviction for possession of marijuana, because the statute upon which that conviction was based was later declared unconstitutional in **People v. McCabe**, 49 Ill.2d 338, 275 N.E.2d 407 (1971).

People v. Brown, 91 Ill.App.3d 163, 414 N.E.2d 249 (2d Dist. 1980) Although a presentence report may contain a brief account of a prior offense, it is error to include information about charges on which convictions have been reversed. Here, a new sentencing hearing was required where, at defendant's sentencing hearing for indecent liberties, the presentence report included an entry concerning a prior misdemeanor conviction for contributing to the sexual delinquency of a minor and details of the prior offense, including that defendant had originally been charged with and convicted of rape and indecent liberties, but after the convictions were reversed on appeal defendant pleaded guilty to the misdemeanor.

The detailed account of the prior offense was improperly included; because there was no indication as to the source of the information, its accuracy and reliability were not established. Also, the general presumption that the trial court only considered proper information cannot be used here; the trial court overruled an objection to the evidence, indicating that it believed the evidence to be proper, and the court stated that the prior offense caused it "much concern," which would have been unlikely had the additional background information not been included.

§44-4(d)
Conduct Not Resulting in Conviction

Illinois Supreme Court
People v. Mertz, 218 Ill.2d 1, 841 N.E.2d 618 (2005) Evidence of defendant's involvement in other criminal activity was reliable based on his own admissions.

People v. Jackson, 149 Ill.2d 540, 599 N.E.2d 926 (1992) Defendant was not entitled to resentencing though the sentencing court explicitly relied on unrelated offenses of which

defendant was subsequently acquitted. There is no inconsistency in allowing a sentencing court to consider reliable and relevant evidence concerning other crimes even if, at a later trial, the State is unable to prove those crimes beyond a reasonable doubt.

People v. LaPointe, 88 Ill.2d 482, 431 N.E.2d 344 (1981) Under certain circumstances, a trial judge may receive proof of criminal conduct for which no prosecution and conviction ensued. Though trial judges should be cautious in admitting such proof and sensitive to the possibilities of prejudice to defendant if inaccurate information is considered, the judge here properly considered the testimony of defendant's acquaintance, who said that defendant asked him to participate in a robbery and smuggle drugs into jail. The evidence appeared trustworthy -- it came in the form of sworn testimony, was presented in open court, and was subjected to cross-examination. And, the evidence was relevant to a determination of a proper sentence. See also, **People v. Collins**, 106 Ill.2d 237, 478 N.E.2d 267 (1985); **People v. Blanck**, 263 Ill.App.3d 224, 635 N.E.2d 1356 (2d Dist. 1994) (new sentencing hearing ordered where sentencing judge erroneously considered hearsay allegations of unrelated criminal conduct for which defendant had not been prosecuted; to avoid the possibility of unfair prejudice, evidence of unprosecuted criminal conduct should be presented by witnesses who can be cross-examined and not merely by placing hearsay in the presentence report, as occurred here).

Illinois Appellate Court

People v. Skinner, 2025 IL App (4th) 240689 Defendant pled guilty to a 2016 charge of unlawful possession of a controlled substance, and received a 20-year sentence. In exchange for the open plea, the State agreed to drop several charges from a 2019 case. During the sentencing hearing, the State reminded the court of the offenses with which defendant and co-defendant Harris were charged in the 2019 case. The State then asked the court to "take judicial notice" of the facts from Harris' trial on those charges, which included evidence that defendant fled from the police in a vehicle registered to him, and that he had narcotics and a firearm in his vehicle.

On appeal, defendant argued that the sentencing court improperly took judicial notice of Harris' trial. The appellate court affirmed. First, defendant affirmatively acquiesced to the trial court's consideration of facts from Harris's trial. Counsel did not object, and in fact agreed with the State that evidence from Harris' trial could be discussed at sentencing. Counsel essentially stipulated to the evidence, resulting in an affirmative acquiescence.

Second, procedural default aside, the court's consideration of evidence from Harris's trial did not violate defendant's right to a fair sentencing hearing. Defendant pointed out that the State improperly asked the court to take judicial notice of the facts at Harris' trial (which the court also presided over), in violation of Rule 201(b), which limits judicial notice to facts not in dispute. The appellate court agreed that the State should not have requested judicial notice, but it held that the sentencing court acted properly – it did not technically "take judicial notice" of facts from Harris's trial; instead, the court took into consideration evidence the court heard at Harris's trial. Consideration of this evidence was proper. Relevant and reliable information at sentencing includes evidence the defendant committed different crimes. This evidence does not require formal proof absent an objection. Thus, the court did not err in considering evidence of defendant's criminal conduct as recounted by witnesses at Harris' trial.

People v. Minter, 2015 IL App (1st) 120958 The trial court abuses its discretion by

considering bare arrests or pending charges as aggravation of a sentence. However, a sentencing court may rely on evidence of other criminal activity, even if that conduct has not resulted in a conviction, where it finds that the evidence is relevant and accurate. A mere listing of arrests or charges in a pre-sentence report, unsupported by live testimony or other evidence, does not constitute relevant and accurate evidence of other criminal activity.

The trial court improperly considered defendant's pending charges for possession of contraband and aggravated battery as aggravation when imposing a sentence for armed robbery. The State presented no evidence concerning the charges, but argued that they showed defendant had continued to commit acts of violence.

In discussing the aggravating factors, the trial court twice referred to the pending charges and said that defendant had "continued" to commit crimes. Under these circumstances, the trial judge improperly considered the mere fact that defendant had pending charges as aggravating evidence.

Where the trial court considers an improper factor in aggravation, re-sentencing is required unless the reviewing court determines that the weight given to the improper factor was minimal. Here, the trial court imposed a sentence that was two years greater than the statutory minimum and mentioned only limited factors in aggravation other than the pending charges. Under these circumstances, the court concluded that the pending charges played more than a minimal role in the sentencing decision. The sentence was vacated and the cause remanded for re-sentencing.

People v. Johnson, 347 Ill.App.3d 570, 807 N.E.2d 1171 (1st Dist. 2004) Although the sentencing court may consider reliable evidence of criminal conduct that is unrelated to the offense for which defendant is being sentenced, the mere fact of an arrest or pending charge is not an appropriate factor in aggravation. See also, **People v. Thomas**, 111 Ill.App.3d 451, 444 N.E.2d 288 (4th Dist. 1983). In sentencing defendant for home invasion and residential burglary, the trial court erred by considering an Arkansas arrest for aggravated criminal sexual assault, because no conviction resulted and there was no evidence of the underlying conduct.

People v. Wallace, 145 Ill.App.3d 247, 495 N.E.2d 665 (2d Dist. 1986) The sentencing judge erred in considering testimony of an alleged rape committed by defendant in South Carolina. The evidence came from the testimony of a naval intelligence officer, who called the naval intelligence in South Carolina, where defendant had been stationed, and learned about a rape that was similar to the instant case, and who then sent a photo of a lineup which included defendant, and learned from a South Carolina detective that the woman had selected defendant's photo. The judge questioned the reliability of the evidence and, thus, would only consider the fact that defendant had been charged with the South Carolina rape. Once the judge decided not to consider the evidence of the underlying facts, he was left with the mere fact of a pending charge, and consideration of that fact was erroneous. Reversed and remanded for resentencing.

People v. Loomis, 132 Ill.App.2d 903, 271 N.E.2d 66 (2d Dist. 1971) Evidence of defendant's conduct in the jail was proper at sentencing hearing.

People v. Thomas, 111 Ill.App.3d 451, 444 N.E.2d 288 (4th Dist. 1983) The mere listing of prior arrests not resulting in convictions in a presentence report does not satisfy the accuracy requirement of **LaPointe**; thus, the sentencing judge erred by considering defendant's prior

arrests, which were listed in the presentence report, where no testimony was presented at the sentencing hearing to support the allegations.

People v. Gaines, 21 Ill.App.3d 839, 316 N.E.2d 14 (1st Dist. 1974) Evidence of defendant's prior arrest for similar crime was incompetent but not prejudicial. Such evidence was relevant to the court's determination of defendant's rehabilitative potential. The evidence was not based upon the bare fact of arrest, but came from trustworthy sources (direct testimony, subject to cross-examination, by the alleged victim and a police officer). "Highly relevant matter should not be excluded from sentencing hearing merely because a narrative of the defendant's past activity mentions an arrest which followed that activity. The unvaried application of the prior arrest exclusionary rule would deny courts access to valuable information where, as here, a previous arrest is only incidental to testimony that the defendant has behaved in a similar, aberrant fashion in the non-distant past." See also, **People v. Jones**, 65 Ill.App.3d 435, 382 N.E.2d 697 (4th Dist. 1978) (testimony concerning defendant's acts of criminal damage to property and sodomy while in jail was properly admitted at his sentencing hearing; although evidence of mere arrests is not admissible, firsthand evidence of the commission of misconduct, which amounted to a crime, is admissible because it bears upon defendant's general moral character, abnormal tendencies, and natural inclination or aversion to crime).

§44-4(e)
Perjury and Lack of Remorse

United States Supreme Court
U.S. v. Dunnigan, 507 U.S. 87, 113 S.Ct. 1111, 122 L.Ed.2d 445 (1993) The trial court properly enhanced defendant's sentence for committing perjury at her federal trial (she testified that she did not commit the crime) under a provision of the Federal Sentencing Guidelines authorizing a trial court to increase a sentence when it believes defendant committed perjury at trial.

A criminal defendant commits perjury, and is subject to sentence enhancement, when, with willful intent to provide false testimony, she gives false testimony concerning a material matter. A defendant is not subject to an enhanced sentence where her testimony was inaccurate due to confusion, mistake or poor memory, or where the trier of fact may have found her testimony truthful but insufficient to excuse criminal liability.

Where a defendant objects to having her sentence enhanced on the ground that her testimony was perjurious, the trial court must consider the evidence and make independent findings concerning each element of perjury. Enhancement of a sentence for the willful presentation of false testimony does not inhibit defendant's right to testify in one's defense.

Illinois Supreme Court
People v. Ward, 113 Ill.2d 516, 499 N.E.2d 422 (1986) Defendant's continued protestation of innocence and his lack of remorse following a determination of guilt must not be automatically and arbitrarily applied as aggravating factors. But, in some cases, such conduct may convey a strong message to the trial judge that defendant is an unmitigated liar and at continued war with society. Such impressions are proper factors to consider in imposing sentence. Defendant's sentence upheld.

People v. Meeks, 81 Ill.2d 524, 411 N.E.2d 9 (1980) A trial judge may properly consider

defendant's perceived perjury at trial as a factor in sentencing. Accord, **U.S. v. Grayson**, 438 U.S. 41, 98 S.Ct. 2610, 57 L.Ed.2d 582 (1978); **People v. Speed**, 129 Ill.App.3d 348, 472 N.E.2d 572 (2d Dist. 1984).

Illinois Appellate Court

People v. Streater, 2023 IL App (1st) 220640 During his pre-sentencing investigation, defendant stated that he hoped that one day the sexual assault complainant would admit defendant did not commit the crime. The sentencing court labeled this comment as "disturbing" and "inappropriate," and appeared to consider this statement in aggravation. The appellate court found no abuse of discretion. The sentencing court was not punishing defendant for merely maintaining his innocence. Rather, the sentencing court properly viewed the statement, which implied the complainant was a liar, as evidence of a lack of remorse.

People v. Hearring, 2022 IL App (1st) 192064 The Appellate Court vacated defendant's 18-year sentence for aggravated battery for spitting on a corrections officer, where the sentencing court relied on two void convictions in aggravation, and misstated defendant's criminal history. The Appellate Court further found the sentence violated the proportionate penalties clause of the Illinois Constitution.

When the trial court relies on a void conviction when imposing sentence, the sentence may be affirmed only if the record clearly establishes that defendant's void conviction did not affect the trial court's sentencing decision. "[I]t is more prudent to remand for resentencing" than to guess at a conviction's impact. **People v. Bridges**, 2020 IL App (1st) 170129, ¶38.

Here, the sentencing court specifically cited the two voided convictions in detailing defendant's criminal history as part of its justification for the sentence. Following the State's assertion that defendant had nine prior convictions, the sentencing court cited this inflated number despite the fact that defendant had only five valid prior convictions. The State's repeated comments about defendant's "history" and the court's emphasis on defendant's alleged "nine felony convictions" and "two pages" of criminal history, which included void convictions and misdemeanors, left the Appellate Court with no choice but to vacate the sentence.

Although defendant did not object to these errors, the Appellate Court agreed with defendant that the issue constituted second-prong plain error. Alternatively, counsel was ineffective for failing to correct the inaccuracies in the PSI, as well as the State's and sentencing court's misstatements.

Finally, the sentence was disproportionate to the offense. An 18-year sentence for spitting is an oppressive penalty. Given that the proportionate penalties clause offers broader protections than the eighth amendment, the Appellate Court found defendant made a persuasive claim. While the State argued that the bulk of the sentence increase over the six-year minimum could be attributed to a pending (but later dismissed) attempt murder charge, about which the State presented significant evidence in aggravation, the Appellate Court rejected this argument. To excuse a disproportionate sentence by citing uncharged conduct "would effectively eliminate all the guarantees that our constitution provides criminal defendants, such as trial by jury, innocent until proven guilty, and proof beyond a reasonable doubt." It "would allow a prosecutor to proceed on the easiest charge and then ask the trial court to sentence the defendant for all the offenses that the State otherwise could not prove."

People v. Donlow, 2020 IL App (4th) 170374 Defendant maintained his innocence in allocution, and the sentencing court repeatedly relied on defendant's refusal to "accept responsibility" in finding defendant likely to re-offend and in imposing a 20-year term for aggravated battery with a firearm. The Appellate Court found no error, holding that while a sentencing court may not punish a defendant for continuing to maintain his innocence, it may consider lack of remorse in considering rehabilitative potential. Here, in addition to noting defendant's refusal to accept responsibility in the context of rehabilitation, the court also explicitly stated that it would not punish defendant for maintaining his innocence.

People v. Matute, 2020 IL App (2d) 170786 The trial court can rely on defendant's lack of remorse in aggravation at sentencing, but it must base its findings on competent evidence. Defendant's invocation of his right to not allocate is not such a basis. A court may not draw a negative inference from a defendant's exercise of his constitutional right to assert his innocence. Here, because the trial court's determination that defendant lacked remorse stemmed from defendant's silence at allocution, the finding infringed on his fundamental right against self-incrimination. The court committed second-prong plain error and remand for a new sentencing hearing was required.

In re H.C., 2019 IL App (1st) 182581 The sentence of 18 months of probation for criminal sexual abuse was not plain error. While a sentencing court should not penalize an individual for exercising his or her right to trial, here the court did not err in commenting that the minor was "still denying what happened" in the face of overwhelming evidence at trial. It is not an abuse of discretion to consider the lack of repentance or remorse at sentencing. And, where an individual chooses to go to trial, the court may consider the evidence presented at the trial when subsequently imposing sentence. The court did not err in declining to impose a sentence of supervision here.

People v. Speed, 129 Ill.App.3d 348, 472 N.E.2d 572 (2d Dist. 1984) Defendant's "lack of a penitent spirit" and "lack of veracity on the witness stand" may be considered as bearing on his rehabilitative potential. Defendant's sentence was improperly influenced by his persistent denial of guilt.

§44-4(f)
Assertion of Right to Trial – Increasing Sentence

Illinois Supreme Court
People v. Ward, 113 Ill.2d 516, 499 N.E.2d 422 (1986) A defendant may not be penalized for asserting his right to trial. See also, **People v. Love**, 139 Ill.App.3d 104, 486 N.E.2d 1337 (1st Dist. 1985) (defendant's sentence was a penalty for choosing his right to a jury trial and violated due process); **People v. Young**, 20 Ill.App.3d 891, 314 N.E.2d 280 (1st Dist. 1974) (defendant's sentence reduced because he received a higher sentence for going to trial); **People v. Dennis**, 28 Ill.App.3d 74, 328 N.E.2d 135 (1st Dist. 1975) (trial court imposed harsh sentence because defendant chose a jury trial, instead of pleading guilty).

People v. Morgan, 59 Ill.2d 276, 319 N.E.2d 764 (1974) Standing alone, the fact that the trial court imposes a greater sentence after trial than it would have imposed upon a guilty plea does not taint the sentence.

Illinois Appellate Court

People v. Minnis, 2026 IL App (1st) 232494 Defendant was convicted by a jury of two counts of aggravated kidnapping and twelve counts of aggravated criminal sexual assault based on evidence that he forced his way at gunpoint into a car occupied by two women, directed them to drive to a nearby parking lot, and sexually assaulted both multiple times. Defendant was sentenced to a total of 96 years of imprisonment.

On appeal, defendant argued that his 96-year sentence was excessive, citing his youth (23 years old), the trial court's improper reliance on his assertions of innocence as aggravation, and his rehabilitative potential. The appellate court disagreed, emphasizing that consecutive sentences were mandatory, the individual sentences on most counts were at the lower end of the available range, and the court properly considered defendant's lack of remorse in its sentencing analysis. Further, defendant had not argued in the trial court that his young age warranted a more lenient sentence, and the appellate court refused to find an abuse of discretion based on a failure to consider *sua sponte* an argument not raised below.

People v. Murry, 2025 IL App (1st) 221202 Defendant received an 80-year sentence for first-degree murder. He argued that the sentencing court imposed a "trial tax" on him, pointing to the fact that the State had offered a six-year plea deal. The appellate court rejected this argument because that plea deal was offered before the State located the key eyewitness to the offense. The court did not reference the plea offer, or defendant's exercise of his right to trial, during the sentencing hearing.

Defendant also argued that the court erred by considering a statutory factor – defendant's conduct caused serious bodily harm – inherent in the offense. A majority of the appellate court agreed. While a dissenting justice found the remark a mere acknowledgment of the victim's death, the majority pointed out that the sentencing court not only mentioned this factor, it specifically stated that it "considered" the factor. The court remanded for a new sentencing hearing.

People v. Garcia, 2023 IL App (1st) 172005 Defendant alleged that his 100-year aggregate sentence for aggravated criminal sexual assault and kidnaping was unconstitutional, excessive, and a "trial tax" for rejecting a plea offer and going to trial. The appellate court found the sentence constitutional, but agreed that second-prong plain error occurred. The sentence was excessive in that it did not adequately take into account defendant's intellectual disabilities or prospects for rehabilitation, and the plea-trial sentencing disparity suggested defendant was penalized for exercising his right to trial.

Defendant was charged with four Class X counts requiring consecutive sentencing. He rejected a 36-year plea offer, and after trial, received four consecutive terms of 25 years.

The appellate court agreed that the record showed an impermissible plea-trial sentencing disparity. The 100-year sentence represented a 177% increase over the 36 year offered at the plea conference. Rather than a sentence allowing for release at age 56, defendant received a *de facto* life sentence.

While a plea-trial sentencing disparity, standing along, generally cannot form the basis of a "trial tax" claim, this disparity was so excessive (the court found an increase of 15-60% the norm) that it could not be explained by anything other than punishment for going to trial. In support, the appellate court noted the displeasure expressed by the trial judge, who made several antagonistic comments about defense counsel during trial. The State, on the other hand, suggested that the increase could be attributed to additional aggravating facts adduced at trial, or to the victim's statement at sentencing. But these potential factors could

not explain the disparity because the trial court already knew the major details about the case when it made the 36-year offer.

Though the State argued that a "plea discount" is a benefit to defendants, the appellate court found the argument unavailing given that almost all criminal defendants now plead guilty. The court concluded that a sentencing court should give proper consideration for a prior plea offer when determining punishment after trial, and noted that the ABA has proposed, and several states have adopted, a rule whereby sentencing courts must explicitly list the factors relied upon when increasing the sentence beyond the term offered in a plea.

The appellate court further found in regard to defendant's intellectual disabilities (low IQ, ADHD, behavioral issues) that, while defendant's constitutional claim must fail under **People v. Coty**, 2018 IL App (1st) 162383, his argument that the court failed to adequately consider them in sentencing was meritorious. First, the court erred when it sentenced defendant without all necessary information, having accepted the pre-sentence investigator's excuse that he couldn't secure defendant's signature for release of medical records because defendant was in jail. Second, the court misapprehended the nature of an intellectual disability by dismissing certain documents as "14 years old," ignoring the **Coty** holding that such disabilities are immutable.

Finally, the sentencing court failed to consider defendant's potential for rehabilitation. A life sentence suggests no prospect for rehabilitation, yet defendant had no violent criminal history, and the court failed to explore how his intellectual disabilities may have influenced his behavior.

People v. Aquisto, 2022 IL App (4th) 200081 The Appellate Court rejected defendant's contention that the trial court imposed a "trial tax" when it sentenced him to 25 years after he was convicted at a trial where defendant had rejected the State's pre-trial offer of 18 years. A defendant may not be punished for exercising his right to trial, but the reviewing court will only find such impropriety where it is "clearly evident" from the record that the court penalized defendant for going to trial. A defendant can establish such impropriety by pointing to comments from the court which demonstrate that the court was imposing a trial tax or by showing that the sentence imposed was outrageously higher than the one offered prior to trial.

Here, the court commented at sentencing that defendant had accepted responsibility in his statement at sentencing but also noted that defendant did not accept responsibility "a short while ago, in the trial." The Appellate Court concluded that the court properly referenced defendant's trial in assessing the sincerity of defendant's acceptance of responsibility at sentencing. And, the court found that the seven-year increase in the sentence over that which the State had offered prior to trial was not disproportionately high. Accordingly, defendant's sentence was affirmed.

People v. Walker, 2021 IL App (4th) 190073 After turning down the State's offer of probation in exchange for a guilty plea to one Class 2 felony, defendant proceeded to trial and was found guilty of, in part, two Class X felonies requiring mandatory consecutive sentences. The judge imposed a 15-year prison term on each.

The Appellate Court rejected defendant's allegation that the disparity between the plea offer and the ultimate sentence shows the court imposed an improper "trial tax." Generally, a trial tax may be found where the trial judge's remarks make it evident that punishment was, at least in part, imposed because the defendant refused to plead guilty and went to trial instead. Defendant noted, however, that some caselaw, such as **People v.**

Jones-Beard, 2019 IL App (1st) 162005, have held that a trial tax may be found "where the actual sentence is outrageously higher than the one offered during plea negotiations." The Appellate Court disagreed with this principle, noting that the few prior cases that have endorsed this idea, such as **People v. Dennis**, 28 Ill. App. 3d 74 (1975), did so only when the judge participated in plea negotiations, which was not the case here. In any event, the court did not find the disparity improper given that the plea offer was motivated by the State's understandable desire to avoid a trial where a 10-year-old complainant would have to testify about repeated predatory sexual assaults, and where the court learned of additional details about the crime at trial.

People v. O'Neal, 2021 IL App (4th) 200014 The defendant's sentence was not improperly disparate to his co-defendant's, and defendant was not penalized for choosing to go to trial. Defendant was convicted of felony murder for participating in a robbery that ended in a shooting. One co-defendant, whom the sentencing court deemed more culpable, received 20 years as part of a plea agreement that included an obligation to testify against co-defendant. Defendant received 24 years.

Generally, a sentence imposed on a codefendant who pleaded guilty as part of a plea agreement does not provide a valid basis of comparison to a sentence entered after a trial. The considerations that warrant a lesser sentence for one who pleads guilty – acknowledgment of guilt, avoidance of a public trial, and cooperation in another prosecution – all applied to the co-defendant's plea. These reasons for leniency defeat any claim that defendant received an arbitrarily or unreasonably disparate sentence.

Nor did the record support defendant's claim that the trial court penalized him for exercising his constitutional right to a trial. A court of review will determine whether a trial court imposed a trial tax by evaluating the court's remarks to discern if the punishment was, at least in part, imposed because the defendant availed himself of his constitutional right to trial. Here, the sentencing court did note that co-defendant was more culpable, referenced co-defendant's plea agreement, and remarked, "defendant exercised his constitutional right to have a trial." However, the trial court immediately stated, "I don't believe that's anything I can hold against the defendant." The court then provided ample explanation for its decision to impose a 24-year sentence, balancing several proper factors in aggravation and mitigation. The record therefore established the sentencing court did not impose a trial tax.

People v. Musgrave, 2019 IL App (4th) 170106 Defendant's 16-year sentence, after rejecting a 13-year plea offer for a greater felony, was not the result of the court's imposing a "trial tax." It was not a large increase over the offer, and nothing on the record suggested the increase was punishment for rejecting the plea. Likewise, the State did not act improperly by requesting 20 years at the sentencing hearing even though it had offered 13 years during plea negotiations. As in civil settlement negotiations, during plea negotiations both parties are trying to get the best deal possible given their views of the case.

People v. Wheeler, 2019 IL App (4th) 160937 The Appellate Court upheld the 18-year-old defendant's aggregate 90-year sentence for home invasion and two counts of aggravated criminal sexual assault despite the fact that the State made a 38-year plea offer before trial. While a trial court may consider a defendant's anxiety and depression as mitigation, such psychological impairments are not "inherently mitigating." Likewise, defendant has no right to rehabilitation; the court could properly conclude that his conduct was so abhorrent that he

forfeited his right to freedom. And, after trial, the 38-year plea offer was irrelevant to whether a lengthy prison sentence was necessary for protection of the public.

People v. Johnson, 2018 IL App (1st) 153634 Where defendant rejected a 13-year plea offer and received a 16-year sentence after trial, the record did not indicate that the sentence was punishment for going to trial. The increase over the plea offer was minimal, and the judge learned additional details at trial which supported the higher sentence.

People v. Latto, 304 Ill.App.3d 791, 710 N.E.2d 72 (1st Dist. 1999) The judge did not improperly increase defendant's sentence for going to trial. Although a nine-year-sentence was imposed after trial and the State had offered to recommend three years as part of a tentative plea bargain, the three-year-sentence was merely a recommendation and not a sentence in which the trial judge concurred. Also, the sentencing judge's remarks did not explicitly state that a lesser sentence would have been imposed had defendant pleaded guilty.

Where immediately after sentencing defendant indicated his intention to file a post-sentencing motion, and he subsequently filed a timely motion claiming that the sentence was "excessive," he preserved the issue that his sentence was increased because he went to trial.

People v. Scott, 256 Ill.App.3d 844, 628 N.E.2d 456 (1st Dist. 1993) Defendant's conviction was reversed and remanded on appeal due to a jury instruction error. Before defendant's first trial, the trial court offered to sentence him to 10 years' imprisonment if he pled guilty. Because it is improper to increase a sentence in retaliation for refusing to plead guilty, if defendant is convicted in the second trial, the sentencing court must consider the original offer.

§44-4(g)
Defendant's Failure to Testify/Defendant's Silence

United States Supreme Court
Mitchell v. U.S., 526 U.S. 314, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1998) A guilty plea does not waive the Fifth Amendment right against self-incrimination concerning the details and circumstances of the offense. Thus, the sentencing judge erred by considering defendant's failure to testify concerning the amount of cocaine involved in a conspiracy to distribute cocaine.

Where defendant chooses to make statements or admissions during a plea hearing, those statements are admissible in later proceedings. "A statement admissible against a defendant, however, is not necessarily a waiver of the privilege against self-incrimination" as to other matters.

Illinois Appellate Court
People v. Lopez, 2025 IL App (1st) 232120 An assailant approached defendant and shot at him. Defendant fired back, then fled. He was apprehended, charged with armed habitual criminal, and found guilty. During sentencing, defense counsel asked for the minimum, arguing defendant was a family man with two sons, the offense was unlikely to recur, and he was remorseful. After defendant declined to speak in allocution, the court remarked: "Okay. So with that, there's been no taking of responsibility or [expression of] remorse." The court imposed a 10-year term. It noted defendant's act of firing the gun threatened serious harm. It acknowledged that defendant acted in self-defense, but observed that his actions caused

bullets to "fly[ ] all over the place" where bystanders were potentially present. The court noted: "People walking around with baby carriages and strollers. Who knows what was there?"

On appeal, defendant argued his sentence was excessive and based on improper factors. He cited the court's consideration of the shooting as an aggravating factor despite the fact that he acted in self-defense, and the evidence-free reference to baby carriages and strollers. Defendant also argued that the sentencing court failed to consider the effect of a 10-year sentence on defendant's two sons, as required by 730 ILCS 5/5-5-3.1(a)(18). Finally, defendant argued the court improperly used his silence during allocution against him when it found a lack of remorse.

The appellate court affirmed. Defendant's sentence was within the 6-30 year range for a Class X felony and therefore presumptively proper. The record did not rebut that presumption. The sentencing court understood that defendant acted in self-defense, at one point stating that there was a reason he wasn't charged with aggravated discharge. Still the court could consider that defendant's possession of the gun led to a risk of serious harm when he decided to fire the weapon in public. The court's comments about bystanders were supported by surveillance footage showing occupied vehicles in the vicinity of the shooting, and the comment about baby strollers was only meant to illustrate the risk of harm. Also, the court did acknowledge that defendant had children, yet it balanced this factor with the totality of the circumstances to ultimately find that he did not deserve the minimum sentence.

Finally, defendant did not object to the comment about a lack of remorse, meaning any error was forfeited. The appellate court found no plain or obvious error for purposes of the plain error rule. It characterized the comment as isolated and made in response to defense counsel's argument that defendant was remorseful.

People v. Young, 2022 IL App (3d) 190015 While sentencing defendant to 10 years in prison for predatory criminal sexual assault, the sentencing court stated, "I would note also that the defendant has not accepted responsibility. He has not even offered a statement in allocution. Now, he doesn't have to accept that, but there is a difference between a defendant who continues to deny any responsibility and a defendant who says, [y]ou know what, what I did was very wrong."

The Appellate Court found second-prong plain error. A sentencing court may consider a defendant's lack of remorse, but it may not draw a negative inference from the defendant's exercise of his right to remain silent. Thus, the court's reference to the lack of allocution was clear error.

When a circuit court considers an improper factor in sentencing a defendant, the sentence must be vacated and the case remanded for resentencing unless it is clear from the record that the improper factor was so insignificant that its consideration did not result in a greater sentence. The Appellate Court could not conclude that the sentencing court's consideration of a lack of allocution was insignificant, so it remanded for resentencing.

People v. Matute, 2020 IL App (2d) 170786 The trial court can rely on defendant's lack of remorse in aggravation at sentencing, but it must base its findings on competent evidence. Defendant's invocation of his right to not allocate is not such a basis. A court may not draw a negative inference from a defendant's exercise of his constitutional right to assert his innocence. Here, because the trial court's determination that defendant lacked remorse stemmed from defendant's silence at allocution, the finding infringed on his fundamental

right against self-incrimination. The court committed second-prong plain error and remand for a new sentencing hearing was required.

People v. Woods, 2018 IL App (1st) 153323 Defendant's compelled participation in preparation of his presentence investigation report (PSI) was improper. Defendant initially "respectfully declined to answer any questions" during preparation of the PSI, and the trial court then "ordered [defendant] to speak with [the investigator]" to complete the PSI. Defendant was prejudiced by this Fifth Amendment violation where the trial court relied on defendant's compelled statements in the PSI as aggravating evidence at sentencing.

On appeal, the State did not challenge defendant's assertion that his compelled participation violated the Fifth Amendment, arguing only that the error was forfeited. Although defendant did not preserve the error in the trial court, the appellate court found second-prong plain error. The appellate court also found that the forfeiture rule should be relaxed under the **Sprinkle** doctrine because it was the court's conduct that caused the error. The trial court's error deprived defendant of a fair sentencing hearing, and the matter was reversed and remanded for resentencing.

People v. Maggio, 2017 IL App (4th) 150287 A defendant has a Fifth Amendment right against self-incrimination at sentencing, and therefore has the right to refuse to provide information during the presentence investigation. During sentencing, the trial court said that defendant's failure to cooperate with the presentence investigation was "significant" and "troubling," spoke "volumes about his attitude," and was a "telling indication of defendant's attitude."

The Appellate Court held that the trial court erred by extensively referring to defendant's exercise of his Fifth Amendment right. In addition, the judge's remarks established that defendant's refusal to cooperate "weighed heavily" in the trial court's sentencing decision. Because it cannot be stated with certainty that reliance on the improper factor was an insignificant factor at sentencing, the cause was remanded for a new sentencing hearing.

People v. Swank, 344 Ill.App.3d 738, 800 N.E.2d 864 (4th Dist. 2003) The sentencing judge erred by considering, as an aggravating factor, defendant's refusal to name his drug supplier.

People v. Smith, 243 Ill.App.3d 358, 612 N.E.2d 57 (1st Dist. 1993) Sentencing judge erroneously considered defendant's refusal to exhibit his tattoos (which, according to the State, linked defendant and co-defendant to certain evidence) at co-defendant's trial. Although a trial judge may consider a defendant's conduct and demeanor as factors in aggravation, in this case defendant's actions occurred not in his own trial, but in the "entirely distinct and separate trial" of co-defendant. A sentencing court is permitted to consider only information which comes to its attention during defendant's trial and sentencing hearing, where defendant is afforded the assistance of counsel and other necessary safeguards. Remanded for new sentencing hearing before different judge.

§44-4(h)
Judge's Private Investigation, Knowledge, Personal Beliefs/Policies

Illinois Supreme Court
People v. Dameron, 196 Ill.2d 156, 751 N.E.2d 1111 (2001) Due process is violated where

a trial court bases its sentencing determination on its private investigation or private knowledge, "untested by cross-examination . . . or any of the rules of evidence." Here, the trial judge erred by referring to: (1) a book which reminded him of defendant's upbringing but which conflicted with some of the evidence, and (2) remarks made by the judge's father, who had also been a circuit judge, when imposing a death sentence in 1966.

People v. Bolyard, 61 Ill.2d 583, 338 N.E.2d 168 (1975) The trial judge improperly denied probation because he believed that narcotic sellers should not receive probation. See also, **People v. Kendrick**, 104 Ill.App.3d 426, 432 N.E.2d 1054 (1st Dist. 1982) (judge was predisposed to impose imprisonment); **People v. Coleman,** 212 Ill.App.3d 997, 571 N.E.2d 1035 (1st Dist. 1991) (defendant did not receive an adequate sentencing hearing where the trial court stated, without allowing the parties to propose sentencing alternatives, that it was considering the maximum sentence just to get defendant off the streets and to try to get him some treatment; the court's remarks indicated that it had predetermined defendant's sentences prior to considering any of the factors mandated in the sentencing statute). Compare, **People v. Hall**, 143 Ill.App.3d 766, 491 N.E.2d 757 (2d Dist. 1986) (no showing that judge was predisposed to impose imprisonment).

People v. Bolyard, 61 Ill.2d 583, 338 N.E.2d 168 (1975) Where judge at original sentencing hearing expressed an opinion that perpetrators of the sale of narcotics should not receive probation, the cause was remanded for resentencing before a different judge. See also, **People v. Vance**, 76 Ill.2d 171, 390 N.E.2d 867 (1979).

People v. Sawyer, 42 Ill.2d 289, 251 N.E.2d 230 (1969) A defendant who is sentenced to the penitentiary only because the judge wants a test case has not been fairly sentenced.

Illinois Appellate Court

People v. Stephens, 2024 IL App (5th) 220828 No plain error occurred when the State argued that defendant's sentence must be at least five years in light of the fact that his prior sentence was five years. Defendant argued that the sentencing court apparently accepted this argument when it sentenced defendant to seven year. This amounted to an improper policy by which a sentence is dependent on the length of prior sentences rather that independent consideration of the statutory aggravating and mitigating factors. The appellate court held that the comment was isolated, and the record did not establish that the court adopted this policy rather than considering the proper factors.

People v. Fisher, 2023 IL App (4th) 220717 As in **People v. Montgomery**, 2023 IL App (3d) 200389, Judge Kevin Lyons exhibited judicial bias at sentencing. Defendant was found guilty of aggravated criminal sexual abuse for having sex with (and impregnating) a 15 year-old while he was 29. The PSI revealed that defendant had several altercations with staff and inmates while in jail, stopped school at 8th grade, self-reported a history of sexual abuse and mental health issues, and fathered 16 children by several women, though he only knew the names of seven of the children.

Lyons made several "derogatory and sarcastic" comments about defendant before imposing a 12.5-year sentence. The remarks primarily concerned defendant's children. Lyons belittled defendant for calling the complainant's baby a "blessing" when he failed to father his previous children. He mocked defendant's inability to name some of his children and his intellectual capacity. Other comments suggested the term of imprisonment was improperly

inflated so as to prevent defendant from fathering more children. Lyons also ridiculed the doctor who conducted the sex offender evaluation for recommending treatment rather than punishment. He also appeared to hold defendant's choice of a jury trial against him, stating "everybody did what the defendant wanted."

Even though Lyons granted the motion to reconsider, acknowledging he made improper remarks, he continued to mock the doctor and harp on defendant's children. It was clear that the same improper attitude and considerations drove the judge at the second hearing. The remarks "constitute a *tour de force* of sarcasm and scorn" and "the court utterly failed to adhere to the high standards expected of judges, which require the court to be dignified and to treat litigants fairly." The error was reviewable as second prong plain error and required a new sentencing hearing before a different judge.

People v. Montgomery, 2023 IL App (3d) 200389 A sentencing hearing is fundamentally unfair where it is affected by judicial bias. Trial judges are presumed to be impartial, and a defendant must present evidence of something more than an unfavorable result to demonstrate bias or prejudice. Defendant met that burden here, where the trial court's remarks at sentencing demonstrated hostility and ill will toward defendant.

Defendant pled guilty to one count of aggravated battery based on his pushing and punching of another individual inside a convenience store. The altercation was captured on video. At sentencing, defendant made a statement in allocution where he offered an apology for his conduct. The judge interrupted defendant, expressing surprise that the store clerk "didn't shoot you," and stating, "I would have killed you. I would not have waited for the police." Later, the judge commented that he didn't know if he believed defendant's apology. The judge also stated that any family member who would support defendant after watching the video "should be ashamed of themselves." At one point, the judge referenced an unrelated incident where he'd had his phone stolen in a "bodega" in Chicago. He also referred dismissively to defendant's wife, mimicked defendant's demands for the return of his phone at the time of his arrest, criticized the arrest officer's patience in dealing with defendant, and suggested that the officer should have tased defendant.

In vacating defendant's sentence and remanding for a new sentencing hearing before a different judge, the appellate court stated, "if remarks of this nature do not traverse the bounds of due process and amount to the 'something more' necessary to demonstrate judicial bias, the standard is meaningless." While defendant had already completed his term of imprisonment, the court noted that the issue was not moot because a reduction of his prison term might affect how long he could be reincarcerated for any violation of mandatory supervised release.

People v. Holland, 2023 IL App (4th) 220384 Defendant alleged that the court erred when: (1) it examined three of the four witnesses at his sexual assault trial; and (2) conducted an independent investigation into defendant's prior rape conviction for sentencing.

The appellate court found both errors forfeited. Defendant asked the court to relax the forfeiture doctrine because the errors involved judicial misconduct, citing **People v. Sprinkle**, 27 Ill. 2d 398, 401 (1963). But the appellate court found no grounds to do so. The alleged errors occurred during a bench trial and sentencing, so there was no misconduct in front of a jury, and the record did not support defendant's suggestion that objections would have been futile.

The plain error doctrine did not apply to the trial error, because no clear or obvious error occurred. A judge may question a witness to elicit the truth or clarify issues, as long as

the judge does not show bias, and does not assume the role of advocate. Here, the sexual assault case against defendant involved a he-said-she-said accusation, with two occurrence witnesses. The court asked several questions of two of the State's witnesses and of defendant, in an attempt to clarify or expand on testimony and elicit the truth. Most of the questions were open ended, and the judge did not appear to advocate for one side or the other. Thus, there was no abuse of discretion.

The sentencing court did err by conducting an independent investigation into defendant's prior rape conviction. The rape conviction occurred in Maryland, and the sentencing court stated that it had "looked it up on the internet" and found it to be the same offense as the instant case. While it would have been proper to research and take judicial notice of a Maryland statute, the sentencing court did not specify what internet source was used.

The appellate court did not find plain error, however. Defendant argued only the first prong, and the appellate court found the evidence was not closely balanced. Even if the results of the court's internet search were improperly considered, the fact remained that the record showed, and the court could rely on, a prior rape conviction.

People v. Cervantes, 2014 IL App (3d) 120745 It is a violation of due process for a trial court to make a sentencing determination based upon private investigation or knowledge. Here, at the end of the sentencing hearing, the court left the bench to look up life expectancy tables. The court then imposed a sentence equal to defendant's life expectancy (33 years of imprisonment).

The trial court's actions were plain error. Neither party asked the court to consider defendant's life expectancy and neither party had a chance to review or evaluate the court's information. The trial court thus improperly imposed a sentence based on his own private investigation.

The dissenting justice would have held that the record did not support a finding that the trial court relied on life expectancy in imposing sentence. The reference about life expectancy came in a single comment amid a thorough discussion of proper sentencing factors. Accordingly, the dissent would have affirmed defendant's sentence.

People v. Daly, 2014 IL App (4th) 140624 The trial court abused its discretion when it rejected probation and imposed a 42-month-sentence for reckless homicide. Among other things, the trial court's comments at sentencing indicated a predisposition against probation for certain types of offenders. A trial judge may not refuse to consider an authorized sentence merely because the defendant is in a class that is disfavored by that judge. Here, the trial court appeared to believe that any offender who drives after drinking should not receive probation if a death results, no matter what offense is charged and without regard for the specific facts of the case. "Such a position results in an arbitrary denial of probation and frustrates the intent of the legislature to provide for a range of sentencing possibilities."

People v. Miller, 2014 IL App (2d) 120873 A trial court abuses its discretion in imposing sentence when, among other things, it bases the sentence on its own beliefs or arbitrary reasons. Here, defendant was eligible for first-offender probation under 720 ILCS 570/410(a). Defendant was guilty of a qualifying offense (unlawful possession of a controlled substance), she had never been placed on probation or court supervision for a controlled substance or cannabis offense, and she consented to being placed on first-offender probation.

The trial court nonetheless refused to sentence defendant to first-offender probation

based on its "strong" belief that this disposition should be limited to defendants who plead guilty. Since pleading guilty is not a proper statutory prerequisite to first-offender probation, the court abused its discretion by basing defendant's sentence on its own beliefs. The case was remanded for a new sentencing hearing.

People v. Ross, 303 Ill.App.3d 966, 709 N.E.2d 621 (1st Dist. 1999) The sentencing judge committed plain error by relying on his belief that the offense was motivated by defendant's gang membership. Defendant and the victim were members of the same gang, and fought each other "notwithstanding a common gang affiliation." Consideration of the erroneous aggravating factor was not harmless where the trial judge "spent more time discussing gang motive than any other factor."

People v. Mote, 255 Ill.App.3d 757, 627 N.E.2d 1253 (4th Dist. 1994) A trial judge's deliberations must be strictly limited to the record made in open court; private communications are improper because defendant "cannot be expected to know the scope and extent of any private inquiry made by the court outside of open court. . . ." The trial court erred by meeting privately with the victims to determine their reaction to a non-prison sentence. Also, though the trial court disclosed its intentions of the *ex parte* communication to the parties before the interview and the defense consented, the consent was not voluntary where the trial court said it would refuse to consider probation if the defense refused to consent. The sentence was vacated and the cause remanded for sentencing before a different judge. See also, **People v. Sumner**, 40 Ill.App.3d 832, 354 N.E.2d 18 (4th Dist. 1976) (trial court erred by engaging in private conversations with other judges and members of the public concerning the possible sentence before imposing defendant's sentence, because defendant had no opportunity to challenge the basis of the information obtained).

People v. Henry, 254 Ill.App.3d 899, 627 N.E.2d 225 (1st Dist. 1993) Remanded for resentencing where the judge improperly relied on his personal opinion of the crime and, though the judge said he had considered all aggravating and mitigating circumstances, his statements suggested that the sentence was based on his subjective feelings and not solely authorized facts.

People v. Jeter, 247 Ill.App.3d 120, 616 N.E.2d 1256 (1st Dist. 1993) Remanded for resentencing where the trial judge sentenced defendants for punishment based on his personal beliefs that rehabilitation does not occur in prison. The judge did not consider each defendant's *individual* rehabilitative potential. See also, **People v . Lang**, 366 Ill.App.3d 588, 853 N.E.2d 90 (1st Dist. 2006) (new sentencing hearing required where the judge failed to consider defendant's rehabilitative potential and fashioned sentenced based on his personal view of the prison system).

People v. Clemons, 175 Ill.App.3d 7, 529 N.E.2d 57 (1st Dist. 1988) The trial court abused its discretion in denying defendant's motion to vacate sentence based on court's "personal policy" not to disturb a sentence without the victim's approval because a court is not authorized to base sentencing on any such "personal policy."

§44-4(i)
Matters Not Proved/Unreliable Evidence

Illinois Appellate Court

People v. Lopez, 2025 IL App (1st) 232120 An assailant approached defendant and shot at him. Defendant fired back, then fled. He was apprehended, charged with armed habitual criminal, and found guilty. During sentencing, defense counsel asked for the minimum, arguing defendant was a family man with two sons, the offense was unlikely to recur, and he was remorseful. After defendant declined to speak in allocution, the court remarked: "Okay. So with that, there's been no taking of responsibility or [expression of] remorse." The court imposed a 10-year term. It noted defendant's act of firing the gun threatened serious harm. It acknowledged that defendant acted in self-defense, but observed that his actions caused bullets to "fly[ ] all over the place" where bystanders were potentially present. The court noted: "People walking around with baby carriages and strollers. Who knows what was there?"

On appeal, defendant argued his sentence was excessive and based on improper factors. He cited the court's consideration of the shooting as an aggravating factor despite the fact that he acted in self-defense, and the evidence-free reference to baby carriages and strollers. Defendant also argued that the sentencing court failed to consider the effect of a 10-year sentence on defendant's two sons, as required by 730 ILCS 5/5-5-3.1(a)(18). Finally, defendant argued the court improperly used his silence during allocution against him when it found a lack of remorse.

The appellate court affirmed. Defendant's sentence was within the 6-30 year range for a Class X felony and therefore presumptively proper. The record did not rebut that presumption. The sentencing court understood that defendant acted in self-defense, at one point stating that there was a reason he wasn't charged with aggravated discharge. Still the court could consider that defendant's possession of the gun led to a risk of serious harm when he decided to fire the weapon in public. The court's comments about bystanders were supported by surveillance footage showing occupied vehicles in the vicinity of the shooting, and the comment about baby strollers was only meant to illustrate the risk of harm. Also, the court did acknowledge that defendant had children, yet it balanced this factor with the totality of the circumstances to ultimately find that he did not deserve the minimum sentence.

Finally, defendant did not object to the comment about a lack of remorse, meaning any error was forfeited. The appellate court found no plain or obvious error for purposes of the plain error rule. It characterized the comment as isolated and made in response to defense counsel's argument that defendant was remorseful.

People v. Ramirez, 2017 IL App (1st) 130022-B The sentencing court did not consider improper factors. First, its "passing reference" to defendant's use of a gun, without more, did not arise to improper consideration of facts inherent in the offense. Second, despite defendant's denial that he was a gang member, the sentencing court properly cited defendant's gang involvement in aggravation, where he fired a gun from a crowd of people flashing gang signs.

People v. Zapata, 347 Ill.App.3d 956, 808 N.E.2d 1064 (1st Dist. 2004) The trial court erred by relying on its "distaste for gang violence" when sentencing defendant for first degree murder because there was no evidence that the murder was gang-related. Though the

presentence report indicated that defendant had previously been a gang member, the State failed to show how the past gang membership was relevant to the murder in question.

People v. Dempsey, 242 Ill.App.3d 568, 610 N.E.2d 208 (5th Dist. 1993) The trial judge relied on fear and prejudice relating to HIV and on speculation and conjecture in sentencing defendant (for knowingly transmitting HIV and criminal sexual assault of a child). In so doing, the judge failed to make a reasoned and dispassionate determination of the appropriate statutory factors and defendant's rehabilitative potential. Remanded for resentencing.

People v. Joe, 207 Ill.App.3d 1079, 566 N.E.2d 801 (5th Dist. 1991) The trial judge erred by finding that defendant involved his younger brother in the offense where there was no evidence that the younger brother agreed to participate at defendant's urging.

People v. Washington, 127 Ill.App.3d 365, 468 N.E.2d 1285 (1st Dist. 1984) Police officer's testimony that defendant was a gang leader, testimony which was based on information from an unnamed informer, was improperly admitted at defendant's sentencing hearing because there was no showing that the informer was reliable or that his information was accurate.

People v. Hammock, 68 Ill.App.3d 34, 385 N.E.2d 796 (5th Dist. 1979) Sentence reduced where judge based sentence on improper factors -- that defendant inflicted mental abuse on decedent (which was not supported by the record) and that defendant was a persistent law violator (defendant had no criminal record).

People v. Gant, 18 Ill.App.3d 61, 309 N.E.2d 265 (1st Dist. 1974) The judge erred in considering that defendant's actions were a contributing factor in the complainant's death two days later, an allegation that was neither charged nor proved. The record showed that the trial judge was affected by the complaining witness's death. See also, **People v. Maldanado**, 80 Ill.App.3d 1046, 400 N.E.2d 656 (3d Dist. 1980) (court erred by considering fact that complainant never recovered from offense; no casual connection established between defendant's actions and allegation that complainant never recovered).

§44-4(j)
Misconduct Committed by Someone Other Than Defendant

Illinois Appellate Court
People v. McPhee, 256 Ill.App.3d 102, 628 N.E.2d 523 (1st Dist. 1993) The conduct of a person besides defendant cannot be considered in aggravation unless defendant was involved in the improper actions. The trial court erred in considering defendant's daughter's alleged perjury as an aggravating factor. Because there was no evidence that defendant had urged his daughter to commit perjury (and, in fact, no reason to suspect perjury), the daughter's testimony was not a legitimate factor in aggravation. See also, **People v. McAfee**, 332 Ill.App.3d 1091, 774 N.E.2d 469 (3d Dist. 2002) (it is improper to impose a harsher sentence because a criminal defendant exercises his constitutional right to present witnesses in his or her defense; the trial court erred by considering, as an aggravating factor, that defendant had presented a witness whom the judge believed had testified falsely).

People v. Barber, 20 Ill.App.3d 977, 313 N.E.2d 491 (2d Dist. 1974) Where sentencing judge

made reference to and showed his displeasure with the misconduct of defendant's mother and girlfriend, it was a fair inference that the sentence was based on the misconduct of persons other than defendant. Remanded for resentencing before a different judge.

§44-4(k)
Other Factors

Illinois Supreme Court
People v. Heider, 231 Ill.2d 1, 896 N.E.2d 239 (2008) The fact that a defendant is mentally retarded is not a proper factor in aggravation. But, the fact that defendant presents a danger to the community due to his retardation is a proper factor in aggravation (it is the future dangerousness, not the mental retardation, which is the aggravation). The trial court errs by using future dangerousness as an aggravating factor if the evidence does not support the conclusion that defendant is dangerous.

Here, there was insufficient evidence to support the trial court's belief that due to his mental retardation, defendant presented a danger to the community. Defendant was a 19-year-old who functioned at the level of a 10-year-old. Although defendant was convicted of predatory criminal sexual assault, the record showed that he did not initiate the relationship with the 12-year-old girl in question, did not have a record of committing violent or sexual crimes, and sought the company of children because they were his emotional peers, not as targets for criminal offenses.

People v. Emerson, 189 Ill.2d 436, 727 N.E.2d 302 (2000) A co-defendant's sentence is not a relevant mitigating factor. Therefore, the trial court did not err at the second stage of a death hearing by excluding evidence that a co-defendant had received a 60-year prison term.

Illinois Appellate Court
People v. Jones, 2024 IL App (1st) 221555 Defendant's sentence was vacated, and the matter was remanded for resentencing. The circuit court considered three improper factors during sentencing when it commented on the personal traits of one of the victims, misstated the facts regarding the threat posed by defendant prior to the shooting, and misstated defendant's status as a resident of the home where the shooting occurred and his right to seek refuge in that home when police arrived.

A victim's personal traits generally are not relevant to questions of guilt or matters of sentencing. Here, the court improperly highlighted the victim's bravery and decision to become a police officer, neither of which were relevant to any proper sentencing factor.

Additionally, the court improperly speculated about the harm that may have come to pass had the officers not responded to a call of a person with a gun on the porch of the home where the shootout with defendant subsequently occurred. Defendant was not the person seen on the porch with the gun, and there was no evidence that he posed a threat to anyone in the home prior to the shooting. The court's improper speculation was wholly unsupported by the record and amounted to clear error.

Finally, the court misstated both law and facts when it said that the residence in question was not defendant's home and that defendant had no right to retreat into the home to avoid police contact. The evidence showed that defendant had been staying at that location for several days, with the permission of the homeowner, and thus had a reasonable expectation of privacy and freedom from governmental intrusion there. It was his home at the time. And, because the officers had no probable cause or even reasonable suspicion to

believe defendant was engaged in criminal activity, he had no legal obligation to interact with the police. While another resident consented to the officers' entry, such that they were lawfully present within the home, it was error for the court to penalize defendant for exercising his right to retreat into the home rather than voluntarily engage with them.

The evidence at sentencing was closely balanced, and thus these errors required remand for resentencing. Defendant had a limited criminal history. The instant offense was his first involving violent conduct. While the offense was seriousness, the court's errors "severely threatened to tip the scales of justice against" defendant and thus amounted to first-prong plain error.

People v. Klein, 2022 IL App (4th) 200599 A defendant's drug addiction is not a statutory factor in mitigation, thus the court is not required to view it as mitigating. Addiction is a "double-edged sword" and may be viewed as mitigating or aggravating depending on the circumstances. Here, the court did not err in finding defendant's addiction to be an aggravating factor. Defendant was under the influence of drugs when he committed the theft, and he used the money he stole to buy more drugs. Defendant had a history of committing similar crimes for a similar purpose. While defendant had periods of sobriety, he had not managed to stay sober. Under these facts, his 12-year sentence was not an abuse of discretion. Defendant's inability to stop committing crimes in furtherance of his addiction was an appropriate basis for the court to conclude that a high sentence was necessary.

People v. Hibbler, 2019 IL App (4th) 160897 It is not a double enhancement to consider the threat of harm as aggravating evidence in sentencing defendant for armed robbery and resisting arrest. The State argued the degree of threat of harm based on the specific facts of the case, and defendant's conduct was more than the minimum required to establish the offenses.

Where defendant did not object to information in the PSI regarding his misconduct while in pretrial custody, the court could properly consider that information at sentencing. Where defendant had the opportunity to challenge the accuracy of the information in the PSI, a court may rely on all information in an unobjected-to PSI to the extent it is relevant and reliable.

The restitution order was deficient where the court failed to indicate the date by which defendant was to pay and whether defendant was to pay a lump sum or installments as required by 730 ILCS 5/5-5-6(f). The matter was remanded for the limited purpose of complying with the statute.

People v. Maurico, 2014 IL App (2d) 121340 Although a trial court may consider a victim's personal traits to the extent they are necessary to understand the seriousness of the crime, it is improper to consider a victim's personal traits as such when imposing sentence. For example, victim-impact evidence is admissible because it shows the harm caused by the offense. By contrast, evidence of a victim's status within his community is not admissible since it does not show that the crime itself is more serious. A sentencing court may thus rely on a crime's specific harm, but not on the victim's mere status.

Here, the trial court improperly focused on the personal traits of the victim, such as his status as a veteran and the court's belief that he was "a very good man," in imposing a 60-year sentence for first degree murder. This focus went beyond factors that would be

relevant to the seriousness of the offense and instead emphasized the victim's mere status.

People v. Harris, 2013 IL App (1st) 110309 Under Illinois law, the crime of attempt second degree murder does not exist. **People v. Lopez**, 166 IL 2d 441, 655 NE 2d 864 (1995). Under **Lopez**, the failure to recognize the offense of attempt second degree murder creates the possibility that a perpetrator could be punished more severely for attempt first degree murder than if the victim had died and a second degree murder conviction resulted.

In 720 ILCS 5/8-4(c)(1)(E), the legislature removed this possible disparity in sentencing by providing that attempt murder carries only a Class 1 sentence if the defendant proves by a preponderance of the evidence at sentencing that at time of an attempt murder, he or she was acting under a sudden and intense passion resulting from serious provocation. Here, the court concluded that the phrase "serious provocation" carries the same meaning under §8-4(c)(1)(E) as for second degree murder: substantial physical injury or assault, mutual quarrel or combat, illegal arrest, and adultery with the offender's spouse.

Defendant failed to prove by a preponderance of the evidence that he was acting under a sudden and intense passion resulting from serious provocation when he stabbed a man whom he believed was reaching for a gun from under a car seat. The court noted that defendant was not injured, was not engaged in a mutual quarrel, and in fact had no interaction at all with the victim before the stabbing occurred. Furthermore, there is no evidence of an illegal arrest or adultery. Under these circumstances, the evidence failed to show any of the recognized classes of serious provocation.

The court rejected the argument that the act of brandishing a deadly weapon should be held to constitute serious provocation where the offender responds in the belief that self defense is justified. In enacting §8-4(c)(1)(E), the legislature chose to recognize only one of the mitigating factors that reduce a first degree murder to second degree - the presence of serious provocation. Had the legislature intended to also recognize an unreasonable belief in the need for self defense as a factor under §8-4(c)(1)(E), it would have done so explicitly.

People v. Calhoun, 404 Ill.App.3d 362, 935 N.E.2d 663 (1st Dist. 2010) The Unified Code of Corrections requires the sentencing court to consider factors in mitigation, including that defendant acted under a strong provocation and that there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense. 730 ILCS 5/5-5-3.1(a)(3) and (4).

Defendant's motive for her participation in first degree murder was her belief that the deceased had raped her infant daughter. The trial court imposed a maximum 60-year sentence, considering in aggravation that defendant had resorted to vigilantism, while giving no weight to the extreme nature of the provocation.

The Appellate Court remanded for resentencing, directing the court to give due consideration to the mitigating factors of provocation, defendant's minimal criminal background, and the unlikelihood of her recidivism, expressing the belief that a proper sentence would be at a "minimal level."

People v. Hillier, 392 Ill.App.3d 66, 910 N.E.2d 181 (3d Dist. 2009) The trial court has authority to require a sex offender evaluation of a convicted defendant even where the conviction is for a non-probationable offense. Furthermore, a convicted defendant need not be warned that any statements made during such an evaluation may be used against him at sentencing.

People v. Myers, 292 Ill.App.3d 757, 686 N.E.2d 363 (3d Dist. 1997) The statutory aggravating factor that defendant, "by the duties of his office or by his position, was obliged to prevent the particular offense committed," applies only where defendant has some "substantive indicia of responsibility," such as that exercised by a manager or supervisor or by an employee "assigned . . . to guard the business, prevent fines, report crimes or otherwise provide security," and not "a store employee hired merely to deliver goods and collect accounts payable."

People v. Behl, 279 Ill.App.3d 1071, 666 N.E.2d 357(4th Dist. 1996) A trial judge may properly consider the goal of deterrence when imposing a sentence for second degree murder. While passion or unreasonable belief might *itself* be undeterrable, a defendant's *voluntary choice* to act upon that passion or belief can be deterred.

People v. Negrete, 258 Ill.App.3d 27, 629 N.E.2d 687 (1st Dist. 1994) The right to procreate is protected by the federal constitution and is not lost upon conviction of a felony. Thus, the trial judge erred by imposing a criminal sentence to prevent a female defendant from becoming pregnant. See also, **People v. Benenkop**, 252 Ill.App.3d 419, 625 N.E.2d 123 (1st Dist. 1993) (trial court's statements that a seven-year sentence following probation revocation was intended to prevent defendant from becoming pregnant disturbed the appellate court).

People v. Gonzalez, 238 Ill.App.3d 303, 606 N.E.2d 304 (1st Dist. 1992) Defendant was sentenced to 40 years for murder and attempt murder after the trial judge referred to the offense as a typical "Chicago street gang murderous assault" and a "typically mindless, stupid, cowardly, callous and . . . mindless gang conflict." The trial judge also stated that "there has been nothing more stupid or cowardly ever conceived of than this continuous street gang rivalry in this city" and that "it was a cold-blooded shooting and murder." The judge referred to the belief of "many" that with day-to-day good-time, a 40-year maximum sentence is "inadequate" for murder. A new sentencing hearing was required because the judge failed to consider statutory aggravating and mitigating factors, emphasized the widespread nature of street gang crimes, and stressed the inadequacy of the maximum available sentence.

People v. Wardell, 230 Ill.App.3d 1093, 595 N.E.2d 1148 (1st Dist. 1992) Remanded for new sentencing hearing because the trial judge improperly considered the cross-racial nature of the crimes in imposing sentence.

People v. Bennett, 222 Ill.App.3d 188, 582 N.E.2d 1370 (2d Dist. 1991) Judge erred in considering defendant's unemployment because many people are unemployed for various reasons. See also, **People v. Birge**, 137 Ill.App.3d 781, 485 N.E.2d 37 (2d Dist. 1985).

Also, the judge erred in considering in aggravation defendant's problems with alcohol because "alcoholism has traditionally been considered as a factor in mitigation rather than aggravation." But see **People v. Blumstengel**, 61 Ill.App.3d 1016, 378 N.E.2d 401 (5th Dist. 1978) (the judge properly considered defendant's alcoholism as a factor in imposing sentence; however, the judge was concerned almost exclusively with defendant's addiction to alcohol and did not consider defendant's prior criminal record or defendant's limited participation in the burglaries).

People v. Joe, 207 Ill.App.3d 1079, 566 N.E.2d 801 (5th Dist. 1991) It was error to consider

that the victim was a doctor and that defendant had not only "deprived the community of another human life, but also a role model." The personal traits of victims are not relevant to the question of the proper sentence.

People v. Daniels, 173 Ill.App.3d 752, 527 N.E.2d 993 (1st Dist. 1988) At resentencing following a remand, the judge erred by refusing to consider defendant's activities while in prison since the initial sentence.

People v. Smith, 148 Ill.App.3d 655, 499 N.E.2d 1038 (4th Dist. 1986) Sentencing judge may properly consider the amount of "good-time credit" that will be available to defendant. See also, **People v. Clankie**, 180 Ill.App.3d 726, 536 N.E.2d 176 (2d Dist. 1989).

People v. Evans, 143 Ill.App.3d 236, 492 N.E.2d 1036 (5th Dist. 1986) Sentencing judge may properly consider the factor of "deprecating the seriousness of the offense."

People v. Fisher, 135 Ill.App.3d 502, 481 N.E.2d 1233 (3d Dist. 1985) Sentencing judge may properly consider psychological harm to the victim as an aggravating factor.

People v. McCumber, 132 Ill.App.3d 339, 477 N.E.2d 525 (3d Dist. 1985) The lawful exercise of one's constitutional right to have an abortion is not a factor in aggravation or mitigation. Here, the judge imposed a harsher sentence because, according to the presentence investigation report, defendant had three abortions. Remanded for a new sentencing hearing before a different judge.

People v. Warwick, 123 Ill.App.3d 692, 463 N.E.2d 206 (3d Dist. 1984) Trial court erred in sentencing defendant, a police officer, for official misconduct, a crime not involving physical harm, by finding that the statutory aggravating factor, "defendant's conduct caused or threatened serious harm," was present because the court believed that defendant's conduct "caused or threatened the serious harm of official corruption." This aggravating factor does not apply to offenses that threaten nonphysical serious harm only to society at large.

People v. Smothers, 70 Ill.App.3d 589, 388 N.E.2d 1114 (5th Dist. 1979) The judge improperly considered defendant's lifestyle (i.e., living with a woman who was not his wife) and several arrests which did not result in convictions. Also, the judge should have given greater weight to several mitigating factors. Sentence reduced.

People v. Short, 66 Ill.App.3d 172, 383 N.E.2d 723 (5th Dist. 1978) It was improper at sentencing for the State to call and examine leading members of the community as to their opinions of an appropriate sentence.

People v. Sterling, 62 Ill.App.3d 986, 379 N.E.2d 660 (1st Dist. 1978) The trial court erred in prohibiting defendant from introducing evidence concerning injuries he received on the day of his arrest to show that he already suffered from his conduct, because information relating to defendant's life is proper mitigation.

People v. Hill, 14 Ill.App.3d 20, 302 N.E.2d 373 (5th Dist. 1973) The judge erred by commenting that defendant could have been charged with a felony instead of a misdemeanor. Defendant was not charged with the felony, so it is improper to use this for sentencing.

§44-5
Double Enhancement; Factors Inherent in the Offense

Illinois Supreme Court

People v. Easley, 2014 IL 115581 Defendant was not subjected to an improper double enhancement where a single prior felony conviction was used both to prove an element of unlawful use of a weapon by a felon and to elevate the severity of the offense from Class 3 to Class 2. Because the prior conviction was an element of the offense and defendant received the only sentence authorized by the Illinois law, double enhancement did not occur.

People v. Maas, 2019 IL App (2d) 160766 Consecutive sentences for two Class 1 offenses, PSMV and DUI, based on the same infliction of severe bodily injury, were permissible. The Appellate Court rejected defendant's "double enhancement" argument. A double enhancement occurs where the same element is used as both proof of the underlying offense, and to trigger an enhanced sentencing range. A consecutive sentence is not an enhancement, but rather a manner of serving multiple sentences.

People v. Siguenza-Brito, 235 Ill.2d 213, 920 N.E.2d 233 (2009) The rule against double enhancement precludes use of a single factor as both an element of an offense and as a basis for a harsher sentence, or use of a single factor twice to elevate the severity of the offense itself. The rule against double enhancement was not violated because defendant was convicted of two offenses – aggravated kidnapping predicated on criminal sexual assault and aggravated criminal sexual assault predicated on kidnapping – which relied on proof of the same facts.

First, the court stressed that defendant was separately charged and convicted of aggravated kidnapping on two theories – asportation and confinement – and that either theory could have been the predicate felony for aggravated criminal sexual assault. Therefore, an enhanced offense was not used to enhance another offense which involved the same conduct.

Furthermore, the double enhancement rule does not prohibit use of a single factor to enhance separate and distinct offenses. (Overruling **People v. McDarrah**, 175 Ill.App.3d 284, 529 N.E.2d 808 (2d Dist. 1988)). Here, each predicate felony (criminal sexual assault and kidnapping) was used only once – to create separate enhanced offenses of aggravated kidnapping and aggravated criminal sexual assault.

People v. Guevara, 216 Ill.2d 533, 837 N.E.2d 901 (2005) "A double enhancement occurs when either (1) a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or (2) the same factor is used twice to elevate the severity of the offense itself." Double enhancement is not permitted unless clearly intended by the legislature. See also, **People v. Phelps**, 211 Ill.2d 1, 809 N.E.2d 1214 (2004); **People v. Chaney**, 379 Ill.App.3d 524, 884 N.E.2d 783 (1st Dist. 2008).

An impermissible double enhancement does not occur where possession of a firearm is used both as an element of home invasion and to enhance the sentence with a mandatory 15-year sentencing provision. See also, **People v. Dixon**, 359 Ill.App.3d 938, 835 N.E.2d 925 (4th Dist. 2005) (the 25-year to life addition applicable to murder for one who personally discharges a firearm that proximately causes great bodily harm or death is not a double

enhancement - although death is an element of the offense, only the use of a firearm triggers the enhancement).

People v. White, 114 Ill.2d 61, 499 N.E.2d 467 (1986) In imposing sentence for aggravated battery of a child, the fact that the victim is under 13 may not be considered as an aggravating factor because a necessary element of a conviction for aggravated battery of a child is that the victim is less than 13 years of age. The Court upheld the sentence here, finding that consideration of the improper factor did not result in a greater sentence. See also, **People v. Ferguson**, 132 Ill.2d 86, 547 N.E.2d 429 (1989) (when the victim's age is an element of the offense for which defendant is being sentenced, age may not also be considered as an aggravating factor to impose an extended-term sentence); **People v. Milka**, 211 Ill.2d 150, 810 N.E.2d 33 (2004) (defendant's extended-term sentence was the result of an improper double enhancement where the victim's age was both an element of the predicate offense for felony murder and a basis for the extended term).

People v. Saldivar, 113 Ill.2d 256, 497 N.E.2d 1138 (1986) In sentencing defendant for voluntary manslaughter, the trial court may, in applying the statutory aggravating factor that defendant's conduct caused serious harm to the victim, consider the force employed and the physical manner in which the victim's death was brought about. Here, the court's finding of aggravation (the "terrible harm" caused to the victim and fact that defendant's conduct caused death) was not directed at the degree or gravity of defendant's conduct, i.e., the force employed and the physical manner in which the victim's death was brought about or the nature and circumstances of the offense. Rather, the court focused primarily on the end result of defendant's conduct, i.e., the death of the victim, a factor which is implicit in the offense of voluntary manslaughter and which, under **Conover**, cannot be considered in aggravation. Defendant's sentence was reduced where this improper factor was the primary factor on which the trial court relied in imposing sentence.

See also, **People v. Martin**, 119 Ill.2d 453, 519 N.E.2d 884 (1988) (the sentencing judge's consideration, as an aggravating factor (in involuntary manslaughter case), that defendant inflicted serious bodily harm to another resulting in death was plain error); **People v. Smith**, 195 Ill.App.3d 878, 552 N.E.2d 1061 (5th Dist. 1990) (trial judge erred by considering the victim's death as an aggravating factor in imposing sentence for voluntary manslaughter; it is implicit in the offense); **People v. Stoneking**, 193 Ill.App.3d 98, 549 N.E.2d 931 (3d Dist. 1990) (in imposing sentence for first degree murder, a judge cannot consider in aggravation fact that defendant inflicted serious injury by causing a person's death, for serious injury is implicit in every murder, but a judge can consider "the degree of harm caused by the defendant and the gravity of his conduct"); **People v. Sperow**, 170 Ill.App.3d 800, 525 N.E.2d 268 (4th Dist. 1988) (in imposing sentence for murder, the trial judge did not err by considering the amount and type of force employed).

People v. Hobbs, 86 Ill.2d 242, 427 N.E.2d 558 (1981) It is improper to impose an extended-term sentence where the sentencing offense is a misdemeanor enhanced to a felony by the same prior conviction which would allow the extended-term sentence. But see, **People v. Thomas**, 171 Ill.2d 207, 664 N.E.2d 76 (1996) (**Hobbs** does not prohibit a sentencing court from considering a prior conviction both to find eligibility for an enhanced penalty and as aggravation when determining the appropriate sentence within the enhanced range; **Hobbs** merely prohibited the use of the same prior conviction both to enhance the class of the offense *and* to increase the range of authorized punishment for that offense; also, "double

enhancement" is not improper where the legislature specifically intended to allow a single factor to be considered in more than one way); **People v. Gonzalez,** 151 Ill.2d 79, 600 N.E.2d 1189 (1992) (a single prior conviction cannot be used to both establish defendant's status as a felon for purposes of proving the crime *and* as an aggravating factor authorizing an extended-term sentence); **People v. Phelps**, 211 Ill.2d 1, 809 N.E.2d 1214 (2004) (separate sentences for heinous battery and aggravated kidnapping did not violate the rule against double enhancement where, although the infliction of severe and permanent disability was used to enhance battery, and the same injury was used as "great bodily harm" to enhance kidnapping to aggravated kidnapping, the factor was used only once for each offense).

People v. Conover, 84 Ill.2d 400, 419 N.E.2d 906 (1981) The statutory aggravating factor that "defendant received compensation for committing the offense" does not apply to theft or burglary merely because property was taken. Thus, the trial judge improperly considered defendant's taking of the proceeds as an aggravating factor in sentencing for burglary and theft. Remanded for a new sentencing hearing. See also, **People v. Bourke**, 96 Ill.2d 327, 449 N.E.2d 1338 (1983) (in sentencing defendant for burglary and deceptive practices, trial judge erred by noting the fact that defendant received compensation for the offenses, where compensation was the proceeds of the offense, but sentences upheld); **People v. Gardner**, 105 Ill.App.3d 103, 433 N.E.2d 1318 (5th Dist. 1982) (burglary and theft); **People v. Hicks**, 101 Ill.App.3d 238, 427 N.E.2d 1328 (4th Dist. 1981) (armed robbery); **People v. Krug**, 97 Ill.App.3d 938, 424 N.E.2d 98 (3d Dist. 1981) (deceptive practices); **People v. Sorice**, 182 Ill.App.3d 949, 538 N.E.2d 834 (1st Dist. 1989) (burglary).

Illinois Appellate Court

People v. Wade, 2025 IL App (1st) 231683 The PSI in defendant's case incorrectly referred to one of his prior convictions as a felony rather than a misdemeanor, and the trial court indicated it was relying on defendant's criminal history in fashioning his sentence. The erroneous classification of one of his prior convictions was not reversible error. The judge's comments indicated that he was concerned with defendant's ongoing criminal activity, including that he committed additional offenses while on probation for the mis-classified offense. Additionally, defendant failed to object to the mis-classification at the time of sentencing, despite being given an opportunity to make corrections to the PSI, and also did not include the issue in his post-sentencing motion. Accordingly, even if there was error, it was forfeited and did not rise to the level of plain error.

Defendant also was not subject to an improper double-enhancement where the trial judge relied on defendant's criminal history in imposing sentence, where two of his prior convictions also served as predicate offenses for the instant conviction of armed habitual criminal. A conviction of AHC is dependent on proof that defendant, in fact, has qualifying predicate convictions. But, the trial court does not err when it also considers, at sentencing, the entirety of defendant's criminal history as a factor impacting the sentence. Here, defendant had 10 convictions in the span of just five years, and the court stated that if defendant kept "catching new offenses" his sentence would be "longer and longer and longer."

People v. Murry, 2025 IL App (1st) 221202 Defendant received an 80-year sentence for first-degree murder. He argued that the sentencing court imposed a "trial tax" on him, pointing to the fact that the State had offered a six-year plea deal. The appellate court rejected this argument because that plea deal was offered before the State located the key eyewitness to

the offense. The court did not reference the plea offer, or defendant's exercise of his right to trial, during the sentencing hearing.

Defendant also argued that the court erred by considering a statutory factor – defendant's conduct caused serious bodily harm – inherent in the offense. A majority of the appellate court agreed. While a dissenting justice found the remark a mere acknowledgment of the victim's death, the majority pointed out that the sentencing court not only mentioned this factor, it specifically stated that it "considered" the factor. The court remanded for a new sentencing hearing.

People v. Hussain, 2024 IL App (1st) 230471 The trial court did not consider a factor inherent in the offense in aggravation at sentencing following defendant's guilty plea to reckless homicide. Defendant's conviction was for reckless homicide "while operating a vehicle and while refusing to comply with lawful orders from police," allowing for a greater sentencing range than simple reckless homicide. Generally speaking, then, the refusal to comply with police orders could not be used as an additional aggravating factor. Here, however, the appellate court majority held that the circuit court did not err in considering that defendant drove a stolen vehicle, attempted to flee the scene on foot after the crash, failed to render aid to those he injured, and encouraged his passengers to lie on his behalf. While the facts of defendant's refusal to comply with the officers' lawful orders to stop the vehicle were intermingled with these other factors during the court's through discussion of the reasons for the sentence, the record failed to show that the court relied on an improper factor at sentencing. Instead, the court simply considered the nature and circumstances of the offense and the degree of defendant's conduct. A dissenting justice would have found that the court considered an improper factor and would have remanded for resentencing.

People v. Shaw-Sodaro, 2023 IL App (4th) 220704 Defendant's 9-year extended-term sentence for his conviction of aggravated criminal sexual abuse of a victim under 13 years of age, a Class 2 felony, was not improper. At sentencing, the State argued that defendant was extended-term eligible based both on the victim's age (under 12) pursuant to 730 ILCS 5/5-5-3.2(b)(3)(i) and the fact that, excluding time spent in custody, defendant had been convicted of a greater class felony within the prior 10 years, under 730 ILCS 5/5-5-3.2(b)(1).

On appeal, defendant argued that the victim's age could not be the basis for extended-term sentencing where the felony classification was already enhanced because the victim was under 13. The appellate court agreed, citing **People v. Ferguson**, 132 Ill. 2d 86 (1989). But, the victim's age was properly considered by the court when imposing a sentence within the extended-term range. Such consideration does not constitute a double-enhancement.

Defendant also challenged his extended-term eligibility based on his criminal history. Specifically, defendant argued that the time defendant spent in pretrial custody on the current offense should not be excluded when calculating whether the prior conviction was within 10 years of the current one. The purpose of the recidivist statute is to allow for harsher sentencing of offenders whose repeated convictions demonstrated a resistance to correction and such resistance can only be properly assessed once an individual is returned to society. Thus, excluding the time spent in custody, including pretrial detention, is logical in that an individual's behavior in custody is an unreliable indicator of the likelihood of recidivism. Moreover, the statute makes no exception for pretrial custody, and the statute's plain language should be applied as written. Thus, defendant was properly found to be extended-term eligible based on his prior conviction which was within 10 years of his current conviction, excluding *all* time spent in custody.

The appellate court also rejected defendant's argument that excluding time spent in pretrial detention from this calculation violated equal protection by discriminating between those who are financially able to post bond and those who are not. First, it was not at all clear that defendant's time in pretrial custody was due to an inability to pay. Defendant initially had posted bond but then moved to exonerate his bond when he was arrested on another offense and it became clear he would not be able to post the additional bond on that charge. Regardless, the recidivist statute serves the purpose of punishing repeat offenders more severely. In furtherance of that goal, it is rational to exclude periods of time spent in custody from calculation of the 10-year term because a person's conduct in custody is not indicative of whether he or she has recidivist tendencies in the world at large.

People v. Donald, 2023 IL App (1st) 211557 Unlawful use of a weapon by a felon is a Class 3 felony with a sentencing range of 2 to 10 years. However, if the defendant is on parole or MSR at the time of the offense, it's a Class 2 felony with a 3- to 14-year range, subject to exceptions in 720 ILCS 5-4.5-110(c)(1). See 720 ILCS 5/24-1.1(e).

Under section 5-4.5-110(c)(1), the sentencing range is elevated to 7 to 14 years if the predicate felony is one of several qualifying offenses. Defendant here received 7.5 years under the elevated range because his prior conviction was for AUUW, a qualifying offense under section 5-4.5-110(c)(1).

Defendant argued he should have been subject to the 3 to 14 range under 720 ILCS 5/24-1.1(e) because application of section 5-4.5-110(c)(1) resulted in a double enhancement. The appellate court disagreed. The sentencing court here did use AUUW as both an element of UUW/felon, and as grounds to increase the sentencing range. But if the statutory language clearly and unambiguously expresses a legislative intent to allow for a prior conviction to be used twice, courts will not find an improper double enhancement. In **People v. Richards**, 2021 IL App (1st) 192154, the court found the legislature clearly intended to authorize a double enhancement in section 5-4.5-110(c)(1). The court cited the legislature's use of the word "shall" as evidence of its clear intent.

A concurring justice agreed with this outcome, but would have found the statutory language less than clear, and used the analysis in **People v. Hayward**, 2023 IL App (1st) 220360-U, to arrive at the same conclusion.

People v. Taylor, 2023 IL App (4th) 220381 The trial court did not err when it considered the same prior Class X felony conviction as both an element of defendant's armed habitual criminal offense and as a basis for sentencing defendant to natural life imprisonment under the habitual offender statute, 730 ILCS 5/5-4.5-95(a). While this was a double enhancement, it was permissible. The plain language of the habitual offender statute provides that a defendant who has been convicted of three separate Class X felonies "shall" be sentenced to natural life. The Court concluded that this reflected the legislature's intent to mandate a life sentence for any offender who met the habitual-offender statutory criteria, regardless of whether the underlying Class X offenses were also an element of the current conviction.

People v. Brown, 2023 IL App (4th) 220476 The trial court did not err in considering defendant's prior convictions of unlawful use of a weapon by a felon at sentencing where those convictions were predicates for his armed habitual criminal conviction. A court can consider a defendant's entire criminal history in fashioning an appropriate sentence within the statutory range. Here, the court noted defendant's prior convictions as part of his "history of prior delinquency and criminal activity" and as an indication that his conduct was likely to

recur. Thus, the sentencing court properly considered defendant's full criminal history in determining his rehabilitative potential, which was appropriate and did not constitute an improper double enhancement.

People v. Jeffers, 2022 IL App (2d) 210236 In sentencing defendant for aggravated DUI, the trial court did not improperly consider a factor inherent in the offense when it considered in aggravation that defendant's conduct caused or threatened serious harm. The record showed that the court considered the degree of harm inflicted on the victims and the threat of harm to persons other than the victims, both of which were proper considerations. While the court could not properly focus on the death of one victim and great bodily harm to another in imposing sentence, it could properly consider the degree of harm, emotional or physical, caused by defendant's conduct. Likewise, the threat to the general public from defendant's impaired driving was a proper consideration; a court's consideration of the threat of harm need not be limited to the named victim of the charged offense.

People v. Larson, 2022 IL App (3d) 190482 A new sentencing hearing was required where the sentencing court considered a factor inherent in the offense, and the hearing included inappropriate victim impact statements.

Defendant collided with another car while driving intoxicated, killing the other car's passenger and harming the driver. She was convicted of aggravated DUI for each victim, though the court merged the counts and sentenced her only for the aggravated DUI resulting in death.

During sentencing, the State introduced 16 victim impact statements from the victim and various family members of the deceased. Five of these statements asked the court to impose jail time, including some that asked for a maximum sentence. The sentencing court found several factors in mitigation. In aggravation, the court found only that defendant caused serious harm. The court sentenced defendant to six years in prison.

The Appellate Court held that the causation of serious harm was a fact inherent in the offense. Aggravated DUI as charged here required the death of a victim. Because the death is implicit in the offense, it may not be considered as a factor in aggravation. Although defendant did cause serious harm to the second victim, the record showed that this was not the harm referenced by the court in aggravation. The entire focus of the sentencing hearing was the victim's death. The Appellate Court remanded for a new sentencing hearing, finding plain error under both prongs.

The Appellate Court also agreed that the sentencing court erred in considering all 16 of the victim impact statements. Under the Rights of Crime Victims and Witnesses Act, where a defendant is convicted of a motor vehicle offense resulting in great bodily harm or death, a representative of the deceased person has a right to address the court regarding the impact of the offense. The court has discretion to allow multiple representatives to present an oral impact statement, but a "representative" is defined as an immediate family member. Here, the court erred where 11 of the 16 witnesses did not meet the definition of "representative," those who asked for jail time went beyond the scope of a permissible statements, and the court did not exercise discretion. On remand, the sentencing court should bar any victim statements by non-representatives, exercise discretion with respect to any additional victim impact statements beyond those specifically provided as a right under the Act, and limit any statements made to the impact of the offense upon the author of the statement.

People v. Martinez, 2021 IL App (1st) 182553 Defendant received a Class X sentence for UUWF, based on prior convictions for PSMV, robbery (committed at age 17), and UUWF. The latter two convictions did not satisfy section 5-4.5-95(b), and therefore defendant's Class X sentence was vacated. As in **People v. Miles**, 2020 IL App (1st) 180736, and **People v. Williams**, 2020 IL App (1st) 190414, the Appellate Court held that a prior conviction committed as a juvenile that would now be resolved exclusively in juvenile court, does not qualify as a prior Class 1 or 2 conviction for purposes of Class X sentencing under section 5-4.5-95(b). And the prior UUWF conviction could not be used to make him Class X eligible because it was already used to prove the current charge of UUWF, thereby constituting an impermissible double enhancement.

People v. O'Neal, 2021 IL App (4th) 170682 Defendant alleged that his life sentence under the habitual criminal statute was the result of an improper double enhancement. Defendant had two prior Class X felony convictions that were used to establish an element of the armed habitual criminal offense in the instant case. Those same two convictions were also used to adjudicate him a habitual criminal under section 5-4.5-95(a). Furthermore, he alleged that because he committed one of the priors when he was a juvenile, and both priors were non-violent offenses, the life sentence violated the eighth amendment.

Although defendant was subject to a double enhancement, the Appellate Court found it proper. Based on the clear language of the habitual criminal statute, which mandates a life sentence for any third Class X offense, this case represents an instance where the legislature clearly intended to enhance the penalty despite repeated use of the prior two Class X offenses.

Finally, even though defendant committed one of his prior Class X offenses, an armed robbery, as a 17-year-old, and new legislation would have subjected that offense to discretionary rather than mandatory transfer to adult court, the Appellate Court found it still qualified for purposes of the habitual criminal statute. It declined to follow **People v. Miles**, 2020 IL App (1st) 180736, and instead adopted the reasoning of **People v. Reed**, 2020 IL App (4th) 180533, which found the elements of the offense, not the defendant's age, dispositive.

People v. Hileman, 2020 IL App (5th) 170481 The sentencing court did not err when, in sentencing defendant for aggravated assault, it considered in aggravation the fact that defendant's conduct threatened serious harm. A threat of serious harm is not an element of aggravated assault predicated on the victim's status as a police officer. Moreover, defendant's conduct threatened other harm beyond that involved in the assault, as he led police officers on a chase through the streets. Finally, defendant received a sentence of probation, suggesting little weight was placed on the factor in any event.

People v. Sherman, 2020 IL App (1st) 172162 Defendant was convicted of armed habitual criminal for possessing a firearm after having been convicted of burglary and residential burglary. During sentencing, the court imposed a sentence twice the minimum, referencing defendant's prior convictions, including the burglaries and another conviction for aggravated unlawful use of a weapon. Defendant alleged error, arguing improper double enhancement for consideration of the prior burglary convictions despite their being elements of the offense, and consideration of a void AUUW conviction.

The Appellate Court affirmed. The rule against double enhancements must not be applied rigidly given the need to weigh the seriousness of the offense, and the statutory requirement that a sentencing court consider criminal history when assessing rehabilitative

potential. 730 ILCS 5/5-5-3.2(a)(3). The sentencing court here properly considered defendant's priors when determining where in the Class X range defendant's sentence should fall. With regard to the prior AUUW, defendant failed to establish this conviction was under the provision found invalid in **Aguilar**. Defendant submitted supplemental records, but they do not contain any documents establishing the details of the AUUW conviction.

People v. Brown, 2019 IL App (5th) 160329 In sentencing defendant for murder, the trial court did not err in citing in aggravation that defendant's conduct threatened or caused harm. The State argued the existence of harm separate and apart from the victim's death. The victim impact statement described the devastating impact of the victim's death on his mother and his four children. And, the death was the result of defendant's shooting the victim in a housing area during the daytime, creating the risk that other people could have been caught in the crossfire. The statutory aggravating factor that "defendant's conduct caused or threatened serious harm" is not restricted to harm to the victim.

People v. Todd, 2019 IL App (3d) 170153 When fashioning a sentence for delivery of a controlled substance, a trial court may consider the quantity of drugs involved in the offense. Here, defendant received a sentence at the high end of the range for delivery of 15-100 grams of cocaine. The sentencing court explicitly considered the quantity of cocaine in aggravation. The Appellate Court rejected defendant's allegation that the court considered a factor inherent in the offense. The plain language of the Controlled Substance Act authorizes the sentencing court to adjust the sentence based on the quantity of drugs involved.

People v. Hibbler, 2019 IL App (4th) 160897 It is not a double enhancement to consider the threat of harm as aggravating evidence in sentencing defendant for armed robbery and resisting arrest. The State argued the degree of threat of harm based on the specific facts of the case, and defendant's conduct was more than the minimum required to establish the offenses.

Where defendant did not object to information in the PSI regarding his misconduct while in pretrial custody, the court could properly consider that information at sentencing. Where defendant had the opportunity to challenge the accuracy of the information in the PSI, a court may rely on all information in an unobjected-to PSI to the extent it is relevant and reliable.

The restitution order was deficient where the court failed to indicate the date by which defendant was to pay and whether defendant was to pay a lump sum or installments as required by 730 ILCS 5/5-5-6(f). The matter was remanded for the limited purpose of complying with the statute.

People v. Felton, 2019 IL App (3d) 150595 The 25-years-to-life firearm enhancement {730 ILCS 5/5-8-4(c)(1)(D)] is not unconstitutionally vague because it allows the sentencing judge wide discretion in determining what length of enhancement to impose. While a specific list of criteria is not included in the statute, courts are implicitly required to consider the unique facts and circumstances of each case because the enhancement's imposition is limited to cases involving great bodily harm, permanent disability, permanent disfigurement, or death. And, consideration of the degree of injury is not an improper double enhancement because the legislature expressly intended that the sentencing court do so by enacting the firearm enhancements. In dissent, Justice McDade found the statute's failure to provide guidance to

judges as to where in the range a particular sentence should fall renders the enhancement unconstitutionally vague.

People v. Bunning, 2018 IL App (5th) 150114 In fashioning defendant's sentence for aggravated criminal sexual abuse of his seven-year-old step-granddaughter, the trial court did not err in considering the threat of long-term psychological harm. The court observed the complainant's testimony and heard a victim-impact statement from her mother describing the emotional effect of the abuse. Concrete proof that the complainant would suffer future harm isn't required, and the potential for such harm is not implicit in the offense itself.

People v. Garcia, 2018 IL App (4th) 170339 Defendant, who pled guilty to three drug offenses in exchange for the dismissal of seven others, challenged his sentence by arguing that the court improperly considered the quantity of drugs in determining his sentence because quantity was already an element of the offenses. Double enhancements are prohibited except where the legislature clearly intends otherwise. The Appellate Court determined that the legislature intended to permit double enhancement where the Cannabis Control Act and Controlled Substances Act expressly provide "wide latitude" in sentencing discretion, and the Controlled Substances Act further provides that the large quantity of drugs is a factor in determining which violations are the most damaging and warrant the most severe penalties. Here, the trial court referenced the large quantity of drugs in discussing the severity of defendant's offenses. The trial court properly considered the fact that defendant was in possession of 1500 grams of cocaine and 2 pounds of marijuana when imposing sentence for defendant's drug offenses.

People v. Sanders, 2016 IL App (3d) 130511 The trial court erroneously considered a factor inherent in the offense of murder - that defendant's conduct threatened or caused serious harm - where it noted the improper factor, acknowledged that it was inherent in the offense, but considered it nonetheless. The erroneous consideration of a factor inherent in the offense constitutes second prong plain error. Although some precedent has equated second prong plain error with structural error, the Illinois Supreme Court recently held that the second prong is not limited to structural error. **People v. Clark**, 2016 IL 118845.

People v. Melvin, 2015 IL App (2d) 131005 Here, defendant pleaded guilty to attempt predatory criminal sexual assault of a child, a Class 1 offense, but was eligible for a Class X sentence of six to 30 years under 730 ILCS 5/5-5-3(c)(8), which at the time of the offense provided a Class X sentence where a defendant was convicted of a Class 1 or 2 felony after having been twice convicted of a Class 2 or greater felony.

However, as part of the negotiated plea agreement the parties agreed to an extended term Class X sentence of 60 years based on the fact that one of the prior offenses used to authorize a Class X sentence under 5/5-5-3(c)(8) was itself a Class X felony. Under 730 ILCS 5/5-5-3.2(b)(1), an extended term is authorized where a felon has been convicted of the same or greater class felony within the last 10 years.

Thus, a single prior Class X conviction was used to both authorize a Class X sentence of six to 30 years on defendant's Class 1 conviction and to authorize a Class X extended term. Under these circumstances, an impermissible double enhancement occurred. The rule against double enhancement applies where the sentence is enhanced twice by the same factor and not just where the factor is used to enhance the offense and also used to enhance the punishment.

The court vacated the entire plea agreement, finding that it could not merely reduce the sentence to 30 years without essentially altering an essential provision of the plea agreement.

People v. Daly, 2014 IL App (4th) 140624 The trial court abused its discretion when it rejected probation and imposed a 42-month-sentence for reckless homicide. Among other things, the trial judge considered as aggravation a factor inherent in the offense of reckless homicide where it did not merely note the decedent's death in passing, but clearly focused on the death when imposing incarceration.

People v. Hall, 2014 IL App (1st) 122868 Defendant was convicted of violating the Sex Offender Registration Act (730 ILCS 150/6) because he failed to register after having been convicted of aggravated criminal sexual assault and of a prior failure to register. As charged, the offense was a Class 2 felony. The trial court imposed a Class X sentence based on two prior convictions - the same aggravated criminal sexual assault conviction that was an element of the offense, and a prior DUI conviction.

The court concluded that the legislature did not intend for a single conviction to be used both as an element of the offense of failing to register as a sex offender and as a reason to enhance the sentence to a Class X. Although the sentence that was actually imposed fell within the permissible sentencing range for a Class 2 felony, re-sentencing was required because the trial court relied on the wrong authorized sentencing range when it imposed the Class X sentence.

People v. Abdelhadi, 2012 IL App (2d) 111053 Defendant was convicted of aggravated arson in that he committed an arson of a residence when he knew or should have known that a person was present therein. At sentencing, the court considered in aggravation that defendant's conduct "did in fact endanger the lives of individuals." Although the court also considered other legitimate factors, consideration of a factor inherent in the offense, with no further discussion or elaboration, was improper.

A double-enhancement error may be considered as plain error under the second prong of the plain-error rule. When a court considers an improper factor in aggravation, the case must be remanded for resentencing unless it appears from the record that the weight placed on the improper factor was so insignificant that it did not lead to a greater sentence. To determine whether the court accorded significant weight to a factor, a reviewing court may consider: (1) whether the trial court made any dismissive or emphatic comments in reciting its consideration of the improper factor; and (2) whether the sentence received was substantially less than the maximum sentence permitted by statute.

The trial court's comments, which were neither dismissive nor emphatic, do not reveal how much weight it placed on the improper factor. The defendant's sentence also did not allow the Appellate Court to determine how much weight the trial court placed on the improper factor because it was four years above the minimum sentence, even though it was substantially below the maximum. Remand for resentencing was thus required.

People v. Powell, 2012 IL App (1st) 102363 720 ILCS 5/24-1.1(e) provides that unlawful use of a weapon by a felon is a Class 3 felony with a sentence of two to 10 years if the prior conviction was for a non-forcible felony, but a Class 2 felony with a sentence of three to 14 years if the prior conviction was for a forcible felony. Section 5/24-1.1(e) does not involve an enhancement of a Class 3 felony to a Class 2 felony based on the nature of the prior conviction. Instead, the legislature chose to define unlawful use of a weapon by a person who has been

convicted of a forcible felony as a Class 2 felony. Thus, under the plain language of the statute there is no enhancement of a lesser offense due to the nature of the prior conviction.

People v. Chambers, 2011 IL App (3d) 090949 The State conceded that the trial court erred by imposing extended term sentences where a single prior conviction was used both to elevate domestic battery to a felony and to impose extended term sentences.

People v. Griham, 399 Ill.App.3d 1169, 929 N.E.2d 1213 (4th Dist. 2010) Defendant was convicted of unlawful possession of a weapon by a felon, which was elevated to a Class 2 felony based on defendant's 1996 Class 2 felony conviction under the Controlled Substances Act. The same conviction was also used at sentencing as one of the prior offenses authorizing a Class X sentence under 730 ILCS 5/5-5-3(c)(8).

The sentence was an improper double enhancement because a single prior conviction was used to both elevate the charge to a Class 2 felony and to impose a Class X sentence. Although double enhancement is proper if clearly authorized by the legislature, nothing in 730 ILCS 5/5-5-3(c)(8) expressly indicates an intention to allow double enhancement for Class X sentencing.

People v. Walker, 392 Ill.App.3d 277, 911 N.E.2d 439 (1st Dist. 2009) Defendant's 60-year-sentence for felony murder was vacated, and the cause was remanded for a new sentencing hearing, because the trial judge considered as an aggravating factor that the victim's death was caused by a firearm, where defendant had already been subjected to the mandatory 25-year enhancement for causing death with a firearm. The trial judge's extended remarks at sentencing showed that defendant's use of a firearm was a significant factor in the sentencing decision. Although a sentencing court may enhance a sentence by considering "the degree of harm" that was caused, the judge "considered not a particular degree of harm, but simply the harm itself, which was already the subject of a sentencing enhancement."

People v. Dowding, 388 Ill.App.3d 936, 904 N.E.2d 1022 (2d Dist. 2009) In sentencing defendant for aggravated DUI, the court improperly considered the victim's death as an aggravating factor. Though the trial court properly have mentioned the victim's death in its discussion concerning defendant's failure to accept responsibility for the offense and to comply with the original probation sentence, it could not expressly consider the victim's death as an aggravating factor.

People v. Chaney, 379 Ill.App.3d 524, 884 N.E.2d 783 (1st Dist. 2008) The trial court erred by using one of defendant's two prior Class 2 felony convictions both to aggravate the offense of unlawful use of a weapon by a felon from a Class 3 to a Class 2 felony, and also as one of the two Class 2 or greater prior convictions required to impose a Class X sentence. See also, **People v. Owens**, 377 Ill.App.3d 302, 878 N.E.2d 1189 (1st Dist. 2007).

People v. Corn, 358 Ill.App.3d 825, 832 N.E.2d 897 (5th Dist. 2005) Where defendant was convicted of conspiring to manufacture a large amount of methamphetamine, the quantity of methamphetamine which could have been produced is presumed to have been considered by the legislature in authorizing a mandatory minimum term of 15 years, and should not have been used to enhance the sentence to 25 years. The court rejected the State's argument that the trial court imposed the sentence based on the potential harm to workers at the plant where the theft of anhydrous ammonia occurred and to the arresting officers as the result of

defendant's possession of two loaded handguns, for there was no evidence of any potential harm to the workers and defendant did not attempt to use the handguns. Although the *potential* threat of harm can always be argued as an aggravating factor, the degree of aggravation assigned to potential outcomes that might have but did not actually materialize cannot justify a 66% increase of an already severe sentence of 15 years in prison.

People v. James, 255 Ill.App.3d 516, 626 N.E.2d 1337 (1st Dist. 1993) In sentencing defendant for aggravated arson, the trial court stated that because defendant was angry at his girlfriend, he had "planned to perile [sic] a number of innocent people who had nothing to do with his relationship." The trial court erred by considering an aggravating factor which was inherent in the offense -- one element of aggravated arson is that defendant knew, or reasonably should have known, that one or more persons was present in the structure he was burning. Defendant did not forfeit review of this issue by failing to object; consideration of an improper sentencing factor is plain error because it affects the fundamental rights to liberty and to be sentenced only on proper information, and it is impractical to expect counsel to interrupt the trial judge during sentencing to object.

People v. Smith, 198 Ill.App.3d 695, 556 N.E.2d 307 (3d Dist. 1990) In sentencing defendant for delivery of cocaine, the judge erred by considering compensation as an aggravating factor because it is a factor in most drug deliveries. See also, **People v. Atwood**, 193 Ill.App.3d 580, 549 N.E.2d 1362 (4th Dist. 1990); **People v. Vue**, 353 Ill.App.3d 774, 818 N.E.2d 1252 (2d Dist. 2004) (in sentencing defendant for armed robbery, the trial court committed harmless error by considering that compensation was received for the offense because this factor was inherent in the offense).

People v. Maxwell, 167 Ill.App.3d 849, 522 N.E.2d 288 (4th Dist. 1988) In imposing sentence for delivery of cocaine, the judge erroneously considered that defendant's conduct caused or threatened serious harm, though there was no evidence that defendant inflicted or attempted to inflict bodily harm. This factor cannot be considered because the issue of widespread harm from the use of cocaine is implicit in the crime of delivery.

People v. Rhodes, 141 Ill.App.3d 362, 490 N.E.2d 169 (4th Dist. 1986) In sentencing for armed robbery, the threat of bodily harm or the presence of a weapon may not be considered in aggravation; such factors are inherent in the offense. See also, **People v. Flanery**, 229 Ill.App.3d 497, 594 N.E.2d 401 (3d Dist. 1992) (the judge erroneously considered the "threat of harm" aggravating factor where the evidence showed only the use of a weapon, a fact inherent in any armed robbery; the error was prejudicial because "deterrence" was the only other factor in aggravation, and defendant had a minor prior record). But see, **People v. Shutz**, 201 Ill.App.3d 154, 559 N.E.2d 289 (4th Dist. 1990) (distinguishing **Rhodes** and holding that in sentencing for armed robbery, the trial judge may consider whether defendant's conduct threatened serious harm "to a degree greater than that inherent to the offense" and that the judge properly considered defendant's conduct as an aggravating factor where the conduct was more serious than that in a conventional armed robbery). See also, **People v. Duffie**, 193 Ill.App.3d 737, 550 N.E.2d 691 (2d Dist. 1990) (armed violence based on aggravated battery).

People v. Warwick, 123 Ill.App.3d 692, 463 N.E.2d 206 (3d Dist. 1984) The judge erred by relying on the statutory aggravating factor that "the defendant [a police officer convicted of

official misconduct], by the duties of his office or by his position, was obliged to prevent the particular offense, etc." Implicit in the offense of official misconduct is that defendant, under the duties of his position as a police officer, was obliged to prevent the particular offense committed.

People v. Davis, 121 Ill.App.3d 916, 460 N.E.2d 471 (1st Dist. 1984) Extended-term sentence based on judge's finding that the crime was brutal and heinous because defendant intended to kill was improper, for the judge relied on conduct inherent in the offense as an aggravating factor to impose the extended term and record did not show brutal and heinous acts.

People v. Allen, 97 Ill.App.3d 38, 422 N.E.2d 254 (4th Dist. 1981) In imposing sentence for burglary, the judge found that the statutory aggravating factor, "defendant's conduct threatened serious harm," was present, based on "defendant's sticking his body out of a window and then withdrawing it back into the building and his hiding and ducking back and forth." The judge stated that "hiding and ducking back and forth and something like that and the hour at night someone could have gotten hurt." The judge erred in finding the presence of this aggravating factor where the threat of harm extended to the burglary and was no greater than that inherently undertaken by almost all burglars, and where almost all burglaries inherently impose a threat of serious harm to police if they attempt to capture the burglar. For the aggravating factor to be applied properly, the risk of harm must be greater than that inherent in almost all burglaries. Remanded for resentencing.

§44-6
Statement of Reasons for the Sentence

United States Supreme Court
Rita v. U.S., 551 U.S. 338, 127 S.Ct. 2456, 168 L.Ed.2d 203 (2007) The sentencing court should set forth a sufficient statement of reasons for the sentence to show that it considered the parties' arguments and exercised its discretion in a reasonable manner.

Illinois Supreme Court
People v. Hicks, 101 Ill.2d 366, 462 N.E.2d 473 (1984) Statutory requirement that the sentencing court set forth in the record the basis for its determination that consecutive sentences are required to protect the public from further criminal conduct by defendant is permissive, rather than mandatory.

People v. Pittman, 93 Ill.2d 169, 442 N.E.2d 836 (1982) Although it is better practice for the sentencing judge to state his findings in the language of the sentencing statute, the failure to do so does not necessarily require reversal. Instead, the record must show that the sentencing court is of the opinion that a consecutive term is necessary for the protection of the public. The judge satisfied this requirement here.

People v. Davis, 93 Ill.2d 155, 442 N.E.2d 855 (1982) Statutory provisions requiring a sentencing court to state its reasons for a particular sentence do not impose a mandatory, non-waivable requirement necessitating remand for failure to comply; provisions are directory. Further, defendants waived their rights under the statutes by failing to request a statement of reasons at the sentencing hearing.

People v. LaPointe, 88 Ill.2d 482, 431 N.E.2d 344 (1981) The Illinois constitutional provision that all sentences must be determined with the objective of restoring the offender to useful citizenship does not require the sentencing judge "to detail for the record the process by which he concluded that the penalty he imposed was appropriate." Here, the judge properly considered the evidence within the prescribed statutory framework. See also, **People v. Clark**, 97 Ill.App.3d 953, 424 N.E.2d 9 (1st Dist. 1981) (the court could not determine whether the judge properly exercised his discretion in sentencing defendant where the record did not reveal what factors the judge considered in imposing sentence).

People v. Meeks, 81 Ill.2d 524, 411 N.E.2d 9 (1980) Judge's failure to mention defendant's educational background and employment history in imposing sentence does not show that the judge ignored these factors. Defendant, a defense witness, and defense counsel commented on these matters during the sentencing hearing. Also, "[t]he requirement that the trial judge set forth his reasons . . . for the particular sentence imposed does not obligate the judge to recite, and assign a value to, each fact presented in evidence at the sentencing hearing." See also, **People v. Gornick**, 107 Ill.App.3d 505, 437 N.E.2d 892 (1st Dist. 1982). But see, **People v. Goodman**, 98 Ill.App.3d 743, 424 N.E.2d 663 (2d Dist. 1981) (the record failed to adequately demonstrate that the judge considered the proper criteria in imposing sentence where evidence in mitigation was presented at the sentencing hearing but the judge's findings referenced only the aggravating factors).

Illinois Appellate Court

People v. Kindle, 2021 IL App (1st) 190484 Defendant argued that the sentencing court abused its discretion because it did not consider all of the mitigating factors required for juvenile defendants pursuant to section 5-4.5-105 of the Unified Code of Corrections. The trial court explicitly stated it considered defendant's age, impetuosity, and his level of maturity, but did not mention the remaining factors in section 5-4.5-105.

Although section 5-4.5-105 states that the sentencing "shall" consider all of the factors therein, the appellate court held that it need not do so explicitly. Instead, it cited the general rule that a sentencing court is not required to recite or assign a value to each mitigating and aggravating factor in the record. Here, the court received mitigating evidence as to each of the factors in section 5-4.5-105, and absent some indication to the contrary, the appellate court would presume the sentencing court properly considered this evidence.

People v. Barnes, 2017 IL App (1st) 143902 In sentencing defendant to consecutive 18- and 5-year sentences for home invasion and robbery, the trial court did not abuse its discretion by deeming the complainant's injuries as the "most significant" aggravating factor. Contrary to defendant's claim that the trial court considered only this factor, the court specifically stated that it considered all statutory factors in aggravation and mitigation. The court was not required to specify on the record all of the reasons for the sentence imposed. **Miller** does not mandate a sentence reduction where it applies only to the most severe criminal penalties and regardless, defendant was 19 at the time of the offense.

People v. Span, 337 Ill.App.3d 239, 785 N.E.2d 975 (3d Dist. 2003) Although the trial court stated that it had considered the trial record, the updated presentence report, and the new evidence presented at the sentencing hearing, the court failed to articulate a sufficient rationale to show that it believed consecutive sentences were required to protect the public.

A general statement that evidence has been considered does not show a belief that such sentences were required to protect the public. The "record of the hearing fails to set forth a clear basis for the court's belief that consecutive sentences were warranted."

People v. Wilson, 303 Ill.App.3d 1035, 710 N.E.2d 408 (1st Dist. 1999) The trial judge committed plain error by failing to make an on-the-record statement of the basis for the extended-term sentence. While the trial judge need not recite every factor involved in a sentencing decision, it "must nevertheless enumerate its consideration of the requisite aggravating factor supporting the imposition of an extended-term sentence."

People v. Acevedo, 275 Ill.App.3d 420, 656 N.E.2d 118 (2d Dist. 1995) While the sentencing judge is required to "consider the financial impact statement filed with the clerk of the court by the Department of Corrections," a judge is not required to specifically state on the record that it has made the requisite consideration. Absent evidence to the contrary, it must be presumed that the judge considered the financial impact before imposing sentence. Also, where the record is silent on whether DOC filed the financial impact statement, as required by 730 ILCS 5/3-2-9, courts will presume that DOC has performed its statutory duty. Defendant, who had the burden to show that DOC failed to file the report, did not carry his burden of proof.

People v. Dorosz, 217 Ill.App.3d 1016, 578 N.E.2d 67 (1st Dist. 1991) The trial judge did not articulate a precise finding that the public protection required consecutive sentences for defendant's drug convictions (simple possession), and the record does not disclose a sufficient rationale for the sentence. Contrary to the State's argument, the judge could not be considering the protection of society when he referred to defendant's drug use as "part of the seed of commerce in illegal drugs." The "the same would be true of any unlawful drug use, yet consecutive sentences are not required." See also, **People v. Jones,** 232 Ill.App.3d 1083, 598 N.E.2d 380 (4th Dist. 1992) (the trial court failed to make sufficient findings to justify consecutive sentences where it stated only that it would not impose the minimum sentence on a defendant with a prior conviction for a similar offense).

People v. Hanna, 185 Ill.App.3d 1069, 542 N.E.2d 131 (1st Dist. 1989) Extended-term sentence vacated where judge said he considered the requisite aggravating factors but did not state what those considerations were. Without the specific considerations of the trial judge, the court had difficulty understanding why the extended term was warranted. Also, record did not show that extended murder sentence was warranted where defendant intended to rob the victim with a loaded gun and shot the victim as a result of his refusal to submit.

§44-7
Restitution, Assessments, and Forfeitures

§44-7(a)
Restitution

United States Supreme Court

Ellingburg v. United States, 607 U.S. ___ (2026) The federal Mandatory Victims Restitution Act of 1996 requires defendants convicted of certain federal crimes to pay monetary restitution to victims. Defendant committed his crime before the MVRA's

enactment, but he was sentenced after it went into effect. The judge imposed $7,567.25 in restitution pursuant to the MVRA.

Defendant challenged the restitution order, citing the Ex Post Facto Clause. The Eighth Circuit concluded that restitution under the MVRA is not criminal punishment subject to the Ex Post Facto Clause. In the United States Supreme Court, the parties agreed that the Eighth Circuit erred. The supreme court reversed, finding restitution is a criminal punishment.

To determine whether restitution constitutes criminal punishment, the court considered the statute's text and structure. Several aspects of the MVRA made clear that its restitution provision is criminal in nature. The statute labels restitution a "penalty" for a criminal "offense." A defendant must commit certain crimes before being ordered to pay restitution. Restitution is imposed at sentencing. Although the lower court found that the penalty is civil in nature, the supreme court noted that when restitution is requested and imposed, the State, not the victim, acts as the adverse party. Victims cannot initiate or settle the restitution process as they would if it was a civil proceeding. Thus, the restitution was plainly a criminal penalty, imposed in violation of the Ex Post Facto Clause.

Nelson v. Colorado, 581 U.S. ___, 137 S.Ct. 1249, 197 L.Ed.2d 611 (2017) Two persons who were convicted of crimes in Colorado courts obtained reversal of their convictions on appeal and in collateral proceedings. One of the persons was acquitted in a retrial, and the prosecution chose not to retry the other. Both persons moved for the return of court costs, fees, and restitution that had been ordered as a result of the convictions.

Persons whose convictions are reversed have an obvious interest in regaining money which they paid under reversed convictions. The court rejected the State's argument that it was entitled to keep funds which it received while the convictions were valid even if those convictions were subsequently reversed. Once the convictions were reversed, the justification for keeping the payments disappeared.

Second, there is a substantial risk of erroneous deprivation of the defendants' interests in return of their funds if the sole remedy for obtaining a refund requires them to prove actual innocence by clear and convincing evidence. Because the petitioners are presumed innocent once their convictions are reversed, they can be deprived of funds only if the State obtains valid convictions against them.

Third, The State has no interest in retaining money paid by defendants under convictions that were subsequently reversed.

Illinois Supreme Court

People v. Birge, 2021 IL 125644 The sentencing court committed plain error when it assessed over $100,000 in restitution without any explanation as to how it arrived at that number. Under 730 ILCS 5/5-5-6(a), a court may impose restitution after assessing the actual losses suffered by the victim of a crime. Here, there was no numerical evidence presented of the victim's losses, only general testimony about the damage to his property. This was insufficient to assist in calculating the cost of his actual losses as required by the statute.

As in **People v. Lewis**, 234 Ill. 2d 32 (2009), which found the imposition of a street-value drug fine without evidence affected the integrity of the judicial process and the fairness of the proceeding, the error here was similarly reviewable under the second-prong of the plain error rule.

People v. Hasprey, 194 Ill.2d 84, 740 N.E.2d 780 (2000) Statute authorizing restitution for

offenses under the Criminal Code which resulted in injury to a person or damage to real or personal property does not authorize restitution for offenses created under the Illinois Vehicle Code. The Vehicle Code has a restitution provision for vehicle theft, but does not authorize restitution for reckless driving.

People v. Brooks, 158 Ill.2d 260, 633 N.E.2d 692 (1994) Under Ch. 38, §1005-5-6(f) (730 ILCS 5/5-5-6), the five-year period within which restitution must be paid need not commence at sentencing; a judge may order that restitution be paid within a period not to exceed five years after defendant is released from prison. Also, where the judge orders that restitution be paid after a lengthy prison term, payment is to be made by lump sum unless a specific schedule is ordered. (**Note**: Effective January 1, 1994, §5/5-5-6 was amended to provide that periods of incarceration are not included in calculating the five-year period.)

People v. Lowe, 153 Ill.2d 195, 606 N.E.2d 1167 (1992) The Court rejected the claim that the legislature did not intend to authorize restitution for non-violent crimes, and found that the restitution statute does not deprive criminal defendants of due process by imposing civil liability at criminal sentencing.

People v. Mahle, 57 Ill.2d 279, 312 N.E.2d 267 (1974) Restitution in excess of monies wrongfully obtained, as charged in deceptive practice information, was not a proper condition of probation. A trial court is not empowered to order restitution of sums extraneous to the informations. See also, **People v. Smith**, 198 Ill.App.3d 695, 556 N.E.2d 307 (3d Dist. 1990); **People v. Lusietto**, 167 Ill.App.3d 251, 521 N.E.2d 174 (3d Dist. 1988).

Illinois Appellate Court

People v. Billups-Dryer, 2025 IL App (1st) 240221 Defendant was convicted of theft, and the court ordered the $9000 she had put up for bond be turned over to the complainant as restitution. Defendant appealed her conviction and won a new trial due to an invalid waiver of counsel. On remand, the State nolle'd the case, stating that the complainant no longer wished to pursue criminal charges. Defendant moved for the recovery of her $9000. The State objected, stating that the only reason for the nolle was that the complainant had already been paid restitution. The trial court agreed with the State, finding it lacked jurisdiction to recover funds owned by the complainant.

The appellate court reversed. First, the trial court had jurisdiction to rule on defendant's motion, as part of its inherent authority to enforce its orders. Second, the merits of the case is controlled by **Nelson v. Colorado**, 581 U.S. 128 (2017), which held that when a criminal conviction is invalidated by a reviewing court and no retrial will occur, the State must refund fees, court costs, and restitution exacted from the defendant as part of the original trial.

Finally, the appellate court held that funds must be returned to a defendant even if they have already been distributed to a complainant as restitution. Justice Alito's concurrence in **Nelson** viewed this part of the holding skeptically, and federal district courts are divided on this issue. But the appellate court found the reasoning of **United States v. Beckner**, 16 F. Supp. 2d 677, 679 (M.D. La. 1998), compelling. In that case, the court pointed out that the government is at fault when restitution funds are dispersed prior to the conclusion of an appeal, and when the result of the appeal is the reversal of defendant's conviction, restitution ordered as part of that conviction must be returned. The appellate court remanded to allow the parties to submit evidence and, if necessary, to hold a hearing

to determine the total amount of money due to be refunded, including restitution, court costs and fees.

People v. Smollett, 2023 IL App (1st) 220322 Defendant challenged a $120,106 restitution order payable to the City of Chicago following his conviction for felony disorderly conduct. Defendant had filed a false police report, and the city argued that the restitution amount reflected the extra manpower it had spent investigating the false report. Defendant argued that a municipality cannot be considered a "victim" for purposes of the restitution statute. The appellate court affirmed.

Under 730 ILCS 5/5-5-6, the court may order restitution when a person has "received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant." A "victim" under the restitution statute is someone who has suffered property damage, personal injury, or financial loss. **People v. Danenberger**, 364 Ill. App. 3d 936, 943 (2006). Although several Illinois cases have held that a police department or government agency is not considered a "victim" within the meaning of the restitution statute "there is no *per se* rule prohibiting a law enforcement agency from receiving restitution." **People v. Ford**, 2016 IL App (3d) 130650, ¶ 29.

Here, the Chicago Police Department documented in detail the number of detectives and the hours they worked investigating the false reports, and therefore it qualified as a "victim" under the statute. Although defendant also objected the lack of detail in some of the timecards and other documents submitted by the city in its victim impact statement, defendant forfeited these complaints by failing to raise them below.

People v. Synowiecki, 2023 IL App (4th) 220834 Defendant was convicted of theft of a coin collection and ordered to pay $33,000 restitution. The victim testified that his entire coin collection was valued at approximately $50,000, including gold coins worth $9,000, and an Indian Head penny collection worth $15,000. The record showed that some of the stolen coins had been recovered and returned, but not which items or how much those items were worth. Given the lack of itemization, the court concluded that defendant may have been ordered to make restitution for the value of items that had been returned, which would be improper. Thus, the restitution order was arbitrary and unreasonable and not supported by the evidence. The matter was remanded for a new restitution hearing.

People v. D'Alise, 2022 IL App (2d) 210541 After his conviction for unlawful practice of dentistry, defendant was ordered to pay over $14,000 in restitution to two patients. He argued on appeal that the restitution order was improper because the monetary damages were not the result of his crime, the court failed to specify a time for payment, and the court failed to consider his ability to pay.

An order for restitution must comply with 730 ILCS 5/5-5-6. A defendant may be ordered to make restitution if the losses sustained were proximately caused by the criminal conduct. Here, the patients incurred losses when defendant, working in his dentist office, hired other dentists who performed the faulty work. Thus, defendant's crime was the proximate cause of the losses.

Section 5-5-6(f) requires the sentencing court to "tak[e] into consideration the ability of the defendant to pay [restitution]" and "fix a period of time not in excess of 5 years . . . within which payment of restitution is to be paid in full." The consideration of defendant's ability to pay is not a consideration in determining the amount of restitution, only in setting the time to pay the restitution. A trial court is not required to expressly state that it

considered a defendant's ability to pay. Rather, the record must show sufficient evidence concerning the defendant's ability to pay. Here, there was evidence before the court that defendant could afford to pay restitution, including defendant's ability to post bond, his hiring of a private attorney, his work history of 40 years as a dentist and current employment as a consultant, and the fact that he moved to multiple states during the course of the proceedings.

The restitution order was improper, however, in that it failed to clearly outline a period of time within which restitution should be paid in full. The court ordered payment in equal monthly installments 60 days before the end of "the term." Defendant's term included jail time and conditional discharge. It is improper to require payment of restitution while a defendant is incarcerated. And it was unclear whether the "term" referred only to the period of conditional discharge. The sentencing court's failure to define the time during which defendant must pay, and to consider the ability to pay in defining this time, was a clear and obvious error. As a sentencing error, it was cognizable under the second prong of the plain error doctrine. The case was remanded the limited purpose of allowing the trial court to determine the time frame for defendant to pay restitution in full.

People v. Boots, 2022 IL App (2d) 200640 Section 5-5-6(f) of the Code of Corrections requires that the sentencing court set the date by which restitution is to be paid, as well as a payment schedule, when entering a restitution order. Here, the court failed to set a deadline for payment of restitution. This constituted second-prong plain error. A defendant must be given notice of the deadline for payment because there are consequences which flow from the failure to comply with a restitution order. Remanded for the trial court to enter a corrected restitution order.

People v. Copeland, 2020 IL App (2d) 180423 Trial court erred in imposing restitution for the expense of a private transportation service contracted by the sheriff's department to bring defendant to Illinois from Texas. Instead, the expense should have been assessed as a cost under 725 ILCS 5/124A-5. The Appellate Court vacated the restitution order and instead imposed a cost in the same amount. In doing so, the court rejected the argument that under Rule 472 it could not consider this issue on appeal because defendant had not objected to the restitution order in the trial court. Rule 472 applies only to fines, fees, costs, and assessments, and restitution does not fit within any of those categories.

People v. Hibbler, 2019 IL App (4th) 160897 It is not a double enhancement to consider the threat of harm as aggravating evidence in sentencing defendant for armed robbery and resisting arrest. The State argued the degree of threat of harm based on the specific facts of the case, and defendant's conduct was more than the minimum required to establish the offenses.

Where defendant did not object to information in the PSI regarding his misconduct while in pretrial custody, the court could properly consider that information at sentencing. Where defendant had the opportunity to challenge the accuracy of the information in the PSI, a court may rely on all information in an unobjected-to PSI to the extent it is relevant and reliable.

The restitution order was deficient where the court failed to indicate the date by which defendant was to pay and whether defendant was to pay a lump sum or installments as required by 730 ILCS 5/5-5-6(f). The matter was remanded for the limited purpose of complying with the statute.

People v. Hammons, 2018 IL App (4th) 160385 The defendant's challenges to: (1) three fines imposed by the circuit court clerk; (2) a duplicate clerk fee; and (3) the improper amount of restitution recorded on the payment status information sheet, were all precluded by **People v. Vara**, 2018 IL 121823. The errors were made by the clerk, not the court, and because the clerk lacked jurisdiction to record fines or fees not imposed by the court, the numbers on the sheet that differed from the circuit court's judgment had no legal effect. As the clerk lacked jurisdiction to record these fines and fees, so too did the appellate court lack jurisdiction to review them.

People v. Adame, 2018 IL App (2d) 150769 The imposition of restitution without evidentiary support is second-prong plain error. After trial, the judge reduced defendant's felony theft conviction to a misdemeanor because the State's evidence of value in excess of $500 was inadequate. Because of that finding, the court's subsequent imposition of $1100 restitution was improper. The Appellate Court vacated and remanded for a new hearing on restitution.

People v. Ford, 2016 IL App (3d) 130650 The restitution statute authorizes courts to order restitution when a defendant through a criminal act has damaged another person's property. A "victim" under the statute is someone who has incurred property damage or financial loss. 730 ILCS 5/5-5-6.

The vast weight of authority holds that a police department is not considered a victim under the restitution statute and should not be compensated for the public money it spends for law enforcement. There are two reasons for this rule: (1) merely investigating offenses does not make the police a "victim" of the offenses; and (2) were the rule otherwise, the police would receive restitution in almost every criminal case, and would thus be compensated twice for performing their basic function, once by the taxpayers and once by the offender

But there is no per se rule prohibiting police from receiving restitution. Here defendant recklessly damaged a police van. The trial court ordered defendant to pay restitution to repair the van. The Appellate Court upheld the order since it did not reimburse the police for their normal costs of investigating crime, but instead covered their out-of-pocket cost of repair required because of defendant's criminal act.

People v. Hanson, 2014 IL App (4th) 130330 The court declined to review as plain error, despite the State's agreement, defendant's claim that the trial court imposed a restitution order without an evidentiary basis for the correct amount of restitution. It rejected the idea that all sentencing errors are reviewable simply because defendant asserts "a few ten-dollar phrases" such as "substantial rights," "grave error," and the "fundamental right to liberty." Since all sentencing errors arguably involve the fundamental right to liberty, applying plain-error requires a more in-depth analysis, requiring a defendant to explain why the sentencing error in his particular case merits plain-error review.

Here, neither defendant nor the State attempted to explain why the trial court's error was more substantial relative to other types of sentencing errors. The sentence and restitution order were affirmed.

People v. Moore, 2013 IL App (3d) 110474 Defendant was placed on probation for burglary and ordered to pay restitution to the complainant in the two counts for which he was convicted, and also to a separate complainant named in two counts which were dropped as

part of a plea agreement. The State filed a petition to revoke probation and requested that defendant's bond be applied first to restitution. The trial court agreed and checked the box in the sentencing order which stated that bond was to be applied first to restitution. However, the court left the section blank which would have required defendant to pay restitution, and did not check the box indicating that restitution was being ordered.

When probation is revoked, an entirely new sentence is imposed. Thus, upon revocation of probation the defendant is no longer subject to the original conditions of probation, including to pay restitution.

Thus, when probation was revoked the original restitution order ceased to exist. Although at the resentencing the trial judge left blank the portion of the sentencing order establishing restitution, it addressed the issue of restitution during the sentencing hearing and responded to the State's request by checking the box in the sentencing order applying defendant's bond first to restitution. Under these circumstances, the trial judge intended to reestablish a restitution order. Thus, defendant was subject to a restitution order after probation was revoked.

However, the provision requiring restitution on the dismissed counts was improper. Generally, a defendant can be required to pay restitution for conduct which did not result in conviction only if the plea agreement includes defendant's agreement to pay such restitution. Because there was no such agreement here, the order requiring restitution concerning the dismissed counts was vacated.

The court also concluded that the trial court erred by applying defendant's bond to restitution rather than to paying court costs. 730 ILCS 5/5-5-6(e) provides that the trial court may "require the defendant to apply the balance of his cash bond, ***after payment of court costs, and any fine that may be imposed***[,] to the payment of restitution."

People v. Korzenewski, 2012 IL App (4th) 101026 In addition to any other fine or penalty, an individual who is convicted of DUI concerning an incident in which the operation of a motor vehicle proximately caused an appropriate emergency response must pay restitution for the cost of that response. (625 ILCS 5/11-501.01(i)). A routine traffic stop for speeding does not qualify as "an appropriate emergency response" under the meaning of §11-501.01(i). Applying **Gaffney v. Board of Trustees of the Orland Fire Protection District**, 2012 IL 110012, the court concluded that the word "emergency" should be interpreted to mean "an unforseen circumstance involving imminent danger to a person or property requiring an urgent response." Because defendant did not proximately cause an incident requiring an emergency response, restitution to the police department was not authorized under §11-501.01(i).

The court vacated the restitution order requiring the payment of $133 to the police department which stopped defendant for speeding.

People v. Allen, 2012 IL App (4th) 110297 625 ILCS 5/11-501.01(c) provides that a person who is convicted of driving under the influence and whose "operation of a motor vehicle . . . proximately caused any incident resulting in an appropriate emergency response" is liable for the cost of the emergency response. 625 ILCS 5/11-501.01(i) defines "emergency response" as "any incident requiring a response by a police officer, a fire fighter carried on the rolls of a regularly constituted fire department, or an ambulance."

Noting that the legislature included a proximate cause requirement in the statute, the court concluded that §5/11-501.01(i) authorizes restitution only if the incident requiring an "appropriate emergency response" was separate from the underlying DUI violation.

Therefore, the trial court erred by ordering that defendant pay restitution where the only official response was that police officers conducted a traffic stop which led them to believe that defendant was intoxicated.

People v. Cameron, 2012 IL App (3d) 110020 A crime victim is entitled to recover restitution for the actual out-of-pocket losses proximately caused by the criminal conduct of the defendant, even if those losses were not set forth in the charging instrument. 730 ILCS 5/5-5-6(a), (b).

When a defendant is convicted of theft, losses for items that were taken as part of the same theft, but not specifically listed in the charging instrument, may be included in a restitution order because the theft of multiple items from one victim involves a single course of conduct that constitutes one offense of theft. Where a defendant is convicted of theft by possession of stolen property, however, the defendant may only be required to pay restitution for those losses associated with the stolen items in his possession, even if some of those items are not listed in the charging instrument. Defendant may not be required to pay for all of the losses associated with the initial taking.

People v. Day, 2011 IL App (2d) 091358 Defendant was convicted of 10 counts of theft and 16 counts of forgery for taking money from her law practice without her partner's consent. The Appellate Court rejected defendant's argument that the trial court erred by imposing $137,937.25 in restitution to be paid in monthly installments of $2,873.

730 ILCS 5/5-5-6(b) authorizes restitution for "actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge." The court concluded that defendant was liable for restitution for the entire amount which she wrongfully took from the firm, without deducting any amount to which she would have been entitled under the firm's partnership agreement.

Furthermore, the trial court did not abuse its discretion by ordering monthly restitution payments of $2,873. The trial court is required to determine a reasonable time and manner for the payment of restitution, and need consider the defendant's ability to pay only when considering the time and manner of payment or when evaluating a petition to revoke restitution.

The Appellate Court also rejected defendant's request to modify the restitution payments to 10% of any monthly income. The court stressed that it was unable to determine whether defendant's unemployment status would be long term or only for a temporary period; "[a]lthough defendant will not be working as an attorney for the majority of the restitution period, she is a highly educated and experienced person who should be able to obtain work earning an above-average salary." The court also noted that if it turned out that defendant's income was insufficient to allow the restitution payments, she could petition the trial court for a modification.

People v. Dickey, 2011 IL App (3d) 100397 The court is required to order restitution when, among other things, the defendant's criminal actions caused personal injury. 730 ILCS 5/5-5-6. The court must determine the actual costs incurred by the victim; a guess is not sufficient. The court is also required to consider the defendant's ability to pay in determining whether restitution should be paid in a single payment or in installments. If the court orders that the restitution be paid over a period of greater than six months, the court is required to order that defendant make monthly payments, unless the court waives this requirement by making a specific finding of good cause for waiver. 730 ILCS 5/5-5-6(f).

The trial court's order that defendant make restitution in a specific amount was supported by the presentence report containing the victim's bills for medical care in that amount. The court ordered that the restitution be paid within the 30-month term of probation, but did not consider defendant's ability to pay in setting the time for payment of restitution. Nor did the court make any finding of good cause to waive the required monthly payments. The cause was remanded for the trial court to consider defendant's ability to pay in setting the time within which restitution must be paid.

People v. Graham, 406 Ill.App.3d 1183, 947 N.E.2d 294 (5th Dist. 2011) The term "victim" in the statute authorizing restitution to a crime victim, 730 ILCS 5/5-5-6(b), includes "a single representative who may be the spouse, parent, child or sibling" of the victim, except where that person is also the defendant. 725 ILCS 120/3(a); 730 ILCS5/3-1-2(n). Use of the word "may" indicates a permissive or directory reading. The statute should also be construed broadly to effect its remedial purpose and to avoid an absurd or unjust result. The word "victim" may thus be construed to include a grandparent who has custody of the minor victim and has assumed the role of a parent.

People v. Felton, 385 Ill.App.3d 802, 896 N.E.2d 910 (4th Dist. 2008) 730 ILCS 5/55-6(d) provides that a defendant may enter a plea agreement requiring restitution on charges that have been dismissed. Where the plea agreement contains no explicit provision to that effect, however, the portion of the restitution order relating to the dismissed charges is void.

People v. Mocaby, 378 Ill.App.3d 1095, 882 N.E.2d 1162 (5th Dist. 2007) The Southern Illinois Drug Task Force is not a "victim" under the restitution statute. See also, **People v. Chaney**, 188 Ill.App.3d 334, 544 N.E.2d 90 (3d Dist. 1989) (an investigatory agency, like the Department of Criminal Investigation of the Illinois State police, is not a "victim"); **People v. Velez**, 336 Ill.App.3d 261, 783 N.E.2d 226 (2d Dist. 2003) (a police department is not considered a "victim" within the meaning of the restitution statute; because a torn uniform is a "reasonably expected law enforcement expense," and it appeared from the record that the officer in question could seek reimbursement from the city, the trial court erred by ordering defendant to pay restitution for trousers that were torn during the arrest). But see, **People v. Gray,** 234 Ill.App.3d 441, 600 N.E.2d 887 (4th Dist. 1992) (legislature intended that restitution be paid to unnamed victims and insurers, including public agencies, which provide free services to indigent victims (such as Illinois Department of Public Aid) for injuries related to the offense).

People v. Haskins, 364 Ill.App.3d 375, 846 N.E.2d 145 (3d Dist. 2006) The Unified Code of Corrections authorizes a trial court to withhold of a portion of defendant's DOC wages for payment of a restitution order.

People v. McClard, 359 Ill.App.3d 914, 834 N.E.2d 984 (3d Dist. 2005) Trial court was not authorized to order restitution for unrelated attempts to cash checks on dates other than that for which defendant was convicted. Section providing that a defendant who faces multiple charges may enter a plea agreement requiring the payment of restitution to victims of charges that have been dismissed under the terms of the agreement did not apply where defendant was convicted in a trial rather than by a plea.

People v. Bouyer, 329 Ill.App.3d 156, 769 N.E.2d 145 (2d Dist. 2002) The trial judge erred,

upon revoking defendant's probation, by continuing the sentencing hearing at three-month intervals while defendant's family paid restitution, but imposing a five-year-sentence when the family stopped making payments. Defendant was legally blind and had limited assets, and the judge failed to determine whether the failure to pay restitution was willful. Further, although defendant's ability to borrow from relatives may be a proper factor in determining ability to pay, where "the family balks at making further payments, it does not necessarily follow that defendant wilfully refused to pay."

People v. Visor, 313 Ill.App.3d 567, 730 N.E.2d 574 (2d Dist. 2000) The trial court need not consider defendant's ultimate ability to pay when determining whether restitution is required, but must do so when determining the method and time of payment. The trial court erred by ordering payment of an unknown amount in restitution within two years of defendant's release; without knowing the amount of money involved, the court could not have considered defendant's ability to pay. Also, the trial court erred by entering a restitution order *nunc pro tunc* some 3½ months after the sentencing hearing where the order added new findings concerning the sum of money to be repaid, and did not merely reflect action taken at an earlier date.

In re T.W., 268 Ill.App.3d 744, 644 N.E.2d 438 (2d Dist. 1994) Restitution statute requiring trial court to order defendant to pay restitution for "out-of-pocket expenses, damages, losses, or injuries" proximately caused by defendant's conduct does not authorize the trial court to require defendant to pay for security measures added to the victim's home after the offense. Accord, **People v. Fitzgerald**, 313 Ill.App.3d 76, 728 N.E.2d 1271 (1st Dist. 2000). See also, **People v. McCormick**, 332 Ill.App.3d 491, 774 N.E.2d 392 (4th Dist. 2002) (the trial court committed plain error by ordering defendant, who had been convicted of making telephone calls "with the intent to abuse, threaten[,] or harass" the complainant, to pay $270 in restitution for parking tickets which the complainant received because she was afraid to park in public garages after she received the calls; the fines were the penalty incurred by the complainant for violating the law, and "[c]ourts will not award damages growing out of the claimant's own illegal act or assist parties in relieving themselves of the consequences of their illegal activities").

People v. Guajardo, 262 Ill.App.3d 747, 636 N.E.2d 863 (1st Dist. 1994) Restitution for counseling can be ordered only where the trial court calculates, on the record, the expenses involved. Because the restitution statute has no waiver provision, defendant's failure to request an accounting in the trial court did not waive this requirement. The restitution order was vacated and the cause remanded for the trial court to determine the amount of restitution for counseling expenses.

Because the judge ordered restitution taken from defendant's bail, ability to pay is presumed.

People v. Mitchell, 241 Ill.App.3d 1094, 610 N.E.2d 794 (4th Dist. 1993) Defendant's ability to pay is relevant to restitution in three circumstances: in determining the manner of payment, when assessing restitution for the victim's counseling services, and where the State attempts to revoke restitution for defendant's failure to pay. Ability to pay need not be considered in determining whether restitution is an "appropriate" sentence. It is also irrelevant that the money will never be collected.

People v. Powell, 199 Ill.App.3d 291, 556 N.E.2d 896 (4th Dist. 1990) In setting the amount of restitution, the sentencing judge may rely on information in the presentence report and, absent some claim that the report is inaccurate, additional information is not required.

People v. Jones, 176 Ill.App.3d 460, 531 N.E.2d 88 (3d Dist. 1988) Sentencing judge may not reserve determination of defendant's ability to pay restitution. If the judge deems restitution appropriate, a definite amount of restitution should be set at the sentencing hearing. See also, **People v. Stinson**, 200 Ill.App.3d 223, 558 N.E.2d 642 (4th Dist. 1990) (remedy for trial court reserving question of restitution is remandment to comply with the statute; reversal of a restitution order without remand should apply only as a special remedy in unusual situations); **People v. White**, 146 Ill.App.3d 998, 497 N.E.2d 888 (4th Dist. 1986) (restitution order was improper where it left open (and subject to increase) the amount of restitution until the victim completed medical care; further, a restitution order that is subject to increase at a later date is not complete, clear, or definite, which is required of a final judgment or sentence); **People v. Daminski**, 80 Ill.App.3d 903, 400 N.E.2d 708 (5th Dist. 1980) (the judge erred by requiring defendant to make restitution but leaving up to probation authorities the amount of restitution and method of payment).

People v. Rupert, 148 Ill.App.3d 27, 499 N.E.2d 93 (3d Dist. 1986) Defendant was not financially able to pay restitution of $12,730 at $200 per month. Payments of $200 per month would absorb at least 40% of defendant's annual income and would be an impossible financial burden that would frustrate the purpose of restitution. The court modified the amount of restitution to 10% of defendant's net monthly income, extended the restitutionary period to five years, and noted that defendant will not be held liable in any further criminal proceedings should any deficiency remain at the end of five years. See also, **People v. Knowles**, 92 Ill.App.3d 537, 414 N.E.2d 1322 (4th Dist. 1980) (modifying amount of restitution to prevent financial burden to defendant and finding that a percentage of defendant's net income, rather than a fixed amount, was more appropriate); **People v. Reece,** 228 Ill.App.3d 390, 591 N.E.2d 993 (5th Dist. 1992) (restitution amount was excessive for defendant and the "better approach" was to establish a fixed percentage of defendant's income as restitution).

People v. Jones, 145 Ill.App.3d 835, 495 N.E.2d 1371 (3d Dist. 1986) The trial court erred in failing to consider defendant's interest in his estranged wife's car, which he drove into, where the car was marital property in which defendant had an interest, and his interest should be deducted in determining the amount of restitution owed to his wife. Also, the trial court did not abuse its discretion in setting the value of the car.

People v. White, 135 Ill.App.3d 563, 482 N.E.2d 134 (4th Dist. 1985) Remanded for a hearing on the amount of restitution and manner of payment where there was no evidence of complainants' medical expenses and the manner of payment was not addressed. The trial court can determine the manner and time of payment only after determining the amount of restitution.

The restitution provision does not require the court to hold a hearing to assess defendant's financial capacity to make restitution. Defendant's financial capacity is a required consideration only (1) when determining the manner of payment and (2) if a petition to revoke restitution is filed.

The judge may order defendant to apply the balance of the cash bond to the payment

of restitution. See also, **People v. Fulkerson**, 326 Ill.App.3d 1124, 762 N.E.2d 1199 (4th Dist. 2002) (the circuit clerk erred by transmitting defendant's bail bond deposit to the victims without a judicial order authorizing disbursement; defendant did not forfeit his right to seek return of the deposit by failing to request a stay of disbursement before the deposit was paid to the victims).

The fact that defendant has been sentenced to prison does not mean that defendant has no future ability to pay. The term of imprisonment is a factor to be considered in assessing defendant's ability to pay and in determining the manner and time of payment.

People v. Johnson, 106 Ill.App.3d 171, 435 N.E.2d 799 (3d Dist. 1982) Restitution order reversed and remanded where the judge failed to sufficiently determine defendant's financial ability to pay it. See also, **People v. Krug**, 97 Ill.App.3d 938, 424 N.E.2d 98 (3d Dist. 1981).

In re F.D., 89 Ill.App.3d 223, 411 N.E.2d 1200 (2d Dist. 1980) The trial judge erred by computing the amount of restitution on the basis of depreciated replacement cost. The amount of restitution must be computed using the fair market value of the property at the time and place of the theft.

The fact that the victim recovered insurance money, which reimbursed him for all or part of his actual out of pocket expenses or loss proximately caused by defendant, does not decrease the amount of the loss. But see, **People v. Jones**, 145 Ill.App.3d 835, 495 N.E.2d 1371 (3d Dist. 1986) (finding that the trial court erred by failing to consider, in a case of felony criminal damage to property, the money the complainant received for the sale of her car to a junk yard, and that the sale amount should be deducted in determining restitution).

People v. Jones, 81 Ill.App.3d 367, 401 N.E.2d 287 (2d Dist. 1980) A judge may order restitution only for losses arising out of the offense for which defendant was convicted. Here, the judge erred in ordering defendant to pay restitution to the victim of a robbery, a crime which he committed while on probation for burglary. "A crime alleged in a petition to revoke probation is a separate offense for which the defendant may not be sentenced until he has been charged, tried and convicted in the manner set forth by law." See also, **People v. Knowles**, 92 Ill.App.3d 537, 414 N.E.2d 1322 (4th Dist. 1980) (vacating portion of restitution (in case where defendant was convicted of arson for setting fire to a student dormitory) that was based on the loss suffered by certain residents of the dormitory because defendant was not charged with damaging students' property); **People v. Exum**, 307 Ill.App.3d 1000, 719 N.E.2d 342 (4th Dist. 1999) (the trial judge erred by requiring restitution in the amount of $305, which the trial judge believed to be the full amount of three forgeries defendant had allegedly committed, where defendant was charged with and pleaded guilty to only a single count of forgery in the amount of $100, for a judge may order restitution only for the loss caused by the offense to which defendant pleaded guilty).

People v. Short, 66 Ill.App.3d 172, 383 N.E.2d 723 (5th Dist. 1978) While restitution may be imposed as a condition of probation, defendant's inability to make immediate restitution may not be the ground for denying probation.

§44-7(b)
Fines

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains

jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order or other parts of record resulting in discrepancy between record and actual judgment of the court.

United States Supreme Court

Southern Union Co. v. United States, 567 U.S. 343, 132 S. Ct. 2344, 183 L.Ed.2d 318 (2012) No principled basis exists under **Apprendi** for treating criminal fines differently from sentences of imprisonment or a death sentence. So far as **Apprendi** is concerned, the relevant question is not whether a fine is insubstantial as compared to imprisonment or a death sentence. The question is whether the fine at issue is substantial enough to trigger the Sixth Amendment right to trial by jury. Where a fine is so insubstantial that the underlying offense is considered petty, the right of jury trial is not triggered and no **Apprendi** issue arises. Where a fine is substantial enough to trigger the Sixth Amendment's jury-trial guarantee, **Apprendi** applies in full.

The statute at issue subjected Southern Union to a maximum fine of $50,000 for each day of a violation. In light of the seriousness of that penalty, the company was properly accorded a jury trial. Judicial factfinding that enlarged the maximum punishment beyond what the jury's verdict allowed therefore violated **Apprendi**.

U.S. v. Bajakajian, 524 U.S. 321, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998) The Excessive Fines Clause of the Eighth Amendment is intended to limit "the government's power to extract payments, whether in cash or in kind," as "punishment" for a criminal offense.

For purposes of the Eighth Amendment, forfeitures are "fines" if they constitute "punishment" for a criminal offense. Forfeiture of $357,144 under a federal statute requiring forfeiture of "any property . . . involved" in the offense of failing to report the taking of more than $10,000 out of the country constituted "punishment " because it was imposed at the conclusion of the criminal proceedings and only against persons who were convicted of the criminal offense. The government's action was not a forfeiture *in rem*, which is considered "nonpunitive," because it "does not bear any of the hallmarks of traditional civil *in rem* forfeitures." The government sought to convict respondent of the criminal charge rather than proceed against the currency itself, and the forfeiture action was triggered by the entry of judgment on the criminal conviction. Under these circumstances, forfeiture did not serve the remedial purpose of an *in rem* forfeiture, but was designed as "punishment" for the underlying crime.

The Excessive Fines Clause is violated where the amount of a fine is "grossly disproportionate to the gravity of the defendant's offense." The clause was violated here, for forfeiture of $357,144 was grossly disproportionate to the offense of failing to report the transportation of more than $10,000 out of the country.

Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) The State cannot constitutionally imprison someone beyond the statutory maximum term because of his inability to satisfy monetary provisions of the sentence. See also, **Tate v. Short**, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971); **Bearden v. Georgia**, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983); **People v. Davis**, 2 Ill.App.3d 106, 276 N.E.2d 134 (1st Dist. 1971).

Illinois Supreme Court

People v. Reyes, 2023 IL 128461 While defendant was nearing the end of his prison sentence, he filed a petition to revoke fines pursuant to 730 ILCS 5/5-9-2. Section 5-9-2 states that "[e]xcept as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." The circuit court denied the petition two weeks later, concluding that defendant had failed to show good cause for revocation of his fines.

On appeal, defendant first argued that the denial of his petition was premature because it was not yet ripe for adjudication where it was dismissed before 30 days had passed. Defendant pointed to **People v. Mingo**, 403 Ill. App. 3d 968 (2010), where the court described Section 5-9-2 petitions as "freestanding collateral actions" like 2-1401 petitions, and to **People v. Vincent**, 226 Ill. 2d 1 (2007), where the Supreme Court held that the 30-day requirement applied to 2-1401 proceedings.

The Court disagreed, observing that **Mingo** did not hold that 2-1401's procedural rules apply to Section 5-9-2 petitions, only that both were freestanding collateral actions. Section 5-9-2 contains no procedural requirements, and, the rules of civil practice containing the 30-day requirement – Illinois Supreme Court Rules 105 and 106 – do not apply to Section 5-9-2 petitions.

Defendant also argued that the circuit court abused its discretion in denying his petition to revoke fines on its merits because he showed good cause for his request. Section 5-9-2 refers to revoking "the fine" in discussing its scope and is facially ambiguous as to whether it applies to all fines – both discretionary and mandatory – that may be imposed or whether it refers only to discretionary fines. The Court determined that the legislature must have meant Section 5-9-2 to apply only to discretionary fines and not all fines because it would be contrary to the intent of the legislature to give the circuit court discretion to revoke a fine where the court had no discretion as to whether to impose the fine in the first instance. In other words, application of Section 5-9-2 to mandatory fines would essentially convert them into discretionary fines after the fact. Because defendant was assessed only mandatory fines and not a discretionary fine, he could not obtain revocation of his fines under Section 5-9-2.

People v. Vara, 2018 IL 121823 When the circuit clerk records fines that were not imposed by the court, those fines are "invalid and unenforceable." The improper assessment of those fines, however, cannot be challenged on appeal from the conviction and sentencing because they are not part of the judgment. Instead, the erroneously recorded fines are a clerical error and questions about the clerk's data entries should be resolved either through cooperation of the parties and the clerk or by the circuit court in a *mandamus* proceeding. Supplementing the record on appeal with the payment status information sheet is improper because its absence was not a material omission where it simply is not part of the court record.

Justice Thomas authored a dissent criticizing the Court's departure from its holding in **People v. Gutierrez**, 2012 IL 111590, where the Court held void the clerk's assessment of a public defender fee not imposed by the judge. He noted that the Court had rejected the same jurisdictional arguments in **Gutierrez** that the majority now accepted here.

Justice Thomas also rejected the notion that the clerk's electronic recording of additional fines was a mere data entry error and instead concluded that the clerk had improperly *assessed* fines. Finally, he concluded that even if the majority's jurisdictional arguments were correct, the Appellate Court has broad authority to correct the clerk's mistakes at any time.

People v. Jackson & Lee, 2011 IL 110615 730 ILCS 125/17 creates the "Arrestee's Medical Cost Fund" to reimburse counties for medical expenses of arrestees. The fund is created by imposition of a $10 fee for each criminal conviction. Both the pre- and post-amended version of §17, which took effect August 15, 2008, allow the $10 medical cost assessment to be levied against all arrestees, including those who did not receive any medical services.

People v. Graves, 235 Ill.2d 244, 919 N.E.2d 906 (2009) In considering a constitutional challenge to a "fee," the court must first determine whether the charge is a "fee" or a "fine." A "fine" violates due process only if the amount is grossly disproportionate to the underlying offense, while a "fee" must be based on a rational relationship between the purpose of the charge and the offense of which the defendant was convicted.

A "fee" is defined as a charge which seeks to compensate the State for some expenditure incurred in prosecuting the defendant. A "fine" is defined as a monetary punishment imposed as part of the sentence imposed upon conviction of an offense. A charge that is labeled as a "fee" by the legislature may in fact be a "fine," depending on whether the charges are intended to compensate the State for a cost incurred in the prosecution.

Other factors to be considered in determining whether a charge is a "fee" or a "fine" include the entity to which the payment is made and whether the charge is imposed only after conviction.

A mental health court fee of $10 and a youth diversion/peer court fee of $5 are both "fines" rather than "fees," because the charges were not intended to compensate the State for any costs incurred in prosecuting the defendant. Because neither fine was disproportionate to the Class 2 felony offense of possession of a stolen motor vehicle, both were constitutionally permissible.

The court rejected defendant's argument that the charges should be considered "fees" because they were imposed by the county board and were paid to a county fund rather than to the State treasury. By enacting legislation permitting county boards to adopt certain monetary charges, the legislature clearly "intended to grant to county boards the limited authority to set 'fines' as punishment for various violations."

People v. Lewis, 234 Ill.2d 32, 912 N.E.2d 1220 (2009) Imposition of a "street value" fine without a sufficient evidentiary basis satisfies the "fundamental fairness" prong of the plain error rule.

People v. Jamison, 229 Ill.2d 184, 890 N.E.2d 929 (2008) Under the Violent Crime Victims Assistance Act, a defendant who is sentenced to pay a fine is required to also pay an "additional penalty" of $4 "for each $40, or fraction thereof" of the fine (725 ILCS 340/10(b)). Under the same act, a defendant who is not sentenced to pay a fine must pay a $25 "penalty" for a crime of violence and $20 for any other felony or misdemeanor (except conservation offenses). (725 ILCS 240/10(c)). Subsections (b) and (c) provide a bifurcated system for imposing a violent crimes victims assistance penalty, depending on whether another fine is imposed.

Here, the judge erred by imposing the $20 penalty under subsection (c) where defendant was ordered to pay a $4 Criminal/Traffic Conviction Surcharge under 730 ILCS 5/5-9-1(c-9). Because the $4 surcharge constituted a "fine," the "additional penalty" under §240/10(b) should have been applied. However, that "additional penalty" should have been $4, not 40¢, as the parties assumed. Section (b) requires a fine of $4 for each fraction of a fine

up to $40, rather than 10% of whatever fine is imposed.

People v. Caballero, 228 Ill.2d 79, 885 N.E.2d 1044 (2008) The $5 per day credit under §110-14 applies to incarceration that occurs either before defendant is convicted or between the conviction and sentencing. The court rejected the argument that once a defendant is convicted, the offense is no longer "bailable." See also, **People v. Rivera**, 378 Ill.App.3d 896, 882 N.E.2d 1169 (2d Dist. 2008) ($5 per day credit under 725 ILCS 5/110-14 applies to incarceration before conviction as well as while awaiting sentencing; defendant entitled to credit requested for first time on appeal).

People v. Jones, 223 Ill.2d 569, 861 N.E.2d 967 (2006) A criminal defendant who is sentenced to pay a fine is entitled to $5 per day credit for each day of incarceration on a bailable offense. This credit applies only to fines, and not to fees. Generally, a "fine" is a pecuniary punishment imposed as part of the sentence on a conviction, while a "fee" is a collateral consequence of the conviction and is intended to compensate the State for some expenditure it incurred in prosecuting defendant.

The $4 criminal/traffic conviction surcharge, the $500 assessment for controlled substance violation, and the $100 trauma fund charge are all "fines" and therefore subject to the $5 per day credit. The $5 charge against drug offenders to fund spinal cord injury and paralysis does not violate due process. Although this charge was labeled a fee, it has the attributes of a fine and should be treated as a fine. "A defendant has no basis for protesting the usage to which his criminal fines are put." See also, **People v. Fort**, 373 Ill.App.3d 882, 869 N.E.2d 950 (1st Dist. 2007) (the "drug assessment" mandated by 720 ILCS 570/411.2(a)(3) constitutes a "fine" to which the $5 credit for each day of presentence incarceration applies). **Note:** P.A. 100-987, effective 7/1/19 expands application of per diem credit.

People v. Maldonado, 109 Ill.2d 319, 487 N.E.2d 610 (1985) In determining the amount and method of payment of a fine, the judge shall consider defendant's financial resources and future ability to pay the fine. The judge's statement ("I would note that the defendant has been gainfully employed, and that . . . he's been on unemployment") was sufficient to indicate that the judge made the requisite considerations. See, **People v. Bergman**, 121 Ill.App.3d 100, 458 N.E.2d 1370 (2d Dist. 1984) (vacating the fine because the record did not show that the trial judge considered "the financial resources and future ability of the offender to pay the fine").

Illinois Appellate Court

People v. Baker, 2022 IL App (4th) 210713 Counsel did not err in failing to seek an assessment waiver pursuant to 725 ILCS 5/124A-20. Defendant argued that because the Office of the State Appellate Defender was appointed to represent her on appeal, the record demonstrated that she was indigent. Accordingly, defendant argued that payment of assessments "would likely result in substantial hardship to" her or her family. But, the record showed that defendant had posted a $5,000 cash bond prior to trial, which was more than enough to satisfy the assessments that were imposed and still provide defendant with a refund of more than half of the bond money. Thus, defendant failed to establish substantial hardship.

People v. Rivera, 2020 IL App (2d) 171002 The trial court erred when it refused to consider defendant's motion to revoke fines, filed under 730 ILCS 5/5-9-2. The trial court had cited the fact that the fines were imposed pursuant to a negotiated plea, and defendant had not moved to withdraw his plea as required by Rule 604(d). The Appellate Court held that a motion to withdraw plea is not a prerequisite to filing a motion to revoke fines. A 5-9-2 motion is particularly appropriate when aimed at mandatory fines which the trial court had no discretion to impose. Mandatory fines aren't affected by the negotiated plea, and therefore a successful motion to revoke fines would not change the terms of the agreement. Accordingly the trial court abused its discretion when it refused to rule on the merits of the motion, and the case was remanded for a ruling on the merits.

People v. Contursi, 2019 IL App (1st) 162894 While the $25,000 fine imposed on defendant (in addition to an eight-year prison sentence) for aggravated battery was not excessive, remand was required because the court failed to consider defendant's future ability to pay. Generally, an adequate consideration of ability to pay may be established by the trial court's discussion of a defendant's employment situation, or when documents in the record establish the defendant's financial situation. However, an eight-year prison term and a $25,000 fine raise significant questions about defendant's ability to pay. The sentencing court's determination that defendant had a union job and lived in a condo did not adequately address his future ability to pay such a large fine after his eight-year prison sentence. The court vacated the fine and remanded for the sentencing court to adequately assess defendant's ability to pay.

People v. Hammons, 2018 IL App (4th) 160385 The defendant's challenges to: (1) three fines imposed by the circuit court clerk; (2) a duplicate clerk fee; and (3) the improper amount of restitution recorded on the payment status information sheet, were all precluded by **People v. Vara**, 2018 IL 121823. The errors were made by the clerk, not the court, and because the clerk lacked jurisdiction to record fines or fees not imposed by the court, the numbers on the sheet that differed from the circuit court's judgment had no legal effect. As the clerk lacked jurisdiction to record these fines and fees, so too did the appellate court lack jurisdiction to review them.

People v. Barajas, 2018 IL App (3d) 160433 Section 5-9-2 of the Unified Code of Corrections provides, "the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2 (West 2016). The "upon good cause shown" standard is ambiguous. After analyzing the legislative history, the Appellate Court concluded that in ruling on a motion to revoke fines, the circuit court should consider only hardship and inability to pay. Here, in refusing to revoke certain fines, the circuit court cited defendant's prior lack of diligence in paying some fines despite satisfying the bulk of another fine. The Appellate Court found this consideration improper, and remanded for a new hearing.

A dissenting justice strongly disagreed that "good cause" is ambiguous and would hold that a trial court should consider past payment as an indicator of whether good cause exists for revoking extant fines.

People v. Mullen, 2018 IL App (1st) 152306 The State agreed that the state police

operations fee and the court systems fee were fines subject to $5 per day credit. The Appellate Court concluded that the public defender and state's attorney records automation assessments and the probation/court services assessment are fees designed to compensate for expenses incurred during prosecution. And, the arrestees medical costs assessment is exempted from $5 per day credit by statute, so the Appellate Court did not resolve the question of whether it is a fine or a fee.

In reaching its decision in this case, the Appellate Court criticized the "complicated, inefficient, and oppressive manner" in which fines and fees are frequently assessed in the circuit courts.

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

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

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

People v. Reed, 2016 IL App (1st) 140498 Although Illinois precedent holds that fees which are improperly imposed are void and may be challenged at any time, the Appellate Court concluded that such a rule did not survive **People v. Castleberry**, 2015 IL 116916. Under **Castleberry**, an order is void only if it was entered by a court which lacked jurisdiction.

Thus, the defendant forfeits a sentencing issue that is not raised through a contemporaneous objection and a written post-sentencing motion. However, the rules of waiver and forfeiture also apply to the State, which in this case failed to make a timely argument that defendant forfeited the issue whether three "fees" imposed by the trial court were actually "fines" and were therefore subject to the $5 per day credit against fines for time served in custody while awaiting trial.

It is the nature of an assessment, and not its statutory label, that determines whether it is a "fee" or a "fine." A "fee" seeks to recoup expenses incurred by the State or compensate the State for some cost of prosecution, while a "fine" is a pecuniary punishment imposed as part of a sentence.

The court accepted the State's concession that the $50 Court System Fee (55 ILCS 5/5-1101(c)) is a "fine" that is subject to the $5 per day credit. However, the court concluded that both the State's Attorney Record's Automation Fee (55 ILCS 5/4-2002.1(c)) and the Public

Defender Records Automation Fee (55 ILCS 5/3-4012) are compensatory in nature because the assessments are intended to compensate the State and the Public Defender for the costs of establishing and maintaining an automated record keeping system. Thus, defendant is not entitled to the $5 per day credit against those charges.

People v. Walker, 2016 IL App (3d) 140766 At sentencing, the trial court ordered defendant to "pay court costs in this matter." The clerk entered a written cost sheet which included several fines. The fines were imposed without authority by the clerk.

People v. Warren, 2016 IL App (4th) 120721-B Rejecting its own opinion in **People v. Alghadi**, 2011 IL App (4th) 100012, the court found that the legislature may intend to authorize the imposition of certain fees and fines on each judgment or order of supervision, and not to limit the trial judge to imposing one charge for each case. The court concluded that the following fees and fines could be imposed on each count on which a conviction is entered: (1) the $50 court finance fee (55 ILCS 5/5-1101(c), (g)), the $40 State's Attorney's fee (55 ILCS 5/4-2002), the $2 State's Attorney's automation fee (55 ILCS 5/4-2002(a)), the $10 arrestee's medical fine (730 ILCS 125/17), the $30 juvenile expungement fund fine (730 ILCS 5/5-9-1.17), the $5 drug-court fine (55 ILCS 5/5-1101(f)), the $25 court-finance fee (55 ILCS 5/5-1101(c), (g)), and the Violent Crimes Victims Assistance Act fine (725 ILCS 240/10(b)).

The court noted, however, that several other fines and fees could be imposed only once in each case, including the $5 document storage fee (705 ILCS 105/27.3c(a)), the $10 circuit clerk automation fee (705 ILCS 105/27.3a), the $100 circuit clerk fee (705 ILCS 105/27.1a(w)), the $25 court security fee (55 ILCS 5/5-1103), and the $10 State Police Operations fine (705 ILCS 105/27.3a(1.5)).

People v. Breeden, 2016 IL App (4th) 121049-B The trial court imposed a fine of $255 for Sexual Offender Registration, less than the minimum fine of $500 required by the statute. 730 ILCS 150/10(a). The Appellate Court held that following the decision in **Castleberry**, 2015 IL 116916, the challenged fine was voidable rather than void and the State lacked the authority to request on appeal an increase in the amount of the fine imposed. The Appellate Court thus left the $255 fine in place.

People v. Carter, 2016 IL App (3d) 140196 In **People v. Castleberry**, 2015 IL 116916, the Supreme Court abolished the void sentence rule, which allowed the Appellate Court to increase illegally low sentences to conform with minimum statutory requirements. After **Castleberry**, the Appellate Court may no longer remand a cause to the trial court for imposition of fines that were improperly imposed by the circuit clerk.

People v Hunter, 2014 IL App (3d) 120552 When a monetary assessment does not compensate the state for costs incurred as a result of prosecuting defendant, the assessment should be viewed as a fine even if it has been labeled a fee by the legislature. The $50 court systems fee assessed against defendant was a fee, not a fine, because 55 ILCS 5/5-1101(g) states that the court systems fee must "be placed in the county general fund and used to finance the court system in the county."

People v. Rogers, 2014 IL App (4th) 121088 Error occurred where the circuit clerk imposed assessments for several fines, including a $5 fine for child advocacy (55 ILCS 5/5-1101(f-5)), $5 drug court charge (55 ILCS 5/5-1101(f)), and $100 assessment for violent crime victims

assistance (725 ILCS 240/10(b)).

The court declined to accept the State's concession that the $2 State's Attorney automation charge (55 ILCS 5/4-2002(a)) was a fine and could only be imposed by the trial court. The court concluded that the assessment was a "fee" because it was intended to reimburse the State's Attorney for expenses related to automated record keeping systems.

In addition, because the charge was a fee, it could be assessed in this case even though it was authorized by legislation which became effective after the crimes in this case occurred. The prohibition against *ex post facto* laws applies only to punitive laws. Fee statutes are compensatory and therefore do not come under the *ex post facto* clause.

The circuit clerk erroneously imposed a $15 State Police operations assistance fine (705 ILCS 105/27.3(a)(1), (1.5), (5)). In addition, because the charge is a fine that was authorized by legislation which became effective after the criminal conduct in question, the *ex post facto* clause prohibited its assessment even by the trial court.

The $10 probation operation assistance assessment (705 ILCS 105/27.3a(1.1)) may be a fine or a fee, depending on the circumstances. Where the defendant was eligible for probation and the probation office conducted a pre-sentence report, the charge is compensatory in nature because it reimburses the State for costs incurred as a result of the prosecution. Under such circumstances, the charge is a fee.

By contrast, where the probation office was not involved in the prosecution, the probation operation assistance assessment constitutes a fine because it does not compensate the State for costs of the prosecution.

People v. Smith, 2014 IL App (4th) 121118 The circuit clerk does not have the power to impose "fines," but does have authority to impose "fees." A "fee" is a charge which seeks to recoup the State's expenses for prosecuting the defendant. A "fine" is punitive in nature and is a pecuniary punishment imposed as part of the sentence imposed for a criminal offense. To determine whether an assessment is a "fine" or a "fee," the court examines the language of the statutes which create the assessment. Similarly, the language used to create an assessment controls whether it may be imposed on each conviction or only once per case.

The following assessments are "fees" which may be imposed only once in each case: (1) the $10 automation fee (705 ILCS 105/27.3a), (2) the $100 circuit clerk fee (705 ILCS 105/27.1a(w)), (3) the $25 court security fee (55 ILCS 5/5-1103), and (4) the $5 document storage fee (705 ILCS 105/27.3c(a)).

The $40 State's Attorney's assessment (55 ILCS 5/4-2002) is a fee which can be imposed on each count for which a conviction is entered.

The following assessments are "fines" and were therefore improperly imposed by the clerk: (1) the $10 arrestee medical assessment (730 ILCS 125/17), (2) the $50 court finance fee(55 ILCS 5/5-1101(c)), (3) the $5 drug court assessment fee (55 ILCS 5/5-1101(f)), (4) the $25 Victims Assistance Act fee (725 ILCS 240/10(c)(1)).

The $30 juvenile expungement assessment (730 ILCS 5/5-9-1.17) is a "fine." In addition, application of the fine in this case would violate the *ex post facto* clause because the statute creating the assessment took effect after the date of the offense for which defendant was convicted.

The circuit clerk erred by imposing a $43.50 late fee (725 ILCS 5/124A-10) and a $100.05 collection fee (730 ILCS 5/5-9-3(a)). The court noted the State's argument that the late fees and collection fees are civil penalties that cannot be challenged in a criminal appeal, but found that the record did not support the imposition of such fees in this case because the defendant was not afforded a minimum of 30 days from the date of the judgment to pay the

assessments.

Finally, because defendant was incarcerated awaiting trial on a charge of sexual assault, he was not entitled to the $5 per day credit against fines for time in which he was in custody. (725 ILCS 5/110-14(b)).

People v. Williams, 2013 IL App (4th) 120313 The imposition of a fine is a judicial act. The clerk of the court is a nonjudicial member of the court and as such has no power to impose sentences or levy fines. The clerk has authority only to collect judicially imposed fines.

Noting the "tremendous amount of appellate resources expended in this case and many others just like it to correctly determine and assist the myriad of fines and fees our legislature has created," the court attached as an appendix to its opinion a reference sheet to assist circuit courts, prosecutors and defense counsel in ensuring that fines and fees are properly imposed.

The appendix lists fines and fees often at issue in criminal cases, the statutory authority for each, and the amount where fixed by statute, as well as noting against which fines pretrial detention credit is available, which fines are discretionary, and which fines require evidentiary support.

People v. Wynn, 2013 IL App (2d) 120575 Whether a charge is a "fine" or a "fee" depends on its intended purpose. A "fine" is punitive and seeks to penalize a defendant who has been convicted of a crime. By contrast, a "fee" is intended to reimburse the State for some cost incurred in the prosecution.

As a matter of first impression, the court held that the $30 juvenile expungement fee (730 ILCS 5/5-9-1.17) and $50 court system finance fee (55 ILCS 5/5-1101(c)(1)) are both "fines" because they are intended as punishment and are imposed based on the mere fact of conviction. Because both charges are fines, they are subject to the $5 per day credit for pre-sentencing custody.

In re Davontay A. and Donavon A., 2013 IL App (2d) 120347 730 ILCS 5/5-9-1.7(b)(1) provides that in addition to any other penalty, a $200 fine "shall be imposed upon any person who pleads guilty or who is convicted of, or who receives a disposition of court supervision for, a sexual assault or attempt of a sexual assault." The court concluded that under the plain language of the statute, minors who were adjudicated delinquent after an adjudicatory hearing are not subject to the fine.

People v. Nelson, 2013 IL App (3d) 110581 Defendant entered a plea agreement which provided for a reduction in the charge, but contained no agreement on sentencing. At the sentencing hearing, the trial court asked the prosecutor whether he had prepared an order for the street value fine. The prosecutor replied that the street value fine should be $600. Defendant was sentenced to probation and ordered to pay a $600 street value fine.

The plain error doctrine applies where the trial court imposes a street value fine without a proper evidentiary basis. (**People v. Lewis**, 234 Ill.2d 32, 912 N.E.2d 1220 (2009)). The evidentiary basis for a street value fine may be provided by testimony at the sentencing hearing, the parties' stipulation as to the value of the substance, or reliable evidence presented at an earlier stage of the proceedings. Because there was no evidentiary basis for the street fine, the cause was remanded for a new hearing on the fine.

The court rejected the State's argument that defendant's failure to object when the prosecutor claimed a $600 value for the controlled substances amounted to a stipulation by

silence. Defendant's silence when the State offers an opinion on street value cannot amount to a stipulation. In **Mitchell v. U.S.**, 526 U.S. 314 (1999), the Supreme Court concluded that even a defendant who pleads guilty has a Fifth Amendment right against self-incrimination throughout the sentencing hearing, and that the sentencing court imposes an impermissible burden on that right by drawing an adverse inference from the defendant's silence concerning facts relating to the crime.

Because the street value fine is part of the sentence, the value of the controlled substances in question relates to the facts of the crime. Thus, under **Mitchell**, the trial court could not draw an adverse inference from defendant's silence in response to the prosecutor's statement of opinion concerning the value of the substances.

Finding a stipulation by silence under these circumstances would violate established law. Here, the only evidence supporting a stipulation is that defendant was silent when the prosecutor offered an opinion concerning the value of the substances. The court concluded that it could not find that defendant intended to be bound by the State's opinion, and that a stipulation therefore could not be found.

People v. Smith, 2013 IL App (2d) 120691 The Counties Code provides that a county board may enact a fee of $50 to be paid by a defendant on a judgment of guilty or a grant of supervision for a felony. 55 ILCS 5/5-1101(c). The statutory label of this assessment as a fee is not dispositive of whether it is a fee or a fine. The central characteristic that separates a fee from a fine is whether it seeks to compensate the state for any costs incurred for prosecuting the defendant.

The $50 assessment is a fine rather than a fee because it is punitive and not compensatory. It is only payable upon conviction of a criminal offense. It is not geared to compensate for the cost of prosecution as it is a flat amount correlated to the severity of the offense and is not tied to the actual expense of prosecution.

People v. O'Laughlin, 2012 IL App (4th) 110018 The Driver's Education Fund fine provides that "[t]here is added to every fine imposed upon conviction of an offense reportable to the Secretary of State under the provisions of subdivision (a)(2) of Section 6-204 of this Act an additional penalty of $4 for each $40 or fraction thereof, of fine imposed." 625 ILCS 5/16-104a(a).

The Lump Sum Surcharge fine provides "[t]here shall be added to every fine imposed in sentencing for a criminal or traffic offense, except an offense related to parking or registration, or offense by a pedestrian, an additional penalty of $10 for each $40, or fraction thereof, of fine imposed." 730 ILCS 5/5-9-1(c).

These are not assessed on each individual fine when a trial court imposes multiple fines on a defendant. When read as a whole, these statutes each provide for imposition of one fine calculated based on the sum total of all of defendant's other applicable fines.

People v. Pohl, 2012 IL App (2d) 100629 The Unified Code of Corrections provides that "[i]n addition to any other penalty imposed, a fine of $200 shall be imposed upon any person who . . .is convicted of . . . domestic battery." 730 ILCS 5/5-9-1.5.

The Appellate Court found this statute ambiguous with respect to whether defendant should be liable for a single fine or multiple fines upon conviction of multiple counts of domestic battery. The court looked for guidance to **People v. Elliott**, 272 Ill. 592, 112 N.E. 300 (1916). In **Elliott**, the court upheld imposition of multiple sentences of fines for multiple convictions of unlawfully selling intoxicating liquor, because defendants were knowing and

willful violators of the law and therefore there was no reason whatsoever for leniency. Like **Elliott**, the court saw no reason why defendant should escape liability for three separate domestic violence fines where he was convicted of three counts of domestic battery. To hold that only one fine should be imposed would result in the unjust consequence that a defendant who battered several people would be punished no differently than a defendant who battered one person.

People v. Devine, 2012 IL App (4th) 101028 Under 730 ILCS 5/5-9-1.1(a), the sentence for a drug related offense involving possession or delivery of cannabis or a controlled substance must include a fine equal to the full street value of the cannabis or controlled substance in question. The court found that there is no *de minimis* exception to this requirement; thus, the trial court erred by failing to impose a street value fine although the prosecutor asked that no fine be imposed because defendant had possessed only cocaine residue.

People v. Martino, 2012 IL App (2d) 101244 Whether statutes and ordinances that authorize fees or fines allow for imposition of multiple charges depends on the legislative authority's intent as revealed by the plain language of the statute or ordinance.

The County Clerks Act authorizes county boards to enact ordinances to defray the costs of maintaining automated record-keeping systems and document storage. The DuPage County ordinance provides that the applicable fee "shall be paid *** by the defendant in any felony, misdemeanor, traffic, ordinance or conservation matter on a judgment of guilty." DuPage County Code §9-10. Because the use of the word "matter" evidences an intent that a fee be imposed for each case rather than for each conviction, only one fee could be imposed in a case resulting in multiple convictions.

The Clerks Act provides that the clerk is entitled to "costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein as follows: (A) Felony complaints, a minimum of $80 and a maximum of $125 (B) Misdemeanor complaints, a minimum of $50 and a maximum of $75." 705 ILCS 105/27.2(w)(1)(A) and (B). The plain language of this statute authorizes one fee per charging instrument. Defendant was charged with both felonies and misdemeanors in a single indictment. Logic dictates that a complaint setting out a felony is a felony complaint even if it also charges a misdemeanor. Therefore, defendant could be assessed one fee for a felony complaint.

The Counties Code authorizes a county board to enact an ordinance to defray the costs of the sheriff in providing court security. DuPage County enacted an ordinance providing that "[i]n criminal, local ordinance, [c]ounty ordinance, traffic and conservation cases, such fee [of $25] shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty resulting in a judgment of conviction or order of supervision." DuPage County Code §20-30. Because the language of the ordinance refers to cases not individual convictions, only one fee may be imposes in each case.

The County Jail Act provides: "The county shall be entitled to a $10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense." 730 ILCS 125/17. The plain language of this Act provides that a fee may be imposed on each of defendant's convictions.

The Counties Code authorizes county boards to enact ordinances that allow for imposition of fees to defray the costs of financing a court system: "A fee to be paid by the defendant on a judgment of guilty or a grant of supervision *** as follows: (1) for a felony, $50; (2) for a class A misdemeanor, $25." 55 ILCS 5/5-1101(c)(1) and (2). DuPage County enacted such an ordinance. The plain language of the Counties Code provides that the fee

may be imposed on a per-conviction basis.

The Counties Code provides that a State's Attorney's fee may be imposed "[f]or each conviction." 55 ILCS 5/4-2002. Therefore it is proper to impose a fee for each conviction.

The Counties Code provides that county boards may enact a "$10 fee to be paid by the defendant on a judgment of guilty or grant of supervision *** to finance the county mental health court, the county drug court, or both." 55 ILCS 5/5-1101(d-5). DuPage County enacted an ordinance providing that the fine should be imposed for each "count" on which there was a "judgment of guilty." The plain language of the ordinance allows imposition of the fine on each count.

A Violent Crimes Victims Assistance Fund fine may be imposed on each conviction based on a "reading of various portions of the statute in tandem." The statute refers to collection of the penalty from each defendant upon conviction and provides for a fine in a specified amount depending on the nature of the conviction.

People v. Millsap, 2012 IL App (4th) 110668 The Children's Advocacy Center assessment is a fine, notwithstanding the statutory label of a fee. 55 ILCS 5/5-1101(f-5). The charge is mandatory for a convicted defendant and does not reimburse the State for money expended in prosecuting the defendant.

The State Police operations assistance fee is also a fine. A circuit clerk in any county that imposes a fee for maintaining automated record-keeping systems pursuant to §27.3a(1) of the Clerks of the Court Act must collect an additional fee, the State Police operations assistance fee, to be paid by the defendant in any felony, traffic, misdemeanor, or local ordinance violation upon a judgment of guilty or grant of supervision. 705 ILCS 105/27.3a(1.5). Such fee is to be deposited in the State Police Operations Assistance Fund to be used by the State Police to finance any of its lawful purposes and functions. Therefore it does not reimburse the State for costs incurred in defendant's prosecution.

People v. Williams, 2011 IL App (1st) 091667-B A "fine" is part of the punishment for a conviction, while a "fee" seeks to reimburse the State for its expenses in prosecuting a defendant. Even where the statute creating a financial penalty labels it as a "fee," a "fee" which is not intended to reimburse the State for the costs of prosecution is construed as a "fine." A "fine" is subject to the $5 per day credit for pretrial incarceration.

The court concluded that the $10 mental health "fee" (55 ILCS 5/5-1101(d-5)), $5 youth diversion/peer court (55 ILCS 5/5-1101(a)), $30 children's advocacy center "fee" (55 ILCS 5/5-1101(f-5)), and $5 drug court "fee" (55 ILCS 5/5-1101(f)) do not reimburse the State for the expense of prosecuting the defendant, and are therefore "fines." Thus, defendant was entitled to $5 per day credit against these charges for his presentence custody.

People v. Alghadi, 2011 IL App (4th) 100012 A defendant charged with multiple counts with a single case number may be assessed only: (1) one document-storage fee, (2) one court automation fee, (3) one circuit-clerk fee, (4) one court-security fee, (5) one arrestee's-medical assessment, (6) one court-finance fee, (7) one State's Attorney assessment, (8) one Violent Crime Victim's Act fine, and (9) one drug-court fee. Where defendant's residential burglary and robbery charges were severed, but the same case number was used for both, duplicate fees were not authorized although defendant was convicted of one count in a jury trial and pleaded guilty to the second count several months later.

People v. Carreon, 2011 IL App (2d) 100391 Although labeled as a fee, the $50

Performance-Enhancing Substance Testing Fund fee, imposed upon conviction of certain drug offenses pursuant to 730 ILCS 5/5-9-1.1(d), is a fine. It qualifies as a fine because it is included in a section labeled "Fines," is imposed only upon conviction of a crime, is not designed to compensate the State for the costs of prosecution, and is expressly exempt from reduction for time spent in presentencing custody.

People v. Anthony, 408 Ill.App.3d 799, 951 N.E.2d 507 (1st Dist. 2011) The $5 court system fee authorized by 55 ILCS 5/5-1101(a) may be entered only if the defendant is convicted of violating the Illinois Vehicle Code or a similar county or municipal ordinance. The fee was vacated where the defendant was convicted of unlawful use of a weapon by a felon.

The $25 court services fee to defray the cost of court security, which is authorized by 55 ILCS 5/5-1103, may be imposed even where the defendant is not convicted of an offense specified under the statute.

The $10 County Jail Medical Fund fee, which is authorized by 730 ILCS 125/17, is to be imposed without regard to whether the defendant incurred an injury or required treatment while in custody. The court concluded that the fee is intended to reimburse the county for the cost of providing medical services to arrestees, and is not a "fine" to which the presentence incarceration credit may be applied.

People v. Blankenship, 406 Ill.App.3d 578, 943 N.E.2d 111 (2d Dist. 2010) Defendant "tacitly stipulated" to a street value fine of $10 where the trial court asked the parties for input concerning the fine, and the defense did not dispute the prosecutor's representation of the street value. "Stipulations by silence have been found under comparable circumstances."

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

The central characteristic separating fees from fines is whether the charge compensates the state for costs incurred as the result of prosecution of the defendant, in which case the cost is a fee. Compensation for labor or services, especially professional services that are collateral consequences of the defendant's conviction, are fees.

A statute that authorizes the court to impose an additional $500 fine on offenders convicted of certain sex offenses provides that 10% of the assessment is to be retained by the circuit court clerk to cover costs incurred in administrating and enforcing the statute, and that this penalty should not be considered part of the fine. 730 ILCS 5/5-9-1.15. This part of the assessment is a fee since it constitutes compensation for services and costs that are a consequence of defendant's conviction. Imposition of this fee is not barred by *ex post facto* principles.

The statute also provides that $100 of the $500 fine should be provided to the State's Attorney who prosecuted the case. This part of the fine is a fee as it is compensation for professional services and therefore also not affected by *ex post facto* principles.

The remaining $350, which by statute is deposited into the Sex Offender Investigation Fund, is a fine. Because the statute authorizing the fine was not in effect when the offense was committed, it may not be assessed against the defendant.

People v. Gutierrez, 405 Ill.App.3d 1000, 938 N.E.2d 619 (2d Dist. 2010) The mental health court assessment is labeled a fee, 55 ILCS 5/5-1101(d-5), but it is a fine and therefore may be offset by a $5 per day credit for the time defendant served in custody prior to sentencing. 725 ILCS 5/110-14(a).

People v. McNeal, 405 Ill.App.3d 647, 955 N.E.2d 32 (1st Dist. 2010) The Child Advocacy Center fee, 55 ILCS 5/5-1101(f-5), though labeled a fee is a fine. The assessment is mandatory upon conviction of a felony or other listed offenses. It does not relate to the costs of prosecution. There is no relevant connection between the offense committed by the defendant and the public endeavor funded by the fee.

People v. Mingo, 403 Ill.App.3d 968, 936 N.E.2d 1156 (2d Dist. 2010) 730 ILCS 5/5-9-2 authorizes the trial court, upon good cause, to revoke all or part of any fine in a criminal case or to modify the method of payment. Because the plain language of §5-9-2 does not impose a time limit for filing a petition to revoke fines, such petitions were intended to be free standing, collateral actions which need not be filed within 30 days of judgment. Thus, the trial court had authority to consider a petition to revoke fines filed more than 30 days after judgment and while appeals from the same conviction were pending.

People v. Schneider, 403 Ill.App.3d 301, 933 N.E.2d 384 (2d Dist. 2010) Imposition of a fine is a judicial function and the clerk of the circuit court has no power to levy even mandatory fines that are not authorized by the court.

People v. Anderson, 402 Ill.App.3d 186, 931 N.E.2d 773 (3d Dist. 2010) 730 ILCS 5/5-9-1.7(b)(1), which authorizes a $200 fine for a person convicted of sexual assault or attempted sexual assault, gives the trial court discretion to impose multiple $200 fines in a multi-count aggravated criminal sexual abuse prosecution. Thus, the trial court was not limited to a single $200 fine where the defendant pleaded guilty to multiple counts arising from a single occurrence.

Because the imposition of fines not authorized by statute challenges the integrity of the judicial process, the court found as a matter of plain error that the trial judge erred in calculating fines under the Violent Crimes Victims Assistance Act (725 ILCS 240/10). Applying **People v. Jamison**, 229 Ill.2d 184, 890 N.E.2d 929 (2008), the court found that the maximum additional fine for each $200 fine ordered under 730 ILCS 5/5-9-1.7(b)(1) was $20, rather than the $40 ordered by the trial court.

People v. Reed, 376 Ill.App.3d 121, 875 N.E.2d 167 (3d Dist. 2007) In a controlled substances case, a street value fine shall be imposed. The trial court is to determine the amount of the fine based on testimony by law enforcement personnel and defendant as to the amount of controlled substance seized, as well as any other testimony that may be required. Although the evidence required to establish street value varies from case-to-case, the trial court must have a concrete, evidentiary basis for the fine. Fine was vacated where there was no evidentiary basis for the $200 street value fine imposed in the lower court. The court rejected the State's argument that the street value fine should be set at $120 - the amount for which defendant sold the two grams of cocaine in question to a police informant - because the court's sentencing decision was "not based upon that testimony." See also, **People v. Gonzalez**, 316 Ill.App.3d 354, 736 N.E.2d 157 (1st Dist. 2000) (trial judge committed plain error by relying on an arrest report to set the street value fine in a cannabis case); **People v. Simpson**, 272 Ill.App.3d 63, 650 N.E.2d 265 (4th Dist. 1995) (it was plain error for the trial judge to merely accept the prosecutor's suggestion of street value and base the street value fine solely on the prosecutor's suggestion; also, a trial judge may not be presumed to know the appropriate street value of a substance based upon his or her experience in other drug cases).

People v. Roberts, 338 Ill.App.3d 245, 788 N.E.2d 782 (2d Dist. 2003) Because a judge is authorized to impose a street value fine only if defendant is convicted of possession or delivery of cannabis or a controlled substance, the trial court erred by imposing a street value fine on a conviction for possession of a look-alike substance.

People v. White, 333 Ill.App.3d 777, 776 N.E.2d 836 (2d Dist. 2002) Under the plain language of 725 ILCS 5/110-14, the $5 credit against a fine for each day of incarceration on a bailable offense is unavailable for financial obligations other than "fines," such as court costs, probation fees, or lab fees. **Note:** P.A. 100-987, effective 7/1/19 expands application of per diem credit.

People v. Mancilla, 331 Ill.App.3d 35, 770 N.E.2d 1262 (2d Dist. 2002) Rejecting **People v. Watson**, 318 Ill.App.3d 140, 743 N.E.2d 147 (4th Dist. 2000), the court found that 735 ILCS 5/12-801 authorizes withholding orders against DOC wages paid to a DOC inmate. But, the withholding order in this case was improper because the court failed to follow the required statutory procedure, for the withholding was not discussed at sentencing and was merely part of a standard sentencing form. Also, it was improper to order that 25% of defendant's DOC wages be withheld because wage withholding orders are limited to the lesser of 15% of debtor's gross weekly wages or the amount by which disposable earnings for the week exceed 45 times the federal minimum hourly wage. See also, **People v. Despenza**, 318 Ill.App.3d 1155, 744 N.E.2d 912 (3d Dist. 2001) (the trial court may enter a withholding order to collect the amount of a "fine" imposed in a criminal case, but not to recover court costs; an order to withhold 50% of defendant's DOC wages would have been improper). But see **People v. Scott**, 324 Ill.App.3d 641, 756 N.E.2d 466 (4th Dist. 2001) (under **Watson**, the trial court lacks authority to order the Department of Corrections to withhold an inmate's wages to pay fines and court costs).

People v. Beler, 327 Ill.App.3d 829, 763 N.E.2d 925 (4th Dist. 2002) Where a defendant is sentenced to probation, conditional discharge, or supervision, the Unified Code authorizes imposition of a fine to reimburse a local anti-crime program.

People v. Nixon, 278 Ill.App.3d 453, 663 N.E.2d 66 (3d Dist. 1996) Under **People v. Robinson**, 167 Ill.2d 397, 657 N.E.2d 1020 (1995), the State need not test samples from each of several containers of drugs in order to prove the amount of controlled substance for purposes of the street value fine. Thus, defendant's street value fine could properly be based on possession of 6.6 grams of cocaine though only 2.2 grams were tested.

People v. Matthews, 273 Ill.App.3d 148, 652 N.E.2d 437 (4th Dist. 1995) The trial judge erred by seizing jewelry in defendant's possession at the time of his arrest to pay fines imposed upon his conviction. A judge is not statutorily authorized to seize a defendant's property in payment of a fine, particularly where, as here, the sentencing order provided for defendant to make monthly payments against the fine.

People v. Price, 227 Ill.App.3d 253, 591 N.E.2d 99 (4th Dist. 1992) A trial judge normally cannot impose a street value fine that includes contraband involved in a charge that has been dismissed. But, where defendant knowingly entered a plea agreement providing for what would otherwise be an unauthorized sentence, the street value fine properly included the substance involved in the dismissed count.

People v. Nearn, 178 Ill.App.3d 480, 533 N.E.2d 509 (1st Dist. 1988) The trial court erred by imposing a fine because "the trial had cost the county money through services of the public defender and payment of a fee to private [appointed] counsel." Also, "[f]ines are disfavored for defendants who lack the ability to pay them."

People v. Morrison, 111 Ill.App.3d 997, 444 N.E.2d 1144 (3d Dist. 1983) The facts before the trial court were insufficient to show that defendant had the financial resources and future ability to pay a $350 fine. That defendant posted a $100 cash bond does not necessarily indicate financial ability to pay because the bail money may have been borrowed or paid by relatives or friends. Also, though defendant was receiving unemployment compensation, the record did not indicate the amount of those benefits. Finally, there was no information about the expenses incurred by defendant, whether his wife had income, or whether any property or other sources of income were available. See also, **People v. Echols**, 146 Ill.App.3d 965, 497 N.E.2d 321 (1st Dist. 1986).

People v. Oravis, 81 Ill.App.3d 717, 402 N.E.2d 297 (4th Dist. 1980) Fine of $2,000 reduced because of defendant's inability to pay. Defendant was working only part time, had liabilities of $2,000, and lived at home while his two-year-old son lived with the mother.

People v. Rolland, 73 Ill.App.3d 531, 392 N.E.2d 163 (5th Dist. 1979) Imposition of a $500 fine on resentencing after defendant's conditional discharge was revoked for failure to pay a $50 installment of his fine was error. "If defendant could not make timely payments of $50 per month for 10 months, the trial court surely could not have considered defendant's financial resources and future ability to pay in imposing an additional fine of $500." Also, defendant had completely paid his initial fine ahead of schedule before the sentencing hearing, and the court failed to see how the additional fine has any relationship to either the seriousness of the offenses or the objective of restoring defendant to useful citizenship.

§44-7(c)
Court Costs and Fees

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order or other parts of record resulting in discrepancy between record and actual judgment of the court.

United States Supreme Court

Nelson v. Colorado, 581 U.S. ___, 137 S.Ct. 1249, 197 L.Ed.2d 611 (2017) Two persons who were convicted of crimes in Colorado courts obtained reversal of their convictions on appeal and in collateral proceedings. One of the persons was acquitted in a retrial, and the prosecution chose not to retry the other. Both persons moved for the return of court costs, fees, and restitution that had been ordered as a result of the convictions.

Persons whose convictions are reversed have an obvious interest in regaining money which they paid under reversed convictions. The court rejected the State's argument that it was entitled to keep funds which it received while the convictions were valid even if those convictions were subsequently reversed. Once the convictions were reversed, the justification for keeping the payments disappeared.

Second, there is a substantial risk of erroneous deprivation of the defendants' interests in return of their funds if the sole remedy for obtaining a refund requires them to prove actual innocence by clear and convincing evidence. Because the petitioners are presumed innocent once their convictions are reversed, they can be deprived of funds only if the State obtains valid convictions against them.

Third, The State has no interest in retaining money paid by defendants under convictions that were subsequently reversed.

Giaccio v. Pennsylvania, 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 447 (1966) State statute authorizing jury to impose cost of prosecution on defendant acquitted of a misdemeanor was unconstitutionally vague and violated due process.

Illinois Supreme Court

People v. Clark, 2018 IL 122495 The Supreme Court determined that four monetary assessments are fees, not fines. Specifically, the Public Defender Records Automation Fund, State's Attorney's Records Automation Fund, Court Automation, and Court Document Storage Fund are all fees. While these assessments are imposed only on conviction and are mandatory, both of which favor the conclusion that they are fines, the legislature chose to label them as fees which is strong evidence of legislative intent. And, the most important factor in determining whether an assessment is a fine or a fee is whether its purpose is to compensate the State for costs incurred in defendant's prosecution. These particular assessments serve to reimburse the court for the costs of prosecution, even if the particular cost was not specifically incurred in the defendant's case, and therefore they are fees.

People v. Harvey, 2018 IL 122325 DNA and Crime Stopper's assessments were moot because clerk corrected its records with regard to DNA fee and per diem credit fully offset Crime Stopper's assessment. The Supreme Court declined to review either under the public

interest exception to the mootness doctrine because the law as to each was already clear.

The $40 Sheriff's Fee was upheld. While the county ordinance increasing the amount of the fee referred only to service of "civil process," this was specific enough to include criminal subpoenas in the increase, as well.

People v. Graves, 235 Ill.2d 244, 919 N.E.2d 906 (2009) In considering a constitutional challenge to a "fee," the court must first determine whether the charge is a "fee" or a "fine." A "fine" violates due process only if the amount is grossly disproportionate to the underlying offense, while a "fee" must be based on a rational relationship between the purpose of the charge and the offense of which the defendant was convicted.

A "fee" is defined as a charge which seeks to compensate the State for some expenditure incurred in prosecuting the defendant. A "fine" is defined as a monetary punishment imposed as part of the sentence imposed upon conviction of an offense. A charge that is labeled as a "fee" by the legislature may in fact be a "fine," depending on whether the charges are intended to compensate the State for a cost incurred in the prosecution.

Other factors to be considered in determining whether a charge is a "fee" or a "fine" include the entity to which the payment is made and whether the charge is imposed only after conviction.

A mental health court fee of $10 and a youth diversion/peer court fee of $5 are both "fines" rather than "fees," because the charges were not intended to compensate the State for any costs incurred in prosecuting the defendant. Because neither fine was disproportionate to the Class 2 felony offense of possession of a stolen motor vehicle, both were constitutionally permissible.

The court rejected defendant's argument that the charges should be considered "fees" because they were imposed by the county board and were paid to a county fund rather than to the State treasury. By enacting legislation permitting county boards to adopt certain monetary charges, the legislature clearly "intended to grant to county boards the limited authority to set 'fines' as punishment for various violations."

People v. Jackson & Lee, 2011 IL 110615 730 ILCS 125/17 creates the "Arrestee's Medical Cost Fund" to reimburse counties for medical expenses of arrestees. The fund is created by imposition of a $10 fee for each criminal conviction. Both the pre- and post-amended version of §17, which took effect August 15, 2008, allow the $10 medical cost assessment to be levied against all arrestees, including those who did not receive any medical services.

People v. Johnson, 2011 IL 111817 Any person convicted of a felony must submit a DNA sample to the Illinois State Police for analysis and pay a $200 analysis charge. 730 ILCS 5/5-4-3. The primary purpose of §5-4-3 is to create a DNA database of the genetic identities of offenders. A court may order that defendant submit a DNA sample only where the defendant is not currently registered in the DNA database. Since the analysis charge is intended to cover the costs of the DNA analysis, by extension, only one analysis fee is necessary as well. **People v. Marshall**, 242 Ill.2d 285, 950 N.E.2d 668 (2011).

Because the DNA analysis charge is a one-time charge intended to cover the cost of analyzing the offender's DNA, it is compensatory, rather than punitive. It compensates the state for professional services and is not a pecuniary punishment imposed as part of a sentence. Therefore, the charge is a fee, and not a fine. Because only fines may be offset by the $5 credit for each day of presentence incarceration (725 ILCS 5/110-14(a)), defendant is

not entitled to any such offset against the DNA analysis charge.

People v. Marshall, 242 Ill.2d 285, 950 N.E.2d 688 (2011) Qualifying offenders are required by statute to submit a DNA sample and pay an analysis fee of $200. 730 ILCS 5/5-4-3. The primary purpose of this statute is to create a DNA database of the genetic identities of recidivist offenders. The Illinois Supreme Court held that the statute authorizes a judge to order a defendant to submit a sample and pay a fee only where the defendant is not currently registered in the DNA database.

People v. Smith, 236 Ill.2d 162, 923 N.E.2d 259 (2010) 55 ILCS 5/4-2002.1(a), which provides that the State's Attorney is entitled to a $20 fee for "preliminary examinations for each defendant held to bail or recognizance," applies only to preliminary hearings at which a probable cause determination is made. The court rejected the State's argument that the fee is authorized for bail hearings.

The court stressed that "preliminary examination" is a familiar legal expression with a settled meaning, and that the legislature is presumed to have intended to apply that meaning when it enacted §4-2002.1(a).

People ex rel. Dir. of Corr. v. Booth, 215 Ill.2d 416, 830 N.E.2d 569 (2005) Section 12-1001(h)(4) of the Code of Civil Procedure, which exempts $7,500 made on account of personal injury, applies to actions by the DOC for reimbursement for incarceration.

People v. Estate of Scott, 66 Ill.2d 522, 363 N.E.2d 823 (1977) The statutory cost scheme does not have an unconstitutional, chilling effect on the exercise of rights such as a jury trial, preliminary hearing, or subpoena of witnesses, does not deny procedural due process by failing to provide for a hearing, and is not unconstitutional because of the manner in which it might be applied.

Illinois Appellate Court

People v. Copeland, 2020 IL App (2d) 180423 Trial court erred in imposing restitution for the expense of a private transportation service contracted by the sheriff's department to bring defendant to Illinois from Texas. Instead, the expense should have been assessed as a cost under 725 ILCS 5/124A-5. The Appellate Court vacated the restitution order and instead imposed a cost in the same amount. In doing so, the court rejected the argument that under Rule 472 it could not consider this issue on appeal because defendant had not objected to the restitution order in the trial court. Rule 472 applies only to fines, fees, costs, and assessments, and restitution does not fit within any of those categories.

People v. Ross, 2019 IL App (3d) 170028 Where defendant's probation is revoked prior to the expiration of the term, it is second-prong plain error for the trial court to retain excess probation fees that were prepaid by defendant. Citing **People v. Lewis**, 234 Ill. 2d 32 (2009), the court noted that there is no *de minimis* exception to the plain error rule. Defendant is due a $440 refund of his pre-paid probation fees.

People v. Barr, 2019 IL App (1st) 163035 After defendant filed his opening brief, in which he challenged the imposition of various court fees, the Illinois Supreme Court adopted Rule 472, effective March 1, 2019. The new rule provides that challenges to monetary assessments must first be made in the circuit court. The State argued that the rule was retroactive and

defendant had to pursue his claim in the circuit court. The Appellate Court disagreed, holding that while the rule may be procedural, a procedural rule is retroactive only if there are some proceedings in the current case to which it may apply. Here, where defendant was already challenging his fines and fees on appeal after March 1, 2019, there are no such "ongoing proceedings" to which the new rule could apply. The court reached the issue and vacated various assessments.

People v. Hammons, 2018 IL App (4th) 160385 The defendant's challenges to: (1) three fines imposed by the circuit court clerk; (2) a duplicate clerk fee; and (3) the improper amount of restitution recorded on the payment status information sheet, were all precluded by **People v. Vara**, 2018 IL 121823. The errors were made by the clerk, not the court, and because the clerk lacked jurisdiction to record fines or fees not imposed by the court, the numbers on the sheet that differed from the circuit court's judgment had no legal effect. As the clerk lacked jurisdiction to record these fines and fees, so too did the appellate court lack jurisdiction to review them.

People v. Adame, 2018 IL App (2d) 150769 The Appellate Court vacated a $250 public defender fee because the trial court had not considered the cost of representation or defendant's ability to pay when imposing the fee at sentencing. Remand for a new hearing to impose the public defender fee was proper because there had been "some sort of a hearing" where the fee was discussed at the sentencing hearing. Further, while defendant was previously assessed a public defender fee when the State entered a *nolle prosequi* of the charge in this case, assessment of a second public defender fee following reinstatement was not precluded. Counsel had been appointed on both occasions and presumably expended additional resources in representing defendant the second time. Nothing in the statute limits a court to a single public defender fee.

Finally, the Appellate Court reduced the $12 court automation and state police operations fund assessments to $7, which was the amount set by the county board in compliance with statute.

People v. Mullen, 2018 IL App (1st) 152306 The trial judge's inquiry of the public defender as to how many times he had appeared in court on defendant's case was inadequate to form the basis for assessment of a public defender fee, consistent with **People v. Hardman**, 2017 IL 121453. The inquiry was sufficient to constitute "some sort of hearing," however, such that remand for a new public defender fee hearing was permitted.

People v. Lovelace, 2018 IL App (4th) 170401 Following defendant's acquittal, the circuit clerk retained 10% of the $350,000 bond posted on defendant's behalf. 725 ILCS 5/110-7(f) allows the court to keep 10% of the bond. While the statute also allows the court to keep less than 10%, the trial court did not abuse its discretion when it declined to lower defendant's bond cost here.

The Appellate Court also rejected various constitutional challenges to section 110-7(f). The statute's purpose is to reimburse for the cost of administering a bail bond system. The statute does not impose a penalty and thus is not an unconstitutional fine. **Nelson v. Colorado**, 137 S.Ct. 1249 (2017), requiring a court to return assessments exacted as a consequence of a conviction which is later reversed, was distinguished because the bail bond cost is not dependent upon conviction. Section 110-7(f) does not violate equal protection or due process because it bears a rational relationship to the government's interest in

administering a bail bond system and applies equally to all individuals who seek the benefit of release on bond. And, the statute does not violate the uniformity clause of the Illinois Constitution, even though it sets a maximum bond fee of $100 for counties with populations greater than 3 million (Cook County), because the legislature believed the bond system could be adequately funded in a much larger county by other sources.

People v. Brown, 2017 IL App (1st) 150203 The Appellate Court does not have subject matter jurisdiction to address substantive issues regarding whether particular assessments were properly imposed where these issues were raised for the first time on appeal from the denial of a post-conviction petition. These assessments are not void and are not independently reviewable under Supreme Court Rule 615(b).

People v. Glass, 2017 IL App (1st) 143551 The trial court may order the defendant to pay a reasonable sum to reimburse the county for the cost of appointed counsel, but only after holding a hearing where the court must consider the defendant's financial circumstances. 725 ILCS 5/113-3.1. The hearing must be held within 90 days and must focus on the ability of the defendant to pay.

Here, after the State filed a motion for reimbursement of funds, the trial court merely asked how many times defense counsel had appeared on this case. After counsel answered "eight times," the court stated: "And plus it was a jury trial. $500 would be appropriate."

The parties agreed on appeal that the trial court did not conduct a sufficient hearing to impose the reimbursement fee, but disagreed about the proper remedy. Defendant argued that his fee should be vacated outright since the trial court failed to hold a hearing within 90 days. The State argued that remand was proper where the court did hold a hearing, even if insufficient, within 90 days.

Remand is proper if "some sort of hearing" has been held within 90 days. But caselaw is not yet clear on whether that hearing has to focus on defendant's ability to pay or whether it may focus more generally on the State's motion to recoup fees. Acknowledging the split in authority, the Appellate Court here adopted the latter position and held that remand was proper since the trial court held "some sort of hearing" regarding the State's motion. Accordingly, the Appellate Court vacated the fee and remanded for a new hearing.

People v. Reed, 2016 IL App (1st) 140498 It is the nature of an assessment, and not its statutory label, that determines whether it is a "fee" or a "fine." A "fee" seeks to recoup expenses incurred by the State or compensate the State for some cost of prosecution, while a "fine" is a pecuniary punishment imposed as part of a sentence.

The court accepted the State's concession that the $50 Court System Fee (55 ILCS 5/5-1101(c)) is a "fine" that is subject to the $5 per day credit. However, the court concluded that both the State's Attorney Record's Automation Fee (55 ILCS 5/4-2002.1(c)) and the Public Defender Records Automation Fee (55 ILCS 5/3-4012) are compensatory in nature because the assessments are intended to compensate the State and the Public Defender for the costs of establishing and maintaining an automated record keeping system. Thus, defendant is not entitled to the $5 per day credit against those charges.

People v. Warren, 2016 IL App (4th) 120721-B Rejecting its own opinion in **People v. Alghadi**, 2011 IL App (4th) 100012, the court found that the legislature may intend to authorize the imposition of certain fees and fines on each judgment or order of supervision, and not to limit the trial judge to imposing one charge for each case. The court concluded that

the following fees and fines could be imposed on each count on which a conviction is entered: (1) the $50 court finance fee (55 ILCS 5/5-1101(c), (g)), the $40 State's Attorney's fee (55 ILCS 5/4-2002), the $2 State's Attorney's automation fee (55 ILCS 5/4-2002(a)), the $10 arrestee's medical fine (730 ILCS 125/17), the $30 juvenile expungement fund fine (730 ILCS 5/5-9-1.17), the $5 drug-court fine (55 ILCS 5/5-1101(f)), the $25 court-finance fee (55 ILCS 5/5-1101(c), (g)), and the Violent Crimes Victims Assistance Act fine (725 ILCS 240/10(b)).

The court noted, however, that several other fines and fees could be imposed only once in each case, including the $5 document storage fee (705 ILCS 105/27.3c(a)), the $10 circuit clerk automation fee (705 ILCS 105/27.3a), the $100 circuit clerk fee (705 ILCS 105/27.1a(w)), the $25 court security fee (55 ILCS 5/5-1103), and the $10 State Police Operations fine (705 ILCS 105/27.3a(1.5)).

People v. Daniels, 2015 IL App (2d) 130517 Under 725 ILCS 5/113-3.1(a), the trial court may order a defendant to pay a reasonable amount to reimburse the county or state for the cost of appointed counsel. But prior to ordering reimbursement, the court must conduct a hearing regarding defendant's financial resources.

Here, the trial court ordered defendant to pay a $750 public defender fee without conducting any hearing at all. The Appellate Court held that where the trial court fails to conduct any hearing at all, the proper remedy is to vacate the fee outright. If the court conducts an inadequate hearing, the remedy is to remand for a proper hearing.

Since the trial court conducted no hearing at all, the Appellate Court vacated defendant's fee outright.

People v. Smith, 2014 IL App (4th) 121118 The circuit clerk does not have the power to impose "fines," but does have authority to impose "fees." A "fee" is a charge which seeks to recoup the State's expenses for prosecuting the defendant. A "fine" is punitive in nature and is a pecuniary punishment imposed as part of the sentence imposed for a criminal offense. To determine whether an assessment is a "fine" or a "fee," the court examines the language of the statutes which create the assessment. Similarly, the language used to create an assessment controls whether it may be imposed on each conviction or only once per case.

The following assessments are "fees" which may be imposed only once in each case: (1) the $10 automation fee (705 ILCS 105/27.3a), (2) the $100 circuit clerk fee (705 ILCS 105/27.1a(w)), (3) the $25 court security fee (55 ILCS 5/5-1103), and (4) the $5 document storage fee (705 ILCS 105/27.3c(a)).

The $40 State's Attorney's assessment (55 ILCS 5/4-2002) is a fee which can be imposed on each count for which a conviction is entered.

The following assessments are "fines" and were therefore improperly imposed by the clerk: (1) the $10 arrestee medical assessment (730 ILCS 125/17), (2) the $50 court finance fee(55 ILCS 5/5-1101(c)), (3) the $5 drug court assessment fee (55 ILCS 5/5-1101(f)), (4) the $25 Victims Assistance Act fee (725 ILCS 240/10(c)(1)).

The $30 juvenile expungement assessment (730 ILCS 5/5-9-1.17) is a "fine." In addition, application of the fine in this case would violate the *ex post facto* clause because the statute creating the assessment took effect after the date of the offense for which defendant was convicted.

The circuit clerk erred by imposing a $43.50 late fee (725 ILCS 5/124A-10) and a $100.05 collection fee (730 ILCS 5/5-9-3(a)). The court noted the State's argument that the late fees and collection fees are civil penalties that cannot be challenged in a criminal appeal, but found that the record did not support the imposition of such fees in this case because the

defendant was not afforded a minimum of 30 days from the date of the judgment to pay the assessments.

Finally, because defendant was incarcerated awaiting trial on a charge of sexual assault, he was not entitled to the $5 per day credit against fines for time in which he was in custody. (725 ILCS 5/110-14(b)).

People v. Rogers, 2014 IL App (4th) 121088 Error occurred where the circuit clerk imposed assessments for several fines, including a $5 fine for child advocacy (55 ILCS 5/5-1101(f-5)), $5 drug court charge (55 ILCS 5/5-1101(f)), and $100 assessment for violent crime victims assistance (725 ILCS 240/10(b)).

The court declined to accept the State's concession that the $2 State's Attorney automation charge (55 ILCS 5/4-2002(a)) was a fine and could only be imposed by the trial court. The court concluded that the assessment was a "fee" because it was intended to reimburse the State's Attorney for expenses related to automated record keeping systems.

In addition, because the charge was a fee, it could be assessed in this case even though it was authorized by legislation which became effective after the crimes in this case occurred. The prohibition against *ex post facto* laws applies only to punitive laws. Fee statutes are compensatory and therefore do not come under the *ex post facto* clause.

The circuit clerk erroneously imposed a $15 State Police operations assistance fine (705 ILCS 105/27.3(a)(1), (1.5), (5)). In addition, because the charge is a fine that was authorized by legislation which became effective after the criminal conduct in question, the *ex post facto* clause prohibited its assessment even by the trial court.

The $10 probation operation assistance assessment (705 ILCS 105/27.3a(1.1)) may be a fine or a fee, depending on the circumstances. Where the defendant was eligible for probation and the probation office conducted a pre-sentence report, the charge is compensatory in nature because it reimburses the State for costs incurred as a result of the prosecution. Under such circumstances, the charge is a fee.

By contrast, where the probation office was not involved in the prosecution, the probation operation assistance assessment constitutes a fine because it does not compensate the State for costs of the prosecution.

People v. Hill, 2014 IL App (3d) 120472 Defendant argued that the trial court improperly required him to pay a $200 DNA analysis fee. The Court refused to consider information from the website "judici.com," in deciding whether defendant was improperly assessed two DNA fees. Instead, the Court relied exclusively on the clerk's "payment status information," included in the common law record. Printouts from "judici.com," were appended to the brief, but were not part of the record on appeal. The Court cautioned the parties against attempting to supplement the record with information from the internet without first obtaining leave of the Court.

People v. Larue, 2014 IL App (4th) 120595 Depending on the statutory language, certain fees may be imposed only once per case, or may be imposed for each conviction. Here, the court determined that four fees could only be imposed once while two could be imposed for each of defendant's two convictions.

The statute authorizing the document storage fee (705 ILCS 105/27.3c(a)) states that a fee shall be imposed for each "matter," which the court concluded was synonymous with "case." Accordingly, this fee can only be imposed once per case.

The statutes authorizing the automation fee (705 ILCS 105/27.3a(1)), and the court

security fee (55 ILCS 5/5-1103) both state that a fee shall be imposed for each "case," and hence can only be imposed once per case.

The circuit clerk fee statute (705 ILCS 105/27.1a(w)(1)(A)) states that the fee shall be imposed for each felony complaint. Since the two counts filed by the State in this case constituted one felony complaint, only one fee could be imposed.

By contrast, the statute authorizing the court finance fee (55 ILCS 5/1101(c)) states that a fee shall be imposed on a "judgment of guilty," and thus allows the imposition of a fee on each judgment.

Similarly, the statute authorizing the state's attorney fee (55 ILCS 5/4-2002(a)), states that a fee shall be imposed for "each conviction." Here, defendant was found guilty of two counts and thus two court finance and state's attorney fees could be imposed.

People v. Martino, 2012 IL App (2d) 101244 Whether statutes and ordinances that authorize fees or fines allow for imposition of multiple charges depends on the legislative authority's intent as revealed by the plain language of the statute or ordinance.

The County Clerks Act authorizes county boards to enact ordinances to defray the costs of maintaining automated record-keeping systems and document storage. The DuPage County ordinance provides that the applicable fee "shall be paid *** by the defendant in any felony, misdemeanor, traffic, ordinance or conservation matter on a judgment of guilty." DuPage County Code §9-10. Because the use of the word "matter" evidences an intent that a fee be imposed for each case rather than for each conviction, only one fee could be imposed in a case resulting in multiple convictions.

The Clerks Act provides that the clerk is entitled to "costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein as follows: (A) Felony complaints, a minimum of $80 and a maximum of $125 (B) Misdemeanor complaints, a minimum of $50 and a maximum of $75." 705 ILCS 105/27.2(w)(1)(A) and (B). The plain language of this statute authorizes one fee per charging instrument. Defendant was charged with both felonies and misdemeanors in a single indictment. Logic dictates that a complaint setting out a felony is a felony complaint even if it also charges a misdemeanor. Therefore, defendant could be assessed one fee for a felony complaint.

The Counties Code authorizes a county board to enact an ordinance to defray the costs of the sheriff in providing court security. DuPage County enacted an ordinance providing that "[i]n criminal, local ordinance, [c]ounty ordinance, traffic and conservation cases, such fee [of $25] shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty resulting in a judgment of conviction or order of supervision." DuPage County Code §20-30. Because the language of the ordinance refers to cases not individual convictions, only one fee may be imposes in each case.

The County Jail Act provides: "The county shall be entitled to a $10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense." 730 ILCS 125/17. The plain language of this Act provides that a fee may be imposed on each of defendant's convictions.

The Counties Code authorizes county boards to enact ordinances that allow for imposition of fees to defray the costs of financing a court system: "A fee to be paid by the defendant on a judgment of guilty or a grant of supervision *** as follows: (1) for a felony, $50; (2) for a class A misdemeanor, $25." 55 ILCS 5/5-1101(c)(1) and (2). DuPage County enacted such an ordinance. The plain language of the Counties Code provides that the fee may be imposed on a per-conviction basis.

The Counties Code provides that a State's Attorney's fee may be imposed "[f]or each

conviction." 55 ILCS 5/4-2002. Therefore it is proper to impose a fee for each conviction.

The Counties Code provides that county boards may enact a "$10 fee to be paid by the defendant on a judgment of guilty or grant of supervision *** to finance the county mental health court, the county drug court, or both." 55 ILCS 5/5-1101(d-5). DuPage County enacted an ordinance providing that the fine should be imposed for each "count" on which there was a "judgment of guilty." The plain language of the ordinance allows imposition of the fine on each count.

A Violent Crimes Victims Assistance Fund fine may be imposed on each conviction based on a "reading of various portions of the statute in tandem." The statute refers to collection of the penalty from each defendant upon conviction and provides for a fine in a specified amount depending on the nature of the conviction.

People v. Millsap, 2012 IL App (4th) 110668 The Children's Advocacy Center assessment is a fine, notwithstanding the statutory label of a fee. 55 ILCS 5/5-1101(f-5). The charge is mandatory for a convicted defendant and does not reimburse the State for money expended in prosecuting the defendant.

The State Police operations assistance fee is also a fine. A circuit clerk in any county that imposes a fee for maintaining automated record-keeping systems pursuant to §27.3a(1) of the Clerks of the Court Act must collect an additional fee, the State Police operations assistance fee, to be paid by the defendant in any felony, traffic, misdemeanor, or local ordinance violation upon a judgment of guilty or grant of supervision. 705 ILCS 105/27.3a(1.5). Such fee is to be deposited in the State Police Operations Assistance Fund to be used by the State Police to finance any of its lawful purposes and functions. Therefore it does not reimburse the State for costs incurred in defendant's prosecution.

People v. Pohl, 2012 IL App (2d) 100629 The Clerks of Court Act provides that the "clerk shall be entitled to costs in all criminal . . . cases from each person convicted . . . as follows: (B) Misdemeanor complaints, a minimum of $50 and a maximum of $75. 705 ILCS 105/27.2(w)(1)(B).

The plain language of the statute authorizes imposition of a fee for a defendant convicted pursuant to a misdemeanor complaint. Defendant was convicted of three counts of domestic battery but only one complaint was filed. Therefore, only one clerk's fee could be imposed.

The Counties Code authorizes a county to enact an ordinance to defray the costs of the sheriff in providing court security. 55 ILCS 5/5-1103. Pursuant to this section, the DuPage County Board enacted an ordinance that provides "[i]n criminal . . . cases, such fee [of $25] shall be assessed against the defendant upon . . . findings of guilty resulting in a judgment of conviction."

The plain language of this ordinance indicates that the court security fee must be imposed against a defendant who is found guilty in a criminal case, but the language refers to cases, not individual convictions. Therefore, defendant convicted of three counts of domestic battery could only be assessed one fee.

People v. Williams, 2011 IL App (1st) 091667-B A "fine" is part of the punishment for a conviction, while a "fee" seeks to reimburse the State for its expenses in prosecuting a defendant. Even where the statute creating a financial penalty labels it as a "fee," a "fee" which is not intended to reimburse the State for the costs of prosecution is construed as a "fine." A "fine" is subject to the $5 per day credit for pretrial incarceration.

The court concluded that the $10 mental health "fee" (55 ILCS 5/5-1101(d-5)), $5 youth diversion/peer court (55 ILCS 5/5-1101(a)), $30 children's advocacy center "fee" (55 ILCS 5/5-1101(f-5)), and $5 drug court "fee" (55 ILCS 5/5-1101(f)) do not reimburse the State for the expense of prosecuting the defendant, and are therefore "fines." Thus, defendant was entitled to $5 per day credit against these charges for his presentence custody.

People v. Anthony, 408 Ill.App.3d 799, 951 N.E.2d 507 (1st Dist. 2011) The $5 court system fee authorized by 55 ILCS 5/5-1101(a) may be entered only if the defendant is convicted of violating the Illinois Vehicle Code or a similar county or municipal ordinance. The fee was vacated where the defendant was convicted of unlawful use of a weapon by a felon.

The $25 court services fee to defray the cost of court security, which is authorized by 55 ILCS 5/5-1103, may be imposed even where the defendant is not convicted of an offense specified under the statute.

The $10 County Jail Medical Fund fee, which is authorized by 730 ILCS 125/17, is to be imposed without regard to whether the defendant incurred an injury or required treatment while in custody. The court concluded that the fee is intended to reimburse the county for the cost of providing medical services to arrestees, and is not a "fine" to which the presentence incarceration credit may be applied.

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

The central characteristic separating fees from fines is whether the charge compensates the state for costs incurred as the result of prosecution of the defendant, in which case the cost is a fee. Compensation for labor or services, especially professional services that are collateral consequences of the defendant's conviction, are fees.

A statute that authorizes the court to impose an additional $500 fine on offenders convicted of certain sex offenses provides that 10% of the assessment is to be retained by the circuit court clerk to cover costs incurred in administrating and enforcing the statute, and that this penalty should not be considered part of the fine. 730 ILCS 5/5-9-1.15. This part of the assessment is a fee since it constitutes compensation for services and costs that are a consequence of defendant's conviction. Imposition of this fee is not barred by *ex post facto* principles.

The statute also provides that $100 of the $500 fine should be provided to the State's Attorney who prosecuted the case. This part of the fine is a fee as it is compensation for professional services and therefore also not affected by *ex post facto* principles.

The remaining $350, which by statute is deposited into the Sex Offender Investigation Fund, is a fine. Because the statute authorizing the fine was not in effect when the offense was committed, it may not be assessed against the defendant.

People v. McNeal, 405 Ill.App.3d 647, 955 N.E.2d 32 (1st Dist. 2010) The Child Advocacy Center fee, 55 ILCS 5/5-1101(f-5), though labeled a fee is a fine. The assessment is mandatory upon conviction of a felony or other listed offenses. It does not relate to the costs of prosecution. There is no relevant connection between the offense committed by the defendant and the public endeavor funded by the fee.

People v. Coleman, 404 Ill.App.3d 750, 936 N.E.2d 789 (1st Dist. 2010) The pre-amendment version of the statute providing for payment upon conviction of a $10 fee into a medical costs fund (730 ILCS 125/17) could be assessed against the defendant even though he was not injured and did not generate any medical expenses for the county while he was in custody. The fund benefits the defendant because it serves as a medical insurance policy while he is in custody. The money in the fund is used for either medical expenses of arrestees or the administration of the fund.

People v. Alexander, 369 Ill.App.3d 955, 862 N.E.2d 240 (3d Dist. 2007) The trial court lacked authority to impose a $10 DNA collection fee on a convicted defendant. The relevant statute does not authorize an additional collection fee. Also, Supreme Court Rule 21, which permits circuit judges to adopt rules and authorizes the chief judge of each circuit to enter "general orders . . . providing for assignment of judges, general or specialized division, and times and places of holding court," does not authorize creation of a $10 DNA collection fee.

People v. Hunter, 358 Ill.App.3d 1085, 831 N.E.2d 1192 (4th Dist. 2005) Statute requiring extraction and storing of DNA for felony conviction did not require defendant to pay his own collection fee.

People v. Blakley, 357 Ill.App.3d 477, 829 N.E.2d 527 (4th Dist. 2005) 55 ILCS 5/4-5001 authorizes a sheriff's fee of 50¢ per mile for returning a charged defendant to the State of Illinois, and provides that the fees authorized are the "maximum fees that may be collected" unless the county board increases the fees based on "an acceptable cost study showing" that the authorized amount is insufficient "to cover the cost of providing the service." Where only one trip was made to retrieve defendant, §4-5001 did not authorize a fee of 50¢ per mile in each of two pending cases.

People v. Campbell, 325 Ill.App.3d 569, 758 N.E.2d 504 (4th Dist. 2001) Portion of a conditional discharge order which required defendant to pay periodic imprisonment fees from an earlier, unrelated offense was reversed. Illinois sentencing law does not authorize the reimposition of unpaid fees from a previous offense when conditional discharge is ordered for a subsequent, unrelated offense.

People v. Fales, 247 Ill.App.3d 681, 617 N.E.2d 421 (3d Dist. 1993) Because only persons who are "convicted" may be assessed costs or fines, and because a sexually dangerous person proceeding is not a criminal prosecution and does not result in a "conviction," cost and fine orders may not be entered against an individual who has been adjudicated a sexually dangerous person. Also, the propriety of the orders could be challenged for the first time on respondent's appeal from the denial of a recovery petition, because such orders are void and can be attacked at any time.

People v. Terneus, 239 Ill.App.3d 669, 607 N.E.2d 568 (4th Dist. 1992) Persons convicted of crimes must pay court costs. Because it would be pointless to require trial judges to hold hearings where they have no discretion to exercise, due process does not require notice or a hearing before a defendant is ordered to pay court costs.

People v. Hodges, 120 Ill.App.3d 14, 457 N.E.2d 517 (3d Dist. 1983) The trial court lacks

authority to assess costs against defendant for a mistrial. Costs may be paid by any person who is convicted, and while a mistrial is not an acquittal, it is not a conviction.

Defendant did not waive his right to challenge the costs by failing to file a motion to retax in the trial court; the trial judge had no authority to impose such costs.

People v. Keagbine, 77 Ill.App.3d 1039, 396 N.E.2d 1341 (5th Dist. 1979) Remanded for assessment of court costs where the trial court did not impose costs against defendant following his conviction and sentence, for a trial court is statutorily required to impose costs.

People v. Winkler, 77 Ill.App.3d 35, 395 N.E.2d 671 (5th Dist. 1979) Order requiring defendant to pay jurors' fees and expenses vacated. Illinois law does not authorize the assessment of jurors' fees and expenses as "costs of prosecution."

People v. Vaughn, 75 Ill.App.3d 121, 394 N.E.2d 19 (5th Dist. 1979) The trial court may impose court costs as an incident to probation or conditional discharge.

§44-7(d)
Forfeitures

Illinois Supreme Court
People ex rel. Hartrich v. 2010 Harley-Davidson, 2018 IL 121636 Illinois' civil forfeiture statute [720 ILCS 5/36-1] allows the State to seize any vehicle used in the commission of certain offenses. Here, the claimant's motorcycle, which she purchased for $35,000 in 2010, was forfeited because her husband drove it while committing aggravated DUI. The claimant raised an as-applied challenge to the forfeiture statute based on the excessive fines clause of the Eighth Amendment to the U.S. Constitution.

The Supreme Court applied the three-part test it adopted in **People ex rel. Waller v. 1989 Ford F350 Truck**, 162 Ill. 2d 78 (1994) to evaluate whether the forfeiture state was unconstitutional as applied to these facts under the excessive fines clause. That test requires courts to weigh (1) the gravity of the offense compared to the harshness of the penalty, (2) how integral the property was in the commission of the offense, and (3) whether the criminal conduct involving the property was extensive.

Here, after asserting an "innocent owner" defense below, the claimant conceded in the Supreme Court that she had allowed her husband to drive the motorcycle knowing he was intoxicated. The Court concluded that the claimant bore "more than marginal culpability" for her husband's DUI and the inherent danger to the public from that offense. The Court could not weigh that factor against the harshness of the forfeiture, however, because the claimant had not presented any evidence as to the value of the motorcycle at the time of the offense or at the time of the forfeiture. The only evidence of value was that the claimant had paid $35,000 for the motorcycle in 2010, four years before its seizure. In light of the Court's duty to construe the statute as constitutional whenever possible, the claimant's as-applied challenge was rejected.

In dissent, Chief Justice Karmeier criticized the majority as wrong on the facts, wrong in its interpretation of the relevant statutes, and wrong in its construction and application of Eighth Amendment law. Specifically, he found that the evidence failed to show the claimant's knowledge of the significance of her husband's prior DUI and license revocation. He also concluded that the evidence did establish that the claimant had acquiesced in her husband's operation of the motorcycle, without any real choice in the matter, but had not consented to

it. Chief Justice Karmeier construed the forfeiture statute as applying only when it is the vehicle's owner who uses the vehicle to commit an offense. He also concluded that if it applied here, the forfeiture statute was unconstitutional as applied under the excessive fines clause of the Eighth Amendment.

In a separate dissent, Justice Burke concluded that the claimant had not consented to her husband's driving the motorcycle. She also disagreed with the majority's rejection of the Eighth Amendment claim on the merits and would have remanded to the trial court to hold a hearing on the as-applied challenge in order to develop a factual record for review.

Illinois Appellate Court

People v. 2008 Ford F-250 Super Duty, 2025 IL App (3d) 240194 Under 720 ILCS 5/36-1.5(a), governing civil forfeitures, the State is required to "seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture" within 14 days of the property's seizure. The State's filing of a forfeiture petition within 14 days satisfies the requirement that the State "seek" a preliminary determination. The statute does not require that the preliminary ruling on the petition occur within that time frame. Accordingly, the circuit court properly denied the criminal defendant's motion to dismiss where the forfeiture petition was filed 12 days after the property seizure but was not heard until more than 14 days had passed.

People v. One 2005 Acura RSX, 2017 IL App (4th) 160595 720 ILCS 5/36-1 provides that a vehicle used with the knowledge and consent of the owner to commit or attempt to commit an offense prohibited by §19-2 of the Criminal Code may be forfeited in a civil forfeiture proceeding. 720 ILCS 5/19-2(a) provides that a person commits the offense of possession of burglary tools by possessing any key, tool, instrument, device, or any explosive suitable for use in breaking into a building with intent to enter that place and commit therein a felony or theft.

Although civil forfeiture may serve a remedial purpose, such proceedings also serve in part to punish the owner of the property subject to forfeiture. Thus, civil forfeitures are subject to the excessive fines clause of the Eighth Amendment. A civil forfeiture violates the excessive fines clause if it is grossly disproportional to the gravity of the offense for which the property is forfeited.

In determining whether a forfeiture violates the excessive fines clause, courts consider several factors including the inherent gravity of the offense compared to the harshness of the penalty, whether the property was an integral part of the commission of the crime, and whether the criminal activity involving the property was extensive in terms of time and/or spatial use.

Forfeiture of a car worth $17,600 was excessive based on the offense of possession of burglary tools, a Class 4 felony punishable by a maximum fine of $25,000. Whether a fine is excessive does not depend solely on the maximum punishment available for the underlying offense compared to the claimant's equity interest in the forfeited property. Instead, courts must also consider that violent crimes are more serious than nonviolent crimes, completed crimes are more serious than attempted crimes, and intentional conduct is more culpable than negligent conduct.

Because civil forfeiture may be instituted even where the defendant is not convicted of the predicate offense, the court must consider whether the claimant has been convicted of the criminal act underlying the forfeiture, has not been charged with any crime, or has been charged with and acquitted of criminal act underlying the forfeiture. The gravity of the

claimant's conduct decreases in each situation.

Finally, the court must consider not only the monetary value of the property forfeited, but also the intangible value of the property.

Where the claimant engaged in nonviolent conduct by driving to several car washes to attempt to gain access to coin boxes, those efforts were mostly unsuccessful in that he obtained only two quarters, and he was not convicted of the offense which was the predicate for the forfeiture, the court found that the first factor (the inherent gravity of the offense compared to the harshness of the penalty) favored the claimant.

The second prong of the test focuses on whether the property was an integral part of the commission of the offense. The court concluded that the vehicle was not sufficiently related to the criminal activity to facilitate that activity in any significant way, as the claimant could just as easily have taken public transportation or walked to the car washes and could have concealed the burglary tools that were found in the car - two vending machine keys - on his person.

The third factor is whether the criminal activity involving the claimant's vehicle was extensive in terms of time and/or spatial use. The court concluded that using the car to drive to several car washes to attempt to obtain access to coin boxes over a period of about one week was not an extensive use of the vehicle and did not justify forfeiture.

The court also noted that the record included only limited information concerning defendant's alleged criminal activities, and because the State was the appellant it bore the burden of providing an adequate record for review.

§44-8
Drug Abuse Treatment

(Note: The General Assembly frequently modifies the provisions of the Alcoholism and Other Drug Abuse and Dependency Act (the Act) (20 ILCS 301/1-1 *et al*). The Act is commonly known as the Treatment Alternatives Act, which was preceded by a number of different acts. Counsel should always check the applicable portions of the Act to determine whether the relevant provisions have changed.)

Illinois Supreme Court

People v. Richardson, 104 Ill.2d 8, 470 N.E.2d 1024 (1984) The Dangerous Drug Abuse Act requires the trial judge to inform every defendant whom he knows or has reason to believe is an addict of the possibility of treatment under the Act even where, as here, acceptance into a treatment program may be vetoed by defendant's parole or probation officer. (Note: a prior version of the statute was merely directory, not mandatory.)

People v. Warren, 69 Ill.2d 620, 373 N.E.2d 10 (1977) A trial judge is not required to order a defendant to be examined by the Department of Mental Health, or to consider the Department's report, before denying a petition for treatment under the Drug Abuse Act. It is only after the trial court has made a tentative determination to treat a defendant under the Act, and defendant has elected to proceed in that manner, that such an exam is to be ordered for the purpose of securing the Department's consent and recommendations.

People v. Phillips, 66 Ill.2d 412, 362 N.E.2d 1037 (1977) The provision of the Dangerous Drug Abuse Act authorizing the probation officer to deny treatment to persons who have been charged with, but not convicted of, a criminal offense does not infringe upon the court's

constitutional right to impose sentence.

People v. McCoy, 63 Ill.2d 40, 344 N.E.2d 436 (1976) Robbery is not a "crime of violence" under the Dangerous Drug Abuse Act; thus a defendant convicted of robbery is not ineligible for drug treatment. By deleting "robbery" from the list of "crimes of violence," and by substituting "armed robbery," the legislature is presumed to have intended to remove the disqualification for robbery. See also, **People v. Robinson**, 255 Ill.App.3d 1067, 627 N.E.2d 262 (1st Dist. 1993) (defendant's conviction for armed violence could not be considered a "crime of violence" under the Alcoholism and Other Drug Dependency Act, as there was no use or threat of physical force, physical restraint, or confinement).

Illinois Appellate Court

People v. Hare, 2022 IL App (2d) 190848 Defendant was convicted of domestic battery and sentenced to probation. He violated probation by failing to attend counseling and failing to stay sober. He was sentenced *in absentia* to five years in prison. On appeal, defendant argued that his sentence violated section 40-10(a) of the Substance Use Disorder Act.

Section 40-10(a) provides that if a sentencing court has reason to believe that an eligible defendant suffers from a substance use disorder, it must advise the defendant that he or she may be sentenced to probation. Here, the court did not advise defendant in rendering its sentence.

The Appellate Court first held that the record sufficiently established that defendant had abused alcohol, so the sentencing court had reason to believe that defendant suffered from a substance use disorder. Under normal circumstances, the sentencing court's failure to advise a defendant of the possibility of electing probation and treatment under the Act, where the court has reason to believe that the defendant suffers from a substance use disorder, will result in a remand for resentencing.

Here, however, defendant failed to appear at the sentencing hearing. Although the effect of defendant's absence on section 40-10(a) presents a case of first impression, the Appellate Court found that, in other contexts, the failure to appear has constituted a waiver of rights. For example, **People v. Woolridge**, 292 Ill. App. 3d 788 (1997), held that the failure to appear waives the right to personal notification of the right to appeal as required by Rule 605(b). Similarly, in this case defendant's failure to appear for sentencing waived his right to be advised of any possibility of electing probation and treatment under the Act.

While defendant argued that he did appear for post-sentencing motions and was still not admonished under 40-10(a), the Appellate Court found no error because the admonishment is required only during sentencing. None of defendant's post-sentencing motions resulted in a new sentencing hearing, so the requirements of section 40-10(a) were not triggered.

People v. Demsco, 2013 IL App (3d) 120391 The trial court abused its discretion by denying defendant TASC treatment. The revised report from the TASC program indicated that defendant was eligible to participate in the rehabilitative program, that there was a nexus between defendant's abuse of alcohol and drugs and his criminal activity, and that defendant was likely to be rehabilitated by treatment. The trial court found that all the eligibility requirements had been met, that rehabilitative services would be needed based on defendant's alcohol and drug abuse, and that defendant was likely to successfully complete the program. In light of these findings, the Act requires TASC treatment unless the trial court makes a specific determination that no significant relationship exists between

defendant's addiction and the crime or that imprisonment is required to protect the community. Because the trial court made neither finding, and in fact found that defendant was an ideal candidate for TASC probation and treatment, the court abused its discretion by denying treatment under the Act.

Defendant's sentence was reversed and the cause remanded with instructions to sentence defendant to TASC probation.

People v. McGregor, 405 Ill.App.3d 776, 939 N.E.2d 1009 (2d Dist. 2010) The Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS 301/1-1 *et seq*.) allows eligible defendants who suffer from alcoholism or other drug addiction to elect to be sentenced to probation conditioned on substance abuse treatment instead of traditional sentencing. If the court does sentence defendant to probation with treatment, and the defendant successfully completes probation, defendant may move to vacate the conviction if he has not been previously convicted of any felony and has not previously moved to vacate a conviction under the statute. The court has the discretion to vacate the conviction "unless, having considered the history, character and condition of the individual, the court finds that the motion should not be granted." 20 ILCS 301/45-10(e).

The court did not abuse its discretion in denying defendant's motion to vacate. Defendant pled guilty to aggravated unlawful use of a weapon. He had attempted to hide a gun in the glove box of a car upon the approach of the police to cover up the participation of fellow gang members in an armed robbery. The simple fact that defendant was older when he successfully completed probation is entitled to no weight because that fact is implicit in defendant successfully completing probation. That defendant obtained employment, though admirable and indicative of a positive direction in defendant's life, did not overcome the court's finding regarding the seriousness of the offense.

People v. Johnson, 338 Ill.App.3d 213, 788 N.E.2d 152 (1st Dist. 2003) A defendant who is ineligible for probation under the Unified Code of Corrections cannot be sentenced to T.A.S.C. probation. But see, **People v. Young**, 334 Ill.App.3d 795, 779 N.E.2d 293 (1st Dist. 2002).

In re Matthew M., 335 Ill.App.3d 276, 780 N.E.2d 723 (2d Dist. 2002) 20 ILCS 301/40-5, which permits a licensed program to establish conditions under which an individual is accepted for drug or alcohol treatment, and to exercise discretion in deciding whether offering treatment best utilizes limited resources, does not authorize a program to reject persons based on factors unrelated to treatment, including age.

People v. Wallace, 331 Ill.App.3d 822, 772 N.E.2d 785 (1st Dist. 2002) Defendant was eligible for TASC, despite the fact that he had been adjudicated delinquent of residential burglary, because juvenile adjudications are not "convictions" for purposes of TASC.

People v. Lillard, 247 Ill.App.3d 683, 617 N.E.2d 420 (3d Dist. 1993) The cause was remanded for resentencing because the trial court failed to advise defendant of his right to elect treatment under the Illinois Alcoholism and Other Drug Dependency Act. The court had reason to believe that defendant was an addict or alcoholic where defendant testified he had been an alcoholic for 12 years and suffered blackouts for six years, defendant had been previously treated for alcoholism, and defendant suffered from cirrhosis of the liver and required medical treatment while incarcerated. Further, the trial court specifically asked defendant how long he had been an alcoholic and found that substance abuse had affected defendant's memory.

People v. Meeks, 236 Ill.App.3d 193, 603 N.E.2d 757 (1st Dist. 1992) Where a defendant is eligible for treatment under the Alcoholism and Other Drug Dependency Act, the trial judge is required to allow him to petition for treatment and undergo a drug treatment evaluation. Although the judge has discretion to refuse to allow treatment, that discretion can be exercised only *after* defendant has been evaluated. Here, the trial court erred by refusing to allow defendant to undergo a TASC evaluation on the ground that he was a "danger to other people and a habitual offender."

People v. Saddler, 231 Ill.App.3d 544, 596 N.E.2d 65 (1st Dist. 1992) Evidence, including defendant's trial testimony and presentence report, which indicated a history of drug and alcohol abuse and unsuccessful attempts at rehabilitation, was sufficient to give the trial judge reason to believe that defendant was an addict or alcoholic. Thus, the judge was required to inform defendant of his right to elect treatment as a sentencing alternative. See also, **People v. Wallace**, 331 Ill.App.3d 822, 772 N.E.2d 785 (1st Dist. 2002) (the trial court had reason to believe that defendant was addicted to drugs and alcohol based on presentence report and defense counsel's statement that defendant wanted to ask if TASC was an option).

People v. O'Bannon, 195 Ill.App.3d 430, 552 N.E.2d 397 (4th Dist. 1990) The trial judge did not err by failing to advise defendant of treatment under the Alcoholism and Other Drug Dependency Act where defendant's uncorroborated and self-serving statement that he was a regular user of drugs and alcohol was insufficient to establish a reason to believe that defendant was an alcoholic or addict. See also, **People v. Atterberry**, 201 Ill.App.3d 641, 559 N.E.2d 193 (1st Dist. 1990) (evidence did not establish a "reason to believe").

People v. Hamelin, 181 Ill.App.3d 350, 537 N.E.2d 3 (2d Dist. 1989) The trial court abused its discretion in revoking defendant's TASC probation (which was imposed along with a jail term) before defendant had the opportunity to participate in the drug rehab program. The court revoked defendant's TASC probation when defendant tried to bring drugs into jail.

People v. Carter, 165 Ill.App.3d 169, 518 N.E.2d 1068 (2d Dist. 1988) The trial court sentenced defendant to TASC probation, but defendant attended outpatient treatment because there were no openings in the inpatient program. The court revoked probation after defendant committed retail theft, and sentenced defendant to a prison term, despite the prosecutor's and defense counsel's contrary advice. In so doing, the court stated that prison would get defendant off drugs. The trial court abused its discretion by imposing the prison term and by refusing to grant defendant inpatient drug treatment. There was a link between defendant's drug use and his continued patterns of theft, and defendant never got the opportunity to participate in the inpatient program that the judge initially prescribed. Furthermore, both the State and defense were in agreement that the only way to address defendant's therapeutic needs was by an inpatient drug program. "The prisons of our State are not intended to serve as drug rehabilitation facilities, nor do they typically serve such a function."

People v. Paxton, 135 Ill.App.3d 680, 482 N.E.2d 180 (3d Dist. 1985) Defendant was not afforded minimal due process at hearing on State's petition for termination of supervision with TASC treatment. The evidence supporting defendant's discharge from the treatment program was based entirely on speculation and hearsay testimony, and defendant could not

cross-examine the counselor whose report resulted in defendant's discharge from TASC.

"[I]n light of the general lenient purpose of the act, the flexibility in such proceedings should be applied in a defendant's favor."

The court erred by ruling that it had no discretion in conducting the proceedings upon proof that TASC had determined that defendant could not be further treated and was discharged. "The trial court's discretion in such matters lies in its determination of the fairness or arbitrariness of the treatment program's subjective decision. If, upon remand, the court finds that defendant's discharge from the program resulted from the fact that he was rehabilitated and not for another reason related to the rehabilitation goal, then it may, in its discretion, deny the State's petition." Reversed and remanded.

People v. Beckler, 121 Ill.App.3d 436, 459 N.E.2d 672 (2d Dist. 1984) A trial court may terminate supervision of TASC if the licensed program determines that defendant cannot further be treated. But, due process requires the trial court to hold a hearing before making a determination on the licensed program's decision. Thus, "the individual subject to termination should be accorded the following rights: (1) written notice of the reasons the individual cannot be further treated; (2) an opportunity to be heard and to present witnesses; (3) disclosure to him of the evidence against him, and (4) the right to confront and cross-examine adverse witnesses." Because defendant was not afforded these procedural safeguards (the trial court terminated defendant's supervision based on a letter from TASC and without a hearing), the order terminating supervision was reversed and remanded.

People v. Moore, 108 Ill.App.3d 260, 439 N.E.2d 98 (4th Dist. 1982) The trial court deferred a finding of guilt (on theft charge) to allow defendant treatment under the Dangerous Drug Abuse Act. After the Department of Mental Health (DMH) discharged defendant, he moved to dismiss the theft charge, but the trial court dismissed the motion. The trial court erred, for the discharge document and letter certified that defendant had successfully completed the DMH treatment program within the meaning of Ch. 95½, §120.9. Because the language of ¶120.9 requires that the pending charge shall be dismissed upon such certification, the trial court erred by failing to dismiss the theft charge. Conviction reversed.

People v. Morguez, 90 Ill.App.3d 471, 413 N.E.2d 128 (1st Dist. 1980) A person is not eligible for treatment under the Dangerous Drug Abuse Act if other criminal proceedings alleging commission of a felony are pending against the addict. Defendant was not ineligible for treatment where, as here, only the sentencing on five charges to which defendant had pleaded guilty was pending. The cause was remanded to the trial court "for its discretionary determination of whether defendant is properly subject to referral under the Act."

People v. Sinclair, 85 Ill.App.3d 688, 407 N.E.2d 225 (3d Dist. 1980) Defendant's treatment under Ch. 91½, §120.9 was improperly terminated based on defendant's failure to keep certain appointments (a condition of treatment). Chapter 91½, §120.9 provides only one applicable basis for terminating supervision - where the Department of Mental Health advises the trial court that defendant can no longer be treated as a medical problem. Because there was no such determination in this case, the termination cannot stand.

People v. Elsner, 27 Ill.App.3d 957, 327 N.E.2d 592 (4th Dist. 1975) Defendant is entitled to a new sentencing hearing where, based on the evidence presented to the sentencing judge, there was reason to believe that defendant was addicted, yet neither the judge nor counsel

made reference to examination and treatment under the Dangerous Drug Abuse Act.

§44-9
Consecutive Sentences

§44-9(a)
Generally

Illinois Supreme Court
People v. Petrenko, 237 Ill.2d 490, 931 N.E.2d 1198 (2010) In **People v. Palmer**, 218 Ill.2d 148, 843 N.E.2d 292 (2006), the Illinois Supreme Court held that consecutive sentences of natural life imprisonment are improper.

The court rejected defendant's claim that imposition of a ten-year term consecutive to his natural life sentence violated **Palmer**. The court noted that **Palmer** involved a defendant sentenced to natural life under the Habitual Criminal Act, not the murder statute, as was defendant. The court acknowledged that **Palmer** also purported to hold that consecutive life sentences violated the consecutive sentencing statute (730 ILCS 5-8-4(a)) and natural law. It found that this holding was a "mistake" as it was not essential to the decision in **Palmer**, and also wrong on its merits, as it was within the purview of the legislature to make such a determination. The court therefore overruled that holding of **Palmer**. *Stare decisis* was not a bar because **Palmer** was wrongly decided.

People v. Horrell, 235 Ill.2d 235, 919 N.E.2d 952 (2009) Where the defendant was sentenced to a term of probation on one count of a multi-count indictment, and the probation term was to commence during the mandatory supervised release period imposed as part of concurrent prison terms for several other counts, the probation term was a permissible concurrent sentence and not an impermissible consecutive sentence.

People v. Williams, 179 Ill.2d 331, 688 N.E.2d 1153 (1997) The Unified Code of Corrections does not authorize consecutive sentences of imprisonment and probation for a single criminal offense. **People v. Wendt**, 163 Ill.2d 346, 645 N.E.2d 179 (1994), approved consecutive sentences of imprisonment and probation only where multiple convictions are entered. See also, **People v. Spera**, 303 Ill.App.3d 834, 708 N.E.2d 1259 (2d Dist. 1999) (rationale of **Williams** prohibits concurrent sentences of imprisonment and probation on single offense).

People v. Singleton, 103 Ill.2d 339, 469 N.E.2d 200 (1984) Statutory provision providing that an "offender serving a sentence for a misdemeanor who is convicted of a felony and sentenced to imprisonment shall be transferred to the Department of Corrections, and the misdemeanor sentence shall be merged in and run concurrently with the felony sentence," is mandatory. Defendant's consecutive sentence is improper under this provision.

Illinois Appellate Court
People v. Battle, 378 Ill.App.3d 817, 882 N.E.2d 1088 (1st Dist. 2008) When defendant is charged with intentional or knowing murder and felony murder and there is an evidentiary basis for a felony murder conviction, the denial of defendant's request for a separate verdict form for felony murder precludes a consecutive sentence for the predicate offense of felony murder.

People v. Moore, 250 Ill.App.3d 906, 620 N.E.2d 583 (4th Dist. 1993) Although the judge here had discretion to impose consecutive sentences, resentencing was required because the judge erroneously believed that consecutive sentencing was mandatory. (**People v. Bole**, 223 Ill.2d 247, 585 N.E.2d 135 (1991), which held that three offenses occurring on separate days, with substantial interruptions of time, could not be considered a "single course of conduct," applied where the offenses occurred 18 months apart.) See also, **People v. River**, 212 Ill.App.3d 519, 571 N.E.2d 202 (2d Dist. 1991) (consecutive sentencing for escape was improper where defendant was charged with and pleaded guilty to escape under Ch. 38, §31-6(a), which makes consecutive sentencing discretionary (rather than under Ch. 38, §1003-6-4, which mandates consecutive sentences); trial court erroneously believed that a consecutive sentence was mandatory, and thus failed to exercise its discretion); **People v. Clodfelder**, 176 Ill.App.3d 339, 530 N.E.2d 1173 (4th Dist. 1988) (consecutive sentencing improper where judge believed that such sentencing was required because defendant committed separate felonies while on pretrial release but statute at time of offenses did not mandate consecutive sentences; reversed and remanded for resentencing).

People v. Reed, 237 Ill.App.3d 561, 604 N.E.2d 1107 (3d Dist. 1992) A sentence cannot run consecutively to a sentence that has not yet been imposed. Here, the cause was remanded for resentencing where defendant's sentence for a crime in one county was ordered served consecutively to any sentence imposed on a pending charge in another county. See also, **People v. McNeal**, 301 Ill.App.3d 889, 704 N.E.2d 793 (1st Dist. 1998).

People v. Brown, 235 Ill.App.3d 945, 601 N.E.2d 1380 (4th Dist. 1992) §1005-8-4(a) applies to criminal contempt. Criminal contempt is an "offense" for purposes of the Unified Code of Corrections, and consecutive sentences of 180 days would violate the rule that a defendant charged with contempt is entitled to a jury trial if the aggregate sentence exceeds six months.

People v. Thompson, 229 Ill.App.3d 606, 593 N.E.2d 154 (3d Dist. 1992) A trial judge has no authority to impose a felony sentence to run consecutively to a juvenile commitment. The court distinguished **People v. Bridges,** 188 Ill.App.3d 961, 545 N.E.2d 367 (1989) on the ground that it involved a juvenile DOC prisoner who was already serving an adult felony sentence at the time of his subsequent crime.

People ex rel. Willis v. Brantley, 6 Ill.App.3d 645, 285 N.E.2d 571 (5th Dist. 1972) Where conviction for which defendant was incarcerated at time a consecutive sentence was imposed was subsequently reversed, defendant began serving his second sentence from the date it was imposed.

§44-9(b)
Aggregate Consecutive Sentences

Illinois Supreme Court
People v. Tucker, 167 Ill.2d 431, 657 N.E.2d 1009 (1995) Defendant was sentenced to consecutive 60-year prison terms for home invasion and criminal sexual assault. Defendant was subsequently convicted of residential burglary and sentenced to a 30-year sentence, to be served consecutively to the 60-year sentence. The consecutive 30-year sentence violated 730 ILCS 5/5-8-4(c)(2), which provides that the "aggregate of consecutive sentences shall not exceed the sum of the maximum terms authorized under Section 5-8-2 for the 2 most serious

felonies involved." The Court ordered that the 30-year sentence be served concurrently with the two consecutive 60-year sentences.

The Court rejected the State's argument that the statutory limitation on consecutive sentences was not intended to apply to separate offenses committed at different times.

See also, **People v. Pullen**, 192 Ill.2d 36, 733 N.E.2d 1235 (2000) (noting that the legislature amended the statute after **Tucker** to provide that the limitation would not apply for offenses that were not committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, and finding that consecutive sentences in **Pullen** exceeded maximum term and were void).

People v. Hillenbrand, 121 Ill.2d 537, 521 N.E.2d 900 (1988) Defendant, who committed murders before 1973 and then escaped (for 13 years) before sentencing, was entitled to be sentenced under the more lenient sentencing statute. Pursuant to the relevant statutory provision, the aggregate minimum period of consecutive sentences could not exceed the lowest minimum term authorized for the most serious felony involved. Because the lowest minimum term for murder at that time was 14 years, defendant's minimum aggregate consecutive sentence could not exceed 28 years. Thus, defendant's consecutive sentences of 50 to 140 years and 80 to 240 years were improper because the aggregate minimum is 130 years. Because the evidence at the sentencing hearing supported the lengthy sentences imposed, the court affirmed the sentences and ordered that they run concurrently.

People v. Snyder, 77 Ill.2d 459, 397 N.E.2d 799 (1979) Unified Code of Corrections does not proscribe the imposition of a consecutive sentence where the aggregate minimum or maximum sentences were less than those which could have been imposed by a concurrent sentence. Also, the record supported the trial judge's conclusion that consecutive sentences were "required to protect the public from further criminal conduct by the defendant."

Illinois Appellate Court

People v. Mercado, 2023 IL App (3d) 220202 Defendant was convicted of one Class B misdemeanor and two Class A misdemeanors, for which the court imposed consecutive sentences of 20 days in jail with 24 months of probation and two terms of two years of conditional discharge. Defendant filed a motion to reconsider, arguing that the consecutive sentences exceeded the maximum aggregate allowed by law. The trial court denied that motion.

The appellate court reversed and remanded for resentencing. 730 ILCS 5/5-8-4(f)(2) provides that when a defendant is sentenced only for misdemeanors, the aggregate term shall not be greater than "the maximum for one Class A misdemeanor." And, the maximum sentence for a Class A misdemeanor is imprisonment for less than one year and a term of probation or conditional discharge not exceeding two years. 730 ILCS 5/5-4.5-55. Defendant's consecutive sentences exceeded that limit and thus resentencing was required.

People v. Mischke, 2018 IL App (2d) 160472 Defendant's case had been remanded for resentencing because the trial court originally erred in imposing concurrent terms of 26 years and 7 years where consecutive terms were mandatory. On remand, the court imposed consecutive terms of the same length – 26 years and 7 years – for a total of 33 years. 730 ILCS 5/5-5-4(a), which prohibits imposition of a more severe sentence on remand for resentencing, was not violated. A mere increase in the aggregate term is not improper under Section 5-5-4(a). The court did not increase either of the individual sentences and did not

otherwise abuse its discretion at resentencing.

People v. Fretch, 2017 IL App (2d) 151107 Under section 5-6-2(f) of the Code of Corrections, the "court may impose a term of probation that is concurrent or consecutive to a term of imprisonment so long as the maximum term imposed does not exceed the maximum term" for that offense. 730 ILCS 5/5-6-2(f).

Defendant was convicted of a Class A misdemeanor and sentenced to 360 days of imprisonment followed by a consecutive two-year term of probation. Defendant argued that his sentence was unauthorized since section 5-6-2(f) should be interpreted to mean that a combined and consecutive sentence of imprisonment and probation must not in the aggregate exceed the maximum term of imprisonment for a Class A misdemeanor which is only 364 days. 730 ILCS 5/5-4.5-55(a).

Section 5-6-2(f) only requires that the individual prison and probation components of a combined and consecutive sentence not exceed their respective statutory maximums. Here the prison component was only 360 days, less than the statutory maximum of 364 days. 730 ILCS 5/5-4.5-55(a). And the probation component was two years and thus did not exceed the statutory maximum of two years probation for a Class A misdemeanor. 730 ILCS 5/5-4.5-55(d).

People v. Taylor, 171 Ill.App.3d 278, 525 N.E.2d 246 (3d Dist. 1988) Where defendant is convicted only of a misdemeanor, the imposition of consecutive sentences that total more than the maximum for one Class A misdemeanor is prohibited.

§44-9(c)
Mandatory Consecutive Sentences

§44-9(c)(1)
Triggering Offenses

Illinois Supreme Court
People v. Whitney, 188 Ill. 2d 91, 720 N.E.2d 225 (1999) Murder is not a triggering offense because it is neither a Class X nor a Class 1 felony. Thus, where death is the only severe bodily injury, that severe bodily injury could not be combined with the Class X or Class 1 felony to trigger consecutive sentences. (Note: in 2000, the legislature made murder a triggering offense.)

People v. Curry, 178 Ill.2d 509, 687 N.E.2d 877 (1997) Where consecutive sentences are mandatory, they are required only on the triggering offenses. Thus, sentences on any "nontriggering" offenses of which defendant is simultaneously convicted "may be served concurrently to one another after any consecutive sentences for triggering offenses have been discharged."

People v. Johnson, 149 Ill.2d 118, 594 N.E.2d 253 (1992) Because attempt murder is subject to a Class X sentence, it is a Class X felony for purposes of 730 ILCS 5/5-8-4(a). See also, **People v. Perkins**, 274 Ill.App.3d 834, 655 N.E.2d 325 (5th Dist. 1995) (the court properly concluded that consecutive sentences were mandatory for two convictions of attempt murder). (But see **People v. Pullen**, 304 Ill.App.3d 294, 709 N.E.2d 980 (3rd Dist. 1999) (**Perkins** does not accurately reflect Illinois law after **People v. Olivo**, 183 Ill. 2d 339, 701

N.E.2d 511 (1998)).

Illinois Appellate Court

People v. Martin, 2012 IL App (1st) 093506 At the time of the commission of the offenses for which defendant was convicted, Illinois law provided that "[w]hen multiple sentences of imprisonment are imposed on a defendant . . . who is already subject to sentence in this State . . . , the sentences shall run concurrently or consecutively as determined by the court. . . . The court shall impose consecutive sentences if: (i) one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(a)(i) (2006).

The plain language of this statute requires a court to order that defendant's current sentence run consecutively to his pre-existing sentence where his pre-existing sentence was for a Class X felony involving severe bodily injury. Nothing in the language of the statute suggests that subsection (a)(i) only applies where the Class X felony involving severe bodily injury is a conviction for which defendant is currently being sentenced.

The court rejected the argument that the only statutory provision for mandatory consecutive sentences applicable to pre-existing and current sentences is contained in 730 ILCS 5/5-8-4(f) through (i) (2006) (which require consecutive sentences where the defendant commits the offense of escape or attempted escape, or commits an offense while a DOC inmate, or while on pretrial or post-conviction release or detention).

Because defendant's pre-existing sentence was for a Class X felony involving severe bodily injury, the court did not err in ordering defendant's current sentence to run consecutively to his pre-existing sentence.

People v. Stanford, 2011 IL App (2d) 090420 Consecutive sentences are mandatory where one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury. 730 ILCS 5/5-8-4(a)(i) (2006). Any consecutive sentences imposed for triggering offenses must be served prior to, and independent of, any sentences imposed for non-triggering offenses. Any sentence that does not conform to this statutory requirement is void.

The court imposed sentence on three triggering offenses, and ordered that they run consecutively to each other. The court also ordered that defendant's sentences on non-triggering offenses run concurrently with each other and with one of the triggering offenses. Defendant's sentences on the non-triggering offenses could not be served until defendant had served his sentences on the triggering offenses. Therefore, that portion of the sentencing order directing that the non-triggering offenses be served concurrently with one of the triggering offenses was void.

The court had imposed the mandatory minimum sentence on all of the convictions. Rather than remand for resentencing, the Appellate Court ordered that the sentences on the non-triggering offenses run consecutively to the sentences on the triggering offenses.

§44-9(c)(2)
Single Course of Conduct

Illinois Supreme Court

People v. Bell, 196 Ill.2d 343, 751 N.E.2d 1143 (2001) To determine whether defendant's acts are part of a single course of conduct during which there was no substantial change in the criminal objective, the "independent motivation" test applies. Under this test, the

question is whether there has been a substantial change in the nature of defendant's conduct. See also, **People v. Arrington**, 297 Ill.App.3d 1, 696 N.E.2d 1229 (2d Dist. 1998) (consecutive sentences were prohibited where the crimes were part of the same course of conduct and no substantial change in the nature of the criminal objective occurred).

People v. Bole, 155 Ill.2d 188, 613 N.E.2d 740 (1993) Although a "course of conduct" can include "a range of activity" and is not "necessarily confined to a single incident," instant offenses occurred on separate days and with substantial interruptions of time and were not part of a single course of conduct.

Illinois Appellate Court

People v. Falcon, 292 Ill.App.3d 538, 685 N.E.2d 962 (1st Dist. 1997) Judge improperly imposed mandatory consecutive sentences because there was no evidence that the offenses were part of a single course of conduct. Resentencing was necessary because the judge imposed three consecutive terms of imprisonment. Upon remand, the judge may not impose mandatory consecutive sentences because it was impossible to determine whether the jury convicted defendant of three counts that occurred in a single course of conduct or three separate and distinct offenses on different days. The State presented evidence of at least eight different acts of criminal sexual assault, but failed to allege in the indictments or at trial that any of the offenses were part of a "single course of conduct."

People v. Pence, 267 Ill.App.3d 461, 641 N.E.2d 933 (1st Dist. 1994) Consecutive sentences were not required where defendant was convicted of two counts of aggravated criminal sexual assault (one victim) and the multiple acts were committed in separate courses of conduct. Count I of the indictment charged that the youth had committed an act of fellatio on defendant between August 1, 1989, and March 10, 1990. Count II alleged an act of fellatio by defendant between the same dates. The State introduced evidence of at least six different acts, over a several-month-period, which would have fit the allegations of the indictment. Although two of these acts had occurred on a single day, the Court concluded that "the language of the charging document, the evidence at trial, and the general verdict of the jury" did not permit the conclusion that the jury had convicted defendant of these two acts rather than of offenses committed on separate days.

People v. Embry, 249 Ill.App.3d 750, 619 N.E.2d 246 (4th Dist. 1993) Offenses (two counts of aggravated criminal sexual assault and two counts of aggravated criminal sexual abuse against two females) were part of a "single course of conduct" for purpose of consecutive sentencing. "Conduct" is "an act or series of acts, and the accompanying mental state." A "single course of conduct" may encompass more than one incident. Although there were two separate victims here, the offenses occurred within a single 10-minute-period while defendant and the victims were lying on the floor. See also, **People v. Brown,** 235 Ill.App.3d 945, 601 N.E.2d 1380 (4th Dist. 1992) (imposition of consecutive sentences for convictions of two counts of direct criminal contempt for fleeing courtroom during an appearance on two traffic charges was improper where both "acts" for which defendant was held in contempt — failing to sign bond papers and fleeing the courtroom — were motivated by a desire to escape the court's jurisdiction and were part of a single course of conduct with no change in objective).

People v. Miller, 193 Ill.App.3d 918, 552 N.E.2d 988 (1st Dist. 1989) Consecutive sentences

for two convictions of voluntary manslaughter which arose out of the shooting of two people at a tavern were improper where there was no showing of a substantial change in defendant's objective.

People v. Morgan, 44 Ill.App.3d 459, 358 N.E.2d 280 (5th Dist. 1976) In imposing the consecutive sentences (for burglary and arson), the trial judge stated that defendant "went in there to steal, became mad and decided to burn it . . . [so] there was a substantial change in the nature of the criminal objective and therefore a consecutive sentence should be granted." The court held there was nothing in the record upon which to base a finding of a change in objective — it is plausible that burning the building was part of defendant's whole scheme, and a judge must limit himself to the evidence adduced of record when imposing sentence.

§44-9(c)(3)
Severe Bodily Injury

Illinois Supreme Court
People v. Deleon, 227 Ill.2d 322, 882 N.E.2d 999 (2008) A trial court's finding of "severe bodily injury" may be reversed only if it is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding itself is unreasonable, arbitrary, or not based on the evidence.

The evidence was more than sufficient to support the trial court's finding that the victim suffered "severe bodily injury" where there was testimony that defendant shot the victim in the chest from a distance of three feet, State photographs showed a bullet wound to the left center of the victim's chest, the victim testified that the bullet passed through his body and exited through his back and that after being shot, the victim felt a burning in his chest. Neither the fact that the victim was able to drive away from the scene nor the absence of testimony concerning the nature and length of his medical treatment indicated that the trial court's finding was against the manifest weight of the evidence.

See also, **People v. Primm**, 319 Ill.App.3d 411, 745 N.E.2d 13 (1st Dist. 2000) (gunshot wound to the rear thigh constituted "severe bodily injury"). But see, **People v. Murray**, 312 Ill.App.3d 685, 728 N.E.2d 512 (1st Dist. 2000) (victim of an attempt murder did not suffer "severe" bodily injury; although gunshot "fractured" his big toe, he was able to run from the scene and was released from the hospital after 2½ hours of treatment); **People v. Ruiz**, 312 Ill.App.3d 49, 726 N.E.2d 704 (1st Dist. 2000) (victim of attempt murder did not suffer "severe" bodily injury; although he was shot in the knee, the wound was barely visible in a photograph taken on the day of the offense and victim did not realize he had been shot, did not immediately seek medical treatment, and testified only that at one point he felt a sharp pain in his knee); **People v. Jones**, 323 Ill.App.3d 451, 752 N.E.2d 511 (1st Dist. 2001) (defendant did not inflict "severe bodily injury" where a bullet merely "grazed" the complainant's cheek, requiring only a band-aid as medical treatment).

People v. Harris, 203 Ill.2d 111, 784 N.E.2d 792 (2003) Where defendant was convicted of attempt first degree murder (a Class X felony) and caused severe bodily injury, and was also convicted of aggravated criminal sexual assault (one of the specified sex crimes), consecutive sentences were mandatory without regard to whether the offenses were part of single or separate courses of conduct.

People v. Whitney, 188 Ill.2d 91, 720 N.E.2d 225 (1999) To warrant consecutive sentences based on fact that defendant was convicted of a triggering offense and inflicted severe bodily injury, the injury must have been inflicted during the commission of the triggering felony in question. Here, where the only severe bodily injury was for a non-triggering offense, consecutive sentences were not mandatory. See also, **People v. Thompson**, 331 Ill.App.3d 948, 773 N.E.2d 15 (1st Dist. 2002) (the "severe bodily harm" need not be "proximately connected" to the triggering crime, but consecutive sentences are required if the triggering offense and the infliction of bodily harm occurred "essentially simultaneously"; thus, consecutive sentences were mandatory for first degree murder and armed robbery where the decedent, a cab driver, was killed during an armed robbery (though first degree murder is not a triggering offense under the applicable statute) because the bodily harm (death) was simultaneously inflicted with armed robbery, the triggering offense).

People v. Sangster, 91 Ill.2d 260, 437 N.E.2d 625 (1982) Statute authorizing consecutive sentences in certain situations if defendant inflicted severe bodily injury applies when injury is inflicted either by defendant personally or by another for whom defendant is accountable.

Illinois Appellate Court

People v. Maas, 2019 IL App (2d) 160766 (6/5/19) Consecutive sentences for two Class 1 offenses, PSMV and DUI, based on the same infliction of severe bodily injury, were permissible. The Appellate Court rejected defendant's "double enhancement" argument. A double enhancement occurs where the same element is used as both proof of the underlying offense, and to trigger an enhanced sentencing range. A consecutive sentence is not an enhancement, but rather a manner of serving multiple sentences.

People v. Alvarez, 2016 IL App (2d) 140364 Under 730 ILCS 5/5-8-4(d)(1), consecutive sentencing is mandatory where the defendant is convicted of a Class X felony during which he inflicted "severe bodily injury."

Defendant was convicted of two counts of attempt first degree murder under an indictment which charged that he had personally discharged a firearm causing great bodily harm, permanent disability, or permanent disfigurement. At sentencing, the trial court stated that consecutive sentences were mandatory because, "as previously found," defendant personally discharged a firearm and inflicted "severe bodily injury." In reality, the trial court had not made a specific finding about "severe bodily injury," and made only a finding concerning "great bodily harm."

The legislature's use of "great bodily harm" and "severe bodily injury" were not equivalent and were intended by the legislature to mean different things. Thus, a finding of having inflicted "great bodily harm" does not equate to inflicting "severe bodily injury" for purposes of mandatory consecutive sentencing. "[W]ithout the trial court's explicit finding of 'severe bodily injury,' we decline to uphold the imposition of consecutive sentences pursuant to section 5-8-4(d)(1) of the Code solely on its finding of 'great bodily injury' in connection with a sentencing enhancement."

The court rejected the argument that the sentences could be merely modified to run concurrently, and remanded the cause for the trial court to determine whether consecutive sentences were required.

People v. Harris, 2013 IL App (1st) 120498 The statute in effect at the time of the commission of the offenses for which defendant was convicted provided that the court shall

not impose consecutive sentences 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, unless one of the offenses for which defendant was convicted was a Class X or Class 1 felony and the defendant inflicted severe bodily injury. 730 ILCS 5/5-8-4(a) (1992).

Defendant was properly sentenced to mandatory consecutive terms of imprisonment based on his infliction of severe bodily injury during the commission of an attempt armed robbery. Attempt armed robbery, a Class 1 felony, qualifies as a triggering offense. Defendant inflicted severe bodily injury during the commission of that offense when he shot and killed the attempt armed robbery victim after his accomplice unsuccessfully attempted to remove the victim from his car at gunpoint. The victim of the triggering felony and the murder was the same. The two offenses were connected and occurred essentially simultaneously.

It is insignificant that on direct appeal the Illinois Supreme Court concluded that the convictions for first degree murder and attempt armed robbery were based on separate acts. That issue is distinct from the issue of whether the death occurred during the commission of the triggering offense.

People v. Russell, 143 Ill.App.3d 296, 492 N.E.2d 960 (2d Dist. 1986) There can be a difference between the degree of great bodily harm which a trier of fact may find sufficient to find a defendant guilty of aggravated battery, and the degree of severe bodily injury which the court may find to be one of the factors warranting a consecutive sentence.

§44-9(c)(4)
Protect the Public

Illinois Supreme Court
People v. O'Neal, 125 Ill.2d 291, 531 N.E.2d 366 (1988) Consecutive sentences for murder, rape, and aggravated kidnapping were not necessary to protect the public, in light of defendant's age (19), background, and criminal history.

Illinois Appellate Court
People v. Clark, 278 Ill.App.3d 996, 664 N.E.2d 146 (1st Dist. 1996) Consecutive sentences, based on trial court's belief that such sentences were necessary to protect the public from defendant's conduct, were improper where, in imposing the sentences, the trial court said that there was no reason to believe that defendant was a "danger to the community" or a "violent or dangerous man." The trial court's remarks clearly showed that there was no basis for consecutive sentences, and ordered that the sentences be served concurrently. See also, **People v. Merz**, 122 Ill.App.3d 972, 461 N.E.2d 1380 (2d Dist. 1984) (trial court's finding -- that defendant was unlikely to commit another crime -- was incompatible with the statutory requirement that the court believe that a consecutive sentence is necessary to protect the public from defendant's further criminal conduct).

People v. Rucker, 260 Ill.App.3d 659, 633 N.E.2d 146 (2d Dist. 1994) Consecutive sentences were modified to run concurrently where the record did not establish that consecutive sentences were necessary to protect the public, even though the second victim suffered severe injuries, where defendant was a 17-year-old high school student with no prior criminal history; defendant had been a good student until he experienced a series of personal problems including the death of his grandmother, moving out of his mother's home and breaking up with his girlfriend; a co-defendant, who "cajoled" defendant into participating, planned the

offenses; defendant accepted responsibility for his actions by pleading guilty without any agreement as to the sentence; and defendant expressed his willingness to pay compensation.

People v. Gray, 121 Ill.App.3d 867, 460 N.E.2d 354 (1st Dist. 1984) The trial court erroneously ordered that defendant's sentence for concealment of a homicidal death run consecutively to his sentences for involuntary manslaughter and obstructing justice because the consecutive sentence was not required to protect the public from defendant's further criminal conduct where defendant was in his early twenties, with no prior record, and where the death of the victim and attendant circumstances did not apply to the concealment offense.

§44-9(c)(5)
Other

People v. Townsell, 2018 IL App (2d) 160612 Mandatory consecutive sentences must be imposed pursuant to 730 ILCS 5/5-8-4(d)(8) where an individual charged with a felony commits a second felony while in pretrial detention. Defendant was charged by complaint with unlawful possession of a controlled substance and, while in jail, had phone conversations with two women which led to a subsequent charge of criminal drug conspiracy. Even though a felony prosecution must be brought by information or indictment, the initial unlawful-possession complaint was sufficient to constitute a "charge" under the plain language of section 5-8-4(d)(8). It was of no consequence for purposes of consecutive sentencing that the grand jury did not return its indictment on the possession charge until after the conspiracy charge was filed.

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

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

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

The trial court's mistaken belief that consecutive sentences were required constituted second prong plain error because the right to be lawfully sentenced is a substantial right.

People v. Davis, 2013 IL App (4th) 110785 "If a person charged with a felony commits a separate felony while on pre-trial release ***, the sentences imposed upon conviction of these felonies shall be served consecutively regardless of the order in which the judgments of conviction are entered." 730 ILCS 5/5-8-4(h).

Under the plain language of this statute, a defendant who is convicted of multiple separate felonies committed while on bond on a felony must serve his sentences on those felonies consecutively to the sentence imposed on the felony for which defendant was on bond.

The statute does not require that the sentences imposed on the felonies committed while on bond also run consecutively to each other.

People v. Flaugher, 396 Ill.App.3d 673, 920 N.E.2d 1262 (4th Dist. 2009) Under Illinois law, there are two situations in which the trial court has jurisdiction to reconsider the State sentence of a defendant who also faces a federal proceeding. First, under 730 ILCS 5/5-8-1(f), a defendant who has an unexpired State prison sentence, and who is subsequently sentenced to a term of imprisonment by another state or federal court, has 30 days after completing the non-Illinois sentence to apply for credit against the Illinois sentence for time served on the non-Illinois sentence. Second, under 730 ILCS 5/5-8-4(a), a defendant who has a prison sentence in Illinois may apply within 30 days of imposition of a subsequent non-Illinois sentence to have the sentences run concurrently.

Where the defendant took no action until his federal sentence expired, the trial court was limited to ordering credit under §5-8-4(f). Thus, the court could not modify defendant's consecutive 15-year State prison terms to run concurrently under a motion filed after defendant's federal sentence had been completed.

The court held, however, that 730 ILCS 5/5-8-4(h), which requires consecutive sentencing where a felony is committed while on pretrial release or on pretrial detention for a separate felony, applies to both federal and state sentences. Therefore, where the defendant committed the federal felony offenses while he was on pretrial release on Illinois charges, the State sentences were required to be served consecutively to the federal sentences. The court also held that where sentences are required to be served consecutively, the defendant is ineligible for sentence credit for a federal sentence under §5-8-1(f).

People v. Karmatzis, 373 Ill.App.3d 714, 871 N.E.2d 118 (4th Dist. 2007) For purposes of statute mandating consecutive sentencing when a defendant charged with a felony commits a separate felony while on pretrial release or pretrial detention, where defendant who had pending charges was mistakenly released by DOC on a separate sentence, crimes which he committed while released occurred on "pretrial release." Thus, consecutive sentences were required. The cause was remanded with instructions that defendant's six-year-terms for crimes committed while he was mistakenly released be served consecutively to the term for the charges which were pending during that release.

People v. Dover, 312 Ill.App.3d 790, 728 N.E.2d 90 (2d Dist. 2000) The statutory requirement that a sentence for concealment of a homicidal death "shall be imposed separately and in addition" to any sentence on simultaneous convictions of first degree murder, second degree murder, or involuntary manslaughter, does not require consecutive sentences for concealment and the enumerated offenses.

People v. Moncrief, 276 Ill.App.3d 533, 659 N.E.2d 106 (2d Dist. 1995) A defendant on electronic home detention as a condition of parole is "committed to the Department of Corrections" within the meaning of 730 ILCS 5/5-8-4(f), which requires consecutive sentencing for crimes committed by such persons.

People ex rel. Gibson v. Cannon, 65 Ill.2d 366, 357 N.E.2d 1180 (1976) The provision of the Unified Code requiring consecutive sentences for crimes occurring while the offender is "committed to the Department of Corrections" does not apply to an offense committed by a person on parole.

§44-10
Other Types of Enhanced or Extended Sentences

§44-10(a)
Generally

United States Supreme Court

Deal v. U.S., 508 U.S. 129, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993) In a single prosecution, defendant was convicted of six counts of "carrying and using a firearm during and in relation to a crime of violence." The offenses involved six bank robberies occurring on six different dates. The relevant federal statute provides a five-year sentence for the first offense, and a mandatory 20-year-sentence "[i]n the case of his second or subsequent conviction." Although "conviction" can have several meanings, in this context Congress intended the term to refer only to a finding of guilt by a judge or jury, with no requirement that a sentence or final judgment be entered. Thus, in a multi-count indictment, each count after the first is a "second or subsequent conviction." The trial court acted properly by imposing 20-year-sentences on convictions obtained in a single proceeding involving a multiple-count indictment.

Parke v. Raley, 506 U.S. 20, 113 S.Ct. 517, 126 L.Ed.2d 391 (1992) Due process does not prohibit a State from requiring that the defense rebut a presumption of validity concerning prior convictions introduced to impose an enhanced sentence. Defendant claimed that two prior burglary convictions could not be used to impose an enhanced sentence because there were no transcripts to show that the trial court complied with **Boykin v. Alabama,** 395 U.S. 238 (1969), which requires that guilty pleas be entered knowingly and voluntarily. The Court found that although the absence of such transcripts would require a reversal on direct appeal, it is appropriate to require a defendant who raises the issue on collateral attack to overcome the "presumption of regularity," which attaches to final judgments.

Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980) The Court affirmed defendant's sentence of mandatory natural life under the state's recidivist statute. Defendant's first conviction was for the fraudulent use of a credit card to obtain $80 worth of goods or services, his second conviction was for passing a forged check in the amount of $28.36, and his third conviction was for obtaining $120.75 by false pretense. The mandatory life sentence under the recidivist statute did not constitute cruel and unusual punishment under the Eighth and Fourteenth Amendments.

U.S. v. Tucker, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972) Convictions obtained in violation of defendant's right to counsel cannot be used to subsequently obtain enhanced penalties. See also, **Burgett v. Texas**, 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967).

Illinois Supreme Court

People v. Easley, 2014 IL 115581 725 ILCS 5/111-3(c) provides that when the State seeks to impose an enhanced sentence due to a prior conviction, the charge must state the intent to seek the enhanced sentence and set forth the prior conviction in order to give notice to the defense. However, the prior conviction and the State's intention to seek an enhanced sentence are not elements of the offense, and may not be disclosed to the jury during trial unless

otherwise permitted by the issues. An "enhanced" sentence is a sentence which is increased by a prior conviction from one class of offense to a higher classification. (725 ILCS 5/111-3(c)).

Notice under §111-3(c) is required only if the prior conviction that would enhance the sentence is not an element of the charged offense. In other words, notice under §111-3(c) is not required when the prior conviction is a required element of the offense.

Defendant was convicted of unlawful use of a weapon by a felon, which is a Class 3 felony for a first offense and a Class 2 felony for a second or subsequent violation. The court concluded that the fact of a prior felony conviction is an element of the offense, and that notice under §111-3(c) is therefore not required. In addition, because a second or subsequent violation is a Class 2 felony with no possibility of any other sentence, the Class 2 sentence is not "enhanced" under the meaning of §111-3(c). Instead, it is the only sentence authorized for the offense.

Illinois Appellate Court

People v. Richards, 2021 IL App (1st) 192154 The trial court erred in applying an enhanced sentencing range for unlawful use of a weapon by a felon under 730 ILCS 5/5-4.5-110 because defendant's prior conviction of second degree murder is not a qualifying predicate offense under that provision. This constituted second-prong plain error because it affects the defendant's fundamental right to liberty. Even though defendant's 8-year sentence was also within the proper sentencing range, remand for resentencing was required because the trial court misapprehended the appropriate range when fashioning defendant's sentence.

UUWF is generally a Class 3 felony, carrying a sentencing range of 2 to 10 years of imprisonment. For a person who has previously been convicted of a forcible felony, UUWF is a Class 2 felony with a range of 3 to 14 years of imprisonment. And, under 730 ILCS 5/5-4.5-110, the range becomes 7 to 14 years where the weapon involved is a firearm and the person has previously been convicted of a qualifying predicate. The statute defines "qualifying predicate offense" as any of 26 specifically listed offenses in sections 5-4.5-110(a)(A)-(Z). Second degree murder is not among those listed.

The State argued that second degree murder was a qualifying predicate where the subsection listing first degree murder as a qualifying predicate states, "first degree murder under Section 9-1 or similar offense under the Criminal Code of 1961." The Appellate Court disagreed and held that rather than expanding the list of qualifying predicate offenses, this language was meant to clarify that the elevated sentencing range applied even if the prior offense was committed before the effective date of the current criminal code. The court noted that the "or similar offense" language is included in each of the 26 enumerated qualifying predicate offenses in order to account for any differences between the Criminal Code of 2012 and the Criminal Code of 1961.

People v. Whalum, 2014 IL App (1st) 110959-B Section 111-3(c) of the Code of Criminal Procedure requires the prosecution to specifically state in the charging instrument its intention to seek an enhanced sentence based on a prior conviction. 725 ILCS 5/111-3(c). In **People v. Easley**, 2014 IL 115581, the Illinois Supreme Court held that notice to defendant under section 111-3(c) only applies when the prior conviction used to enhance the sentence is not an element of the offense.

Both **Easley** and the present case involved the offense of unlawful use of a weapon by a felon (UUWF). 720 ILCS 5/24-1.1(a). To prove UUWF the State must show that defendant possessed a weapon or ammunition and had a prior felony conviction. The sentence for UUWF is dictated by subsection (e) and depends on the nature of the prior felony. If the prior felony

is UUWF or a number of other felonies listed in subsection (e) (including forcible felonies and a Class 2 or greater felony drug offense), then UUWF is a Class 2 felony; otherwise it is a Class 3 felony.

In **Easley** the charging instrument specifically listed UUWF as the prior felony that would be used to prove the prior conviction element of the offense. Here, by contrast, the prior felony was a drug conviction from Wisconsin. The Appellate Court held that this prior offense did not fall under any of the felonies listed in subsection (e) and therefore the prior conviction did not make defendant's UUWF offense a Class 2 felony.

Because the State relied on another prior conviction (other than the prior Wisconsin drug conviction that was charged as an element of the offense) to enhance defendant's sentence to a Class 2 felony, **Easley** did not control the outcome of this case. Instead, the State was required to provide defendant with notice under section 111-3(c) that it intended to seek an enhanced sentence. Since it failed to do so, defendant's case was remanded for re-sentencing as a Class 3 felon.

People v. Wooden, 2014 IL App (1st) 130907 Under 725 ILCS 5/111-3(c) when the State seeks to impose an enhanced sentence due to a prior conviction, the charge must state the intent to seek the enhanced sentence and set forth the prior conviction to give the defense notice. In **People v. Easley**, 2014 IL 115581, the Illinois Supreme Court held that notice under §111-3(c) is required only if the prior sentence that would enhance the sentence is not an element of the charged offense.

Here, the State charged defendant with unlawful use of a weapon by a felon, alleging that the prior felony was vehicular hijacking. The prior conviction for vehicular hijacking was used to elevate the offense from a Class 3 to a Class 2 felony on the basis that it was a forcible felony. 720 ILCS 5/24-1.1(e).

Defendant argued that he was improperly convicted of a Class 2 felony because the State did not give him notice that it would seek an enhanced sentence. Defendant further argued that **Easley** did not apply to his case because vehicular hijacking is not per se a forcible felony. Vehicular hijacking is not one of the specifically enumerated offenses in the forcible felony statute and, according to defendant, does not fall within the residual clause definition of forcible felony.

Vehicular hijacking falls squarely within the definition of forcible felony. A defendant commits vehicular hijacking when he knowingly takes a motor vehicle from a person by the use or imminent threat of force. 720 ILCS 5/18-3(a). A forcible felony includes several specifically enumerated felonies and any other felony which involves the use or threat of physical force or violence against any person. 720 ILCS 5/2-8.

The act of taking a motor vehicle from a person by force or threat of imminent force necessarily involves at least the contemplation that violence might be used. Defendant could not provide, and the court could not conceive of, a situation where a defendant could commit vehicular hijacking without using or threatening physical force or violence. Vehicular hijacking thus falls within the definition of forcible felony and **Easley** controls the outcome of this case. Defendant's sentence was affirmed.

People v. Allen, 382 Ill.App.3d 594, 888 N.E.2d 686 (1st Dist. 2008) Supreme Court Rule 451(g), which provides that in noncapital cases the trial court may conduct a bifurcated trial where the State intends to seek an enhanced sentence under 725 ILCS 5/111-3(c-5), applies *only* where an enhanced sentence is sought under §111-3(c-5). Rule 451(g) does not apply where the legislature has chosen to make a prior felony conviction an element of the offense.

Where defendant's prior felony conviction is an element of the offense, the least prejudicial means of introducing the prior conviction is for the parties to stipulate. The name, date, and nature of the prior felony conviction are needless surplusage, and should not be submitted to the jury.

People v. Davis, 233 Ill.App.3d 878, 600 N.E.2d 88 (3d Dist. 1992) The reasonable doubt standard applies to a death eligibility determination. Here, evidence did not establish defendant's death eligibility (based on factor that murder occurred during a burglary). See also, **People v. Harrison**, 196 Ill.App.3d 298, 553 N.E.2d 746 (3d Dist. 1990) (aggravating factor (murder in the course of another felony) not proved where defendant's actions did not evince that he intended to kill the victim or acted with knowledge that his actions created a strong probability of death or great bodily harm).

§44-10(b)
Habitual Criminal

Note: Summaries included here relate to the Habitual Criminal Act (730 ICLS 5/5-4.5-95(a)). For summaries of cases addressing the Armed Habitual Criminal Statute (720 ILCS 5/24-1.7), please see §55-3 Weapons – Armed Habitual Criminal.

United States Supreme Court
Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) Defendant's life sentence without the possibility of parole for uttering a $100 bad check under a habitual offender statute constituted cruel and unusual punishment because it was grossly disproportionate to the crime.

Illinois Supreme Court
People v. Brown, 2026 IL 130930 Under the Habitual Criminal Act, 720 ILCS 5/5-4.5-95(a), the commission of a third Class X felony requires a natural life sentence. Defendant committed a third Class X and was sentenced to life in prison in 1995. He filed a post-conviction petition, arguing that the statute did not apply to him. He reasoned that he committed his first Class X felony at age 17, and in 2021, the legislature amended section 5-4.5-95(a) so that a natural life sentence was only mandatory if the first Class X felony was committed at age 21 or older.

The appellate court reversed and remanded, finding that the 2021 amendment "clarified" the original meaning of the law. It reasoned that the supreme court in **People v. Stewart**, 2022 IL 126116, found the same amendment to section 5-4.5-95(b) clarified, rather than amended, the provision relating to Class X sentencing.

The supreme court reversed the appellate court and affirmed defendant's life sentence. It first rejected the State's claim that defendant's claim was not cognizable in a post-conviction petition because it was merely a claim of statutory interpretation. The court reasoned that if defendant's claim is accepted, then the circuit court violated his constitutional right to due process by imposing an illegal sentence.

Turning to the merits, the supreme court held that the 2021 amendment does not apply to defendant because it is neither retroactive nor a clarification. Regarding retroactivity, the first question is whether the amendment indicates the statute's temporal reach. The supreme court found it did, because it was passed with a future effective date. Use of delayed implementation establishes legislative intent to make the amendment prospective.

Even if this amendment were silent as to temporal reach, section 4 of the Statute on Statutes requires prospective application of any law that mitigates a sentence.

As for defendant's claim that the amendment was a clarification, the supreme court found **Stewart** distinguishable. **Stewart** analyzed section 5-4.5-95(b), and found that the amendment which imposed the 21-and-over age limitation to that subsection clarified the original meaning, because the provision had been silent as to age, and because a split in the appellate court existed over the question of age. The circumstances of this case are different, because section 5-4.5-95(a) was not silent as to age, and no appellate split arose over the question of age. Section 5-4.5-95(a) had an explicit age requirement of 18 (at the time of the third offense), pursuant to a 2016 amendment. The 2021 amendment altered this requirement by stating that the first offense must occur when defendant is 21 or older. An amendment can be considered a clarification only if it's logically consistent with the prior enactment. It would not be logical to call the 2021 amendment a clarification where it directly undermines the 2016 amendment.

People v. Ligon, 2016 IL 118023 The Habitual Criminal Act (Act) mandates the imposition of a natural life sentence on defendants convicted of three Class X felonies within a 20-year period. 720 ILCS 5/33B-1(a). The act does not create an independent offense, but simply prescribes the circumstances where a defendant may be more severely punished because of his prior convictions. The Act is a recidivist sentencing statute that does not define any crime and has no elements to compare with another statute. Since the identical elements test requires a comparison between the elements of different offenses, it cannot be applied to the Act.

The court thus overruled **Cummings** and held that a defendant's sentence as an habitual criminal has no effect on a court's determination of whether a qualifying offense violates the identical elements test.

People v. Brown, 229 Ill.2d 374, 892 N.E.2d 1034 (2008) The Habitual Criminal Act mandates a life sentence for a person with three convictions for Class X felonies, criminal sexual assault, aggravated kidnapping, or first degree murder, if the third offense was committed after conviction of the second offense and the second offense was committed after conviction of the first offense.

The State bears the burden of proving by a preponderance of the evidence that the defendant is eligible for habitual criminal sentencing. By introducing "duly authenticated" copies of the prior convictions the State presents a *prima facie* case and creates a permissive rebuttable presumption that defendant is eligible for enhanced sentencing. Although defendant has no burden to produce evidence that he is not eligible, the failure to do so creates the risk that the trial court will find that the State has carried its burden of persuasion.

Defendant forfeits the right to contest habitual criminal eligibility on direct appeal if he fails to present evidence to contradict the rebuttable presumption at trial, unless the State's evidence affirmatively shows a lack of eligibility. But, a defendant who is ineligible for habitual criminal sentencing may file a post-conviction petition alleging ineffective assistance of counsel for failing to introduce evidence of his lack of eligibility.

Here, the State proved by a preponderance that defendant was eligible for habitual criminal sentencing where it submitted certified records showing that defendant had been convicted of the required prior offenses and that the convictions occurred on separate occasions. Also, the State introduced a presentence report showing the dates on which defendant was arrested for committing the offenses leading to the prior convictions. Finally,

the prosecutor stated that defendant had been on parole when he committed the second and third offenses. Such evidence created a rebuttable presumption that defendant was eligible for habitual criminal sentencing. Defendant did not contest the presumption, and in fact admitted that he was eligible. See also, **People v. Robinson**, 167 Ill.2d 53, 656 N.E.2d 1090 (1995).

People v. Palmer, 218 Ill.2d 148, 843 N.E.2d 292 (2006) Multiple convictions connected to the same transaction are counted as one conviction for purposes of determining whether the Habitual Criminal Act applies. However, the statutory provision does not require that such convictions be merged into a single conviction. Therefore, where defendant had previously been convicted of offenses which triggered habitual criminal status, and was thereafter convicted of five Class X offenses, judgment could be entered - and a natural life sentence imposed - on each of the five convictions. But, it was improper to impose *consecutive* natural life sentences. Because *consecutive* natural life sentences cannot be served, only concurrent natural life sentences may be imposed.

Illinois Appellate Court

People v. Reed, 2025 IL App (1st) 232116 In 1993, defendant was convicted of attempt murder, armed robbery, and other offenses. The State requested defendant be sentenced as a habitual criminal under what was then 720 ILCS 5/33B-1 [now 725 ILCS 5/5-4.5-95(a)], because he had two prior convictions for Class X offenses. The first of those prior convictions was for an offense committed while defendant was 17 years old. Defendant was found eligible for habitual-criminal sentencing, and was sentenced to a term of natural life imprisonment.

In 2023, defendant sought leave to file a successive post-conviction petition arguing that his sentence was improper because his first qualifying prior conviction was committed when he was less than 21 years old. In support of his claim, defendant cited a 2021 amendment to Section 5-4.5-95(a), providing that habitual criminal sentencing is only available if the first offense was committed when the person was 21 years of age or older. Defendant also cited the Illinois Supreme Court's decision in **People v. Stewart**, 2022 IL 126116, which held that an identical amendment to subsection (b) of the statute (providing an enhanced Class X sentencing range for a defendant's third Class 2 or greater conviction under certain circumstances) was meant to clarify what the law had always been and thus applied to sentences imposed even decades prior. Defendant argued that **Stewart** was controlling given the use of identical language in amending both subsections.

The trial court denied leave to file, and the appellate court affirmed. The appellate court concluded that while the amendment to subsection (b) was determined to be a clarification of the law, no such finding could be made with regard to subsection (a) because of its different legislative history. Prior to the 2021 amendment at issue, subsection (b) contained no age-based element, while subsection (a) provided that a natural life sentence could only be imposed on an individual who was at least 18 years old at the time of the third offense. That age-based requirement had been added to subsection (a) in 2016; prior to that time, the habitual criminal provision had been silent as to age. Subsection (b), on the other hand, had never included an age-based requirement. The appellate court concluded that this difference in legislative history between (a) and (b) meant that the amendments to the two provisions could be construed differently, despite their identical language and simultaneous implementation.

The 2021 amendment to subsection (a) was a change in law, not a clarification like the amendment to subsection (b). The legislature did not indicate it was clarifying a prior

enactment, and there was no conflict or ambiguity in subsection (a) prior to the 2021 amendment. The amendment to subsection (a) was a clear change in the law, increasing the protections for young offenders, while the amendment to subsection (b) resolved an ambiguity as to whether offenses committed by a minor could serve as predicates for Class X sentencing. The court acknowledged that it is unusual for a court to construe identical language differently, but the non-identical legislative history warranted the different construction here.

People v. Robinson, 2025 IL App (1st) 240884 The 2021 amendment to the habitual criminal statute, 730 ILCS 5/5-4.5-95(a), requiring proof that defendant was 21 years of age or older at the time of the first qualifying Class X offense, applies retroactively because it was not an amendment, but rather a clarification of existing law. Thus, the circuit court erred in summarily dismissing defendant's post-conviction petition challenging his life sentence imposed pursuant to the habitual criminal statute.

The appellate court initially held that defendant's petition met the low threshold for a first stage petition, given that he established he was under 18 at the time of his first Class X offense, and that the amendment to section 5-4.5-95(a) was identical to the amendment to section 5-4.5-95(b), which the supreme court, in **People v. Stewart**, 2022 IL 126116, already held was a clarification rather than a change in law.

The appellate court majority proceeded to grant substantive relief, vacating the life sentence and remanding for re-sentencing, after finding that defendant's claim was meritorious. The legislature used identical language when amending both subsections (a) and (b), and where identical language appears in parallel provisions of the same statute, courts presume the legislature intended the same meaning throughout the statute. **Stewart** also held that when an amendment resolves an ambiguity in existing authority, it can be characterized as a clarification. An ambiguity exists here because in **People v. Miles**, 2020 IL App (1st) 180736, the court questioned whether prior caselaw interpreting subsection (a) remained valid after amendments to the Juvenile Court Act. While it's true that a 2016 amendment to subsection (a) required defendants to be 18 at the time of the third offense, that amendment was merely intended to ensure compliance with **Miller**. It did not address which offenses qualify as predicates.

Because defendant was under 21 when he committed his first Class X offense, he was never eligible for a natural life sentence under the properly interpreted version of 730 ILCS 5/5-4.5-95(a). The court vacated defendant's natural life sentence and remanded for resentencing.

A dissent found that **Stewart** does not control because it addressed subsection (b), not subsection (a), the legislature already amended subsection (a) in 2016, and the 2021 amendment lacks the three hallmarks of a clarification set forth in **Stewart**.

People v. Fuller, 2025 IL App (4th) 231457 Defendant was convicted of home invasion and criminal sexual assault. Because of his prior Class X convictions for rape and armed robbery, he was given a life sentence as a habitual criminal pursuant to section 730 ILCS 5/5-4.5-95(a). In a successive post-conviction petition, he argued that a 2021 amendment to this statute, which exempted predicate offenses committed under the age of 21, was retroactive. He argued he therefore did not qualify as a habitual criminal because his prior rape conviction was a juvenile conviction entered in Kansas. The circuit court granted a State motion to dismiss at the second stage.

The appellate court affirmed. The court analyzed two amendments to the habitual criminal statute. The first amendment applied to subsection (b) of the statute, which required Class X sentencing whenever defendant had two prior Class 1 or 2 offenses. The 2021 amendment placed an age restriction on this provision, requiring that defendant be 21 or older at the time of the predicate offenses. This provision was deemed retroactive in **People v. Stewart**, 2022 IL 126116, because the amendment was a clarification of the prior version, not a change in law. The second amendment involved subsection (a), which went from having no age restrictions, to, via a 2016 amendment, requiring the third offense be committed at age 18 or older, to, via the 2021 amendment, requiring all three offenses to have been committed at age 21 or older.

The appellate court noted a current split as to whether the **Stewart** applies to subsection (a). (Compare **People v. Durant**, 2024 IL App (1st) 211190-B, with **People v. Smallwood**, 2024 IL App (5th) 210407.) Some courts, following **Stewart**, deemed the 2021 amendment a clarification of prior law and therefore found the amendment retroactive. Others noted, however, that the existence of the 2016 amendment undermined the notion that the 2021 amendment was clarifying the pre-2016 version, because this interpretation rendered the 2016 amendment meaningless.

The appellate court here held that defendant was not entitled to the benefit of the 2021 amendment. First, applying the traditional retroactivity analysis, the change in law was substantive, not procedural, meaning it applies prospectively. Second, **Stewart** is inapposite. The supreme court did not discuss subsection (a) in **Stewart**, and the logic of **Stewart** does not apply to subsection (a). **Stewart** characterized the 2021 amendment to subsection (b) as a clarification rather than a change because there was a split in authority as to the correct interpretation of the pre-amended version, and because the pre-amended version was ambiguous. Here, subsection (a) was not ambiguous prior to 2021, because the 2016 amendment placed a specific age restriction on the third offense. After the 2016 amendment, there was no ambiguity for the 2021 amendment to "clarify." Thus, the 2021 amendment can only be seen as a substantive change in the law which applies prospectively.

People v. Durant, 2024 IL App (1st) 211190-B Defendant received a life sentence under the habitual criminal statute, 720 ILCS 5/33B-1 (now 730 ILCS 5/5-4.5-95(a)), for committing a third Class X felony. One of the predicate felonies was a robbery committed at age 16. He attempted to challenge the sentence in a successive post-conviction petition, arguing that the 2021 amendment to the habitual criminal statute, specifying that the first offense must have occurred when defendant was 21 years of age or older, should apply retroactively to his case. The circuit court and appellate court both held the amendment did not apply retroactively, but the supreme court ordered the appellate court to reconsider in light of **People v. Stewart**, 2022 IL 126116.

On remand, the appellate court held that the amendment applies to defendant's case. In **Stewart**, the court analyzed whether the mandatory Class X sentencing provision, 730 ILCS 5/5-4.5-95(b), applies when a prior conviction is one for which, due to subsequent amendment, the defendant would now be adjudicated delinquent instead of convicted in adult court. To answer this question, the court looked to the 2021 amendment of section 5-4.5-95(b). This amendment stated that the first qualifying offense must have been committed when defendant was 21 years of age or older. Because an appellate court split existed on this issue, the Supreme Court found this amendment was not a new rule, but rather an interpretation or clarification of existing law. Thus, it concluded the amendment applied to convictions pre-dating the amendment.

The same language the **Stewart** court found to be a "clarification" of existing law in the mandatory Class X provision, was also added to the to the habitual criminal provision, section 5-4.5-95(a), The appellate court concluded that this identical, simultaneous amendment must also be interpreted as a clarification of existing law. Therefore, the amendment applies to defendant's sentence. The court saw no need for further post-conviction proceedings in light of this finding. It vacated the life sentence and remanded for resentencing.

People v. Taylor, 2023 IL App (4th) 220381 The trial court did not err when it considered the same prior Class X felony conviction as both an element of defendant's armed habitual criminal offense and as a basis for sentencing defendant to natural life imprisonment under the habitual offender statute, 730 ILCS 5/5-4.5-95(a). While this was a double enhancement, it was permissible. The plain language of the habitual offender statute provides that a defendant who has been convicted of three separate Class X felonies "shall" be sentenced to natural life. The Court concluded that this reflected the legislature's intent to mandate a life sentence for any offender who met the habitual-offender statutory criteria, regardless of whether the underlying Class X offenses were also an element of the current conviction.

People v. Debardelaben, 2018 IL App (1st) 151741 A natural life sentence under the Habitual Criminal Act, 730 ICLS 5/5-4.5-95(a), predicated in part on a 1986 armed robbery, is not invalid based on a subsequent amendment to the armed robbery statute. The amendments created separate offenses for robbery committed with a firearm, and robbery committed with a dangerous weapon other than a firearm. The 1986 version, defined as robbery committed with a dangerous weapon, therefore included the same elements as the current Class X armed robbery offense, meeting the requirements of the act.

People v. Robinson, 2018 IL App (1st) 153319 The State adequately proved defendant's eligibility for a natural life sentence under section 5-4.5-95(a)(1), because he committed a Class X felony after having previously committed two prior Class X armed robberies. The fact that the elements of armed robbery had changed since defendant's armed robbery convictions did not affect their classification as prior Class X offenses for purposes of the Habitual Criminal Act.

People v. Fernandez, 2014 IL App (1st) 120508 Defendant was convicted of selling more than 1000 grams of cocaine in 2010, and based on his guilty pleas to drug offenses in 1992 and 1999 was sentenced as a habitual criminal to a natural life sentence. 730 ILCS 5/5-4.5-95(a) defines a habitual criminal as a person who has been twice convicted in state or federal court of an offense that contains the same elements as an offense which is now classified as a Class X felony in Illinois, and who thereafter is convicted of a Class X felony which is committed after the two prior convictions were entered.

The court found, as a matter of first impression, that a natural life sentence under the Habitual Criminal Act does not violate the proportionate penalties clause of the Illinois Constitution even where the defendant has been convicted only of non-violent offenses. Although a mandatory life sentence for three nonviolent offenses is a harsh sentence, defendant was not a juvenile, had been convicted of the first offense when he was 36 years old and the third when he was 55, and was convicted as a principal. Furthermore, defendant's sale of cocaine was not a spontaneous decision, but resulted from careful planning and the recruitment of an accomplice.

Noting that the legislature limited the Habitual Criminal Act to Class X offenses and to persons who have exhibited recidivist tendencies, the court concluded that three convictions for distributing large quantities of narcotics constitutes serious criminal conduct for which a natural life sentence can be deemed proportionate. Defendant's natural life sentence was affirmed.

People v. Abdullah, 336 Ill.App.3d 940, 785 N.E.2d 863 (4th Dist. 2002) For purposes of the Habitual Criminal Act, the time during which defendant was imprisoned on the second offense and time during which he was on parole both count as "custody" and are therefore excepted from calculation of the 20-year period.

People v. Banks, 212 Ill.App.3d 105, 569 N.E.2d 1388 (5th Dist. 1991) A juvenile adjudication may be considered as a prior conviction for purposes of the Habitual Criminal Act. See also, **People v. Bryant**, 278 Ill.App.3d 578, 663 N.E.2d 105 (1st Dist. 1996).

§44-10(c)
Extended Term

§44-10(c)(1)
Generally

Illinois Supreme Court
People v. Bell, 196 Ill.2d 343, 751 N.E.2d 1143 (2001) In determining whether offenses arise from "unrelated courses of conduct" for purposes of extended term sentencing, "independent motivation" test is the appropriate standard. Extended terms may be imposed for different class offenses only if there was a "substantial change in the nature of the defendant's criminal objective" between the two offenses.

Where defendant and two accomplices beat and robbed the complainant after following him into an alley and the trial court found that the offenses were part of a "single course of conduct" for purposes of mandatory consecutive sentencing, the offenses were not part of "unrelated courses of conduct" for purposes of extended term sentencing. Therefore, an extended term could be ordered only on armed robbery, the most serious conviction.

See also, **People v. Terry**, 183 Ill.2d 298, 700 N.E.2d 992 (1998) (where a defendant is sentenced to death or natural life imprisonment, an extended term may be imposed on the next most serious offense of which he was convicted); **People v. Pittman**, 316 Ill.App.3d 245, 736 N.E.2d 662 (5th Dist. 2000) (trial court erred by imposing an extended term for possession of cannabis in a penal institution, a Class 3 felony, where defendant was also convicted of the Class 1 felony of unlawful possession of cocaine in a penal institution).

People v. Coleman, 166 Ill.2d 247, 652 N.E.2d 322 (1995) **Jordan** does not apply where unrelated charges resulting from separate courses of conduct are consolidated in a single prosecution. Because defendant's convictions for first degree murder and three counts of armed robbery were unrelated and arose from separate courses of conduct, the court did not err by imposing extended terms of 50 years for each armed robbery and an extended term of 85 years for murder. See also, **People v. Peacock**, 359 Ill.App.3d 326, 833 N.E.2d 396 (4th Dist. 2005) (courses of conduct are unrelated where "there was a substantial change in the nature of the defendant's criminal objective"; here, the offenses were not unrelated, for there was no evidence of any change in the nature of defendant's criminal objective (defendant

committed home invasion, aggravated battery, and domestic battery to dissuade the complainant from breaking up with him).

People v. Neal, 111 Ill.2d 180, 489 N.E.2d 845 (1985) Extended-term sentence for armed robbery was not precluded by defendant's conviction for murder where defendant was sentenced to death, not a term of years, for murder. The statute allows the imposition of an extended-term sentence of imprisonment for the class of the most serious offense of which defendant was convicted when defendant was sentenced to a term of years, and this is so even though defendant was also separately sentenced to death for murder. See also, **People v. Young**, 124 Ill.2d 147, 529 N.E.2d 497 (1988); **People v. Hines**, 165 Ill.App.3d 289, 518 N.E.2d 1352 (4th Dist. 1988). But see, **People v. Askew**, 273 Ill.App.3d 798, 652 N.E.2d 1041 (1st Dist. 1995) (**Young** was implicitly overruled by **People v. Henderson**, 142 Ill.2d 258, 568 N.E.2d 1234 (1990); thus, defendant sentenced to death or natural life for murder may not be given extended term on lesser offense).

People v. Jordan, 103 Ill.2d 192, 469 N.E.2d 569 (1984) 1. An extended-term sentence may be imposed on a defendant convicted on the basis of accountability.

2. An extended-term sentence "may only be imposed for offenses within the most serious class of offense of which the accused is convicted." Where defendant is convicted of murder and kidnapping, or murder and armed robbery, an extended-term sentence may not be imposed for kidnapping (or armed robbery) because those offenses are not within the most serious class of offense. However, where defendant is convicted of attempt murder, armed robbery, and deviate sexual assault, extended terms may be imposed on all the offenses because they are all within the same class (Class X). See also, **People v. Kane**, 140 Ill.App.3d 928, 489 N.E.2d 500 (1st Dist. 1986) (murder and armed robbery); **People v. Howard**, 130 Ill.App.3d 967, 474 N.E.2d 1345 (2d Dist. 1985) (murder and home invasion).

Illinois Appellate Court

People v. Fontanez-Marrero, 2023 IL App (2d) 220128 The trial court erred in applying truth-in-sentencing to defendant's five-year prison term for aggravated battery by strangulation under 720 ILCS 5/12-3.05(a)(5) where it was not specifically listed as an 85% offense in 730 ILCS 5/3-6-3. And, trial counsel was ineffective for failing to raise this issue in the trial court. Additionally, the trial court erred in imposing a four-year MSR term where the proper term for a Class 1 offense is two years pursuant to 730 ILCS 5/5-4.5-30(l). Accordingly, the appellate court modified the judgment to indicate day-for-day sentencing and a two-year MSR term on that conviction.

The trial court did not err in imposing an extended-term sentence for defendant's Class 4 conviction of resisting a peace officer. While it was not the most serious offense of which he was convicted, the trial court properly found that defendant's conduct in attempting to elude the arresting officer was unrelated to his earlier battery and unlawful restraint of the complainant. Thus, because the less serious offense arose from an unrelated course of conduct, the extended-term sentence for that offense was affirmed.

People v. Russell, 2022 IL App (2d) 190733 Defendant was convicted of two counts of leaving the scene of an accident involving personal injury or death pursuant to section 11-401(b) of the Illinois Vehicle Code. He received two concurrent extended term sentences of 15 years. The defendant argued that the imposition of an extended term on Count I violated 730 ILCS 5/5-8-2(a).

Under section 5-8-2(a) of the Code, a defendant convicted of multiple offenses may be sentenced to an extended-term sentence for only the most serious class of offenses. Although an extended-term sentence "may be imposed on separately charged, differing class offenses that arise from unrelated courses of conduct," defendant here struck both victims almost simultaneously, and there was no substantial change in his criminal objective. Thus, defendant's course of conduct was the same, and the two offenses were not independently motivated. Therefore, an extended-term sentence for the lesser offense was improper.

This was a plain error which deprived defendant of his right to a fair sentencing hearing. The Appellate Court reduced defendant's sentence on count I to seven years' imprisonment, the maximum nonextended-term sentence for a Class 2 felony.

People v. McKinley, 2020 IL App (3d) 160350 Section 111-3(c-5) of the Code of Criminal Procedure requires that where the State intends to seek an extended-term sentence, the fact(s) alleged to justify the enhanced penalty must either be included in the charging instrument or provided in a written notice to defendant before trial. Defendant argued that the State failed to provide reasonable notice of its intent to seek a natural life sentence where it gave notice on the day of jury selection. The Appellate Court disagreed. The statute requires only that notice be given "before trial." Even if "reasonable" notice is required, that standard was met here where the defense gave no indication of how earlier notice would have affected its preparation and where the defense did not seek additional time to prepare when notice was served.

People v. White, 2016 IL App (2d) 140479 Under 730 ILCS 5/5-8-2(a) and Illinois Supreme Court precedent, a trial court may impose an extended-term sentence only for the conviction of the most serious class of offense. However, extended-term sentences may be imposed on separately charged, differing class offenses that arise from unrelated courses of conduct.

Where defendant was charged in one indictment with unlawful sale of a firearm to a felon and being an armed habitual criminal, and both offenses arose from obtaining a firearm and making arrangements to sell it to a previously convicted felon, an extended-term sentence was permitted only on the Class X offense of being an armed habitual criminal. Because the trial court failed to impose an extended-term sentence on the Class X offense and instead imposed an extended-term only on the Class 3 offense of unlawful sale of a firearm to a felon, the court reduced the sentence on the Class 3 offense to the maximum nonextended term of five years.

People v. Robinson, 2015 IL App (1st) 130837 Under 730 ILCS 5/5-8-2(a), a defendant with multiple convictions may normally receive an extended-term sentence only for the convictions within the most serious class of offense. But when there was a substantial change in the nature of the criminal objective, the defendant's offences are part of an unrelated course of conduct and an extended-term sentence may be imposed on a less serious class of offense.

Here the tenant discovered defendant in his apartment trying to steal a television set. When defendant saw the tenant standing near the doorway, he ran at him and the two struggled for several minutes before other individuals detained defendant. Defendant was convicted of residential burglary and aggravated battery, and was sentenced to extended-term sentences on both offenses, even though aggravated battery was a lesser class of offense.

The trial court erred in imposing an extended-term sentence for aggravated battery. Defendant's actions in fighting with the tenant did not constitute a substantial change in the

nature of his criminal objective. A burglar maintains a constant objective to escape throughout the burglary. The struggle with the tenant which led to the aggravated battery conviction, was merely a means to effectuate defendant's objective of escaping.

The Court reduced defendant's sentence to the maximum of five years for a Class 3 felony.

People v. Brooks, 2012 IL App (4th) 100929 A defendant convicted of a felony is subject to an extended-term sentence if the defendant has been convicted in Illinois of any felony of the same or greater class in the previous ten years. 730 ILCS 5/5-5-3.2(b)(1). A misdemeanor enhanced to a felony in accordance with the legislature's direction qualifies as a felony within the meaning of this statute.

Violation of an order of protection is a Class 4 felony if the defendant has a prior conviction for unlawful restraint. 720 ILCS 5/12-30(d). Where the prosecution intends to seek an enhanced sentence based on a prior conviction, it is required to notify the defendant of such intention in the charging instrument. "However, the fact of such prior conviction and the State's intention to seek an enhanced sentence are not elements of the offense and may not be disclosed to the jury during trial unless otherwise permitted. . . ." 725 ILCS 5/111-3(c).

Defendant was properly convicted of the Class 4 felony of violating an order of protection based on a prior unlawful conviction for unlawful restraint. The State properly disclosed its intent to seek the enhancement based on that conviction in the indictment. The trial court took judicial notice of the conviction outside the presence of the jury. Therefore, defendant was convicted of a felony as required by §5-5-3.2(b)(1) to make him eligible for an extended term.

The court rejected defendant's reliance on **People v. Palmer**, 104 Ill.2d 340, 472 N.E.2d 795 (1984), as support for the argument that the unlawful restraint conviction was an element of the offense that had to be proved to the jury. **Palmer** was decided prior to the legislature's enactment of 725 ILCS 5/111-3(c).

People v. Baumann, 314 Ill.App.3d 947, 733 N.E.2d 417 (2d Dist. 2000) In determining whether a defendant is eligible for a Class X or extended-term sentence, unclassified offenses are classified according to the sentences they carry. Thus, the trial court should treat an attempt armed robbery conviction as a Class 1 offense and an attempt residential burglary conviction as a Class 2 offense. Accord, **People v. Gonzales**, 314 Ill.App.3d 993, 734 N.E.2d 77 (2d Dist. 2000) (although criminal drug conspiracy is itself an unclassified offense, it carries the same sentence as the offense that was the object of the conspiracy; where the object of the conspiracy was a Class X felony, defendant was guilty of a Class X offense for purposes of determining credit for pretrial detention).

People v. Matthews, 304 Ill.App.3d 514, 711 N.E.2d 435 (5th Dist. 1999) Illinois law does not authorize an extended term for aggravated DUI.

People v. Blanck, 286 Ill.App.3d 583, 676 N.E.2d 731 (2d Dist. 1997) Where the conviction and extended term on the most serious offense were vacated on appeal, on remand the trial court could not impose an extended term on the next most serious offense of which defendant was convicted.

People v. King, 248 Ill.App.3d 253, 618 N.E.2d 709 (1st Dist. 1993) Instead of reducing defendant's sentence to non-extended term (after finding that the extended-term sentence

was unauthorized at the time of the crime), the court remanded the cause for a new sentencing hearing because it refused to assume that the trial judge would simply resentence defendant to the maximum non-extended term.

People v. Anderson, 201 Ill.App.3d 75, 559 N.E.2d 267 (3d Dist. 1990) Defendant was not eligible for an extended murder sentence where the judge based the extended term on non-authorized factors.

§44-10(c)(2)
Extended Term Based on a Prior Felony Conviction

Illinois Supreme Court
People v. Williams, 2016 IL 118375 Under section 408(a) of the Illinois Controlled Substance Act (Act), the trial court may sentence a defendant who has been convicted of "a second or subsequent offense under this Act" to a term of imprisonment "up to twice the maximum term otherwise authorized." 720 ILCS 570/408(a).

Defendant pled guilty to unlawful delivery of a controlled substance, a Class 2 felony, in exchange for a sentencing cap of 25 years. Prior to accepting the plea, the trial court admonished him that if he did not plead guilty, he would be sentenced as a Class X offender (due to his prior convictions) and (due to his prior conviction under the Act) his maximum potential sentence could be doubled under section 408(a) to a total of 60 years imprisonment. The trial court accepted defendant's plea and sentenced him to 25 years imprisonment.

Defendant was improperly admonished about the maximum potential sentence he faced. The court was "unable to say with certainty" that section 408(a) only applied to offenses in violation of the act (and thus would only double the maximum permissible sentence for defendant's Class 2 conviction) or whether it also applied to double the maximum penalty of 30 years for a Class X sentence.

Since the meaning of section 408(a) was ambiguous, the court invoked the rule of lenity and resolved the ambiguity in favor of defendant. The court thus held that section 408(a) only applies to offenses committed in violation of the Act and could not be used to double the Class X maximum sentence of 30 years.

The court reversed defendant's conviction and encouraged the legislature to revisit section 408(a) and clarify its meaning.

People v. Garcia, 241 Ill.2d 416, 948 N.E.2d 32 (2011) 730 ILCS 5/5-5-3.2(b)(1) provides that an extended term may be imposed where the defendant is convicted of a felony after having been previously convicted of the same or greater class felony within the past 10 years, excluding time spent in custody, and the charges are separately brought and tried and arise from different series of acts. Because the purpose of §5-5-3.2(b)(1) is to impose harsher sentences on offenders whose repeat convictions show that they are resistant to corrective measures, the court concluded that the 10-year period is tolled by time lapsed when the defendant wrongfully delays or avoids criminal proceedings by becoming a fugitive from justice.

People v. Harvey, 196 Ill.2d 444, 753 N.E.2d 293 (2001) Defendant's prior conviction for attempted murder was the same or greater class felony as his subsequent conviction for armed robbery, though the prior conviction occurred in 1974 when attempt murder was a Class 1 felony, because by the time defendant was sentenced in the instant case, attempt

murder had been reclassified as a Class X felony. The *ex post facto* clause did not prohibit use of the 1974 attempt murder conviction as an aggravating factor.

People v. Lemons, 191 Ill.2d 155, 729 N.E.2d 489 (2000) For purposes of the statute under which any felony will support an extended-term sentence for a similar class felony or greater class felony conviction occurring within 10 years of the prior conviction, the 10-year-period begins on the date the final sentence is pronounced on a defendant who was originally sentenced to probation. Where defendant was sentenced to probation in 1985 but had probation revoked in 1996, a crime that occurred in 1997 qualified for extended-term sentencing.

People v. Olivo, 183 Ill.2d 339, 701 N.E.2d 511 (1998) A defendant has not been convicted of a Class X felony where the sentence for a lesser offense was enhanced to a Class X sentence due to prior convictions - the fact that a defendant receives a Class X sentence on a lesser offense does not elevate the class of the conviction. Thus, the trial court may not impose a Class X extended-term sentence (pursuant to § 5/5-3.2(b)(1)) on a defendant who has never been convicted of a Class X felony but who has received a Class X enhanced sentence.

People v. Harden, 113 Ill.2d 14, 495 N.E.2d 490 (1986) A prior conviction obtained in a federal court sitting in the state of Illinois may be properly used to impose an extended-term sentence.

People v. Richardson, 104 Ill.2d 8, 470 N.E.2d 1024 (1984) A "conviction" is a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty. Thus, defendant's prior conviction which resulted from a guilty plea could be used to trigger the extended term.

People v. Robinson, 89 Ill.2d 469, 433 N.E.2d 674 (1982) Defendant's prior state and federal convictions for robbery could be used to impose an extended term, for the time defendant spent in federal custody had to be excluded from the 10-year limitation period; therefore, the prior convictions occurred within 10 years, excluding the time spent in custody, of defendant's current conviction.

Illinois Appellate Court

People v. Holman, 2025 IL App (2d) 240513 The trial court did not err by finding defendant eligible for extended-term sentencing based on a prior conviction without submitting the issue to the jury. In reaching this conclusion, the court first rejected the State's invited error argument. Defense counsel did not invite error by objecting to the admission of defendant's conviction for impeachment purposes at trial. The issue of whether the same conviction should be presented to the jury for purposes of establishing extended-term eligibility is separate and was never raised or considered. Accordingly, defendant did not invite the sentencing error he now asserts.

And, while the State argued that the error was forfeited because it was not raised below, the court found it appropriate to overlook any forfeiture here given that the issue involves the application of a recent US Supreme Court case, **Erlinger v. United States**, 602 U.S. 821 (2024), to Illinois law.

On the merits, defendant argued that under **Erlinger** the question of whether his prior conviction occurred within 10 years of the current offense is a factual question beyond

the mere fact of a prior conviction and thus must be proven to the jury beyond a reasonable doubt. The appellate court found **Erlinger** distinguishable because it involved the question of whether, for purposes of the Armed Career Criminal Act, defendant's three qualifying prior offenses occurred on at least three different occasions, while the instant statute involves the much simpler inquiry of whether the single prior offense occurred within a certain time frame. That question can be readily determined by review of public records or the presentence investigation and does not necessitate a jury finding.

People v. Shaw-Sodaro, 2023 IL App (4th) 220704 Defendant's 9-year extended-term sentence for his conviction of aggravated criminal sexual abuse of a victim under 13 years of age, a Class 2 felony, was not improper. At sentencing, the State argued that defendant was extended-term eligible based both on the victim's age (under 12) pursuant to 730 ILCS 5/5-5-3.2(b)(3)(i) and the fact that, excluding time spent in custody, defendant had been convicted of a greater class felony within the prior 10 years, under 730 ILCS 5/5-5-3.2(b)(1).

On appeal, defendant argued that the victim's age could not be the basis for extended-term sentencing where the felony classification was already enhanced because the victim was under 13. The appellate court agreed, citing **People v. Ferguson**, 132 Ill. 2d 86 (1989). But, the victim's age was properly considered by the court when imposing a sentence within the extended-term range. Such consideration does not constitute a double-enhancement.

Defendant also challenged his extended-term eligibility based on his criminal history. Specifically, defendant argued that the time defendant spent in pretrial custody on the current offense should not be excluded when calculating whether the prior conviction was within 10 years of the current one. The purpose of the recidivist statute is to allow for harsher sentencing of offenders whose repeated convictions demonstrated a resistance to correction and such resistance can only be properly assessed once an individual is returned to society. Thus, excluding the time spent in custody, including pretrial detention, is logical in that an individual's behavior in custody is an unreliable indicator of the likelihood of recidivism. Moreover, the statute makes no exception for pretrial custody, and the statute's plain language should be applied as written. Thus, defendant was properly found to be extended-term eligible based on his prior conviction which was within 10 years of his current conviction, excluding *all* time spent in custody.

The appellate court also rejected defendant's argument that excluding time spent in pretrial detention from this calculation violated equal protection by discriminating between those who are financially able to post bond and those who are not. First, it was not at all clear that defendant's time in pretrial custody was due to an inability to pay. Defendant initially had posted bond but then moved to exonerate his bond when he was arrested on another offense and it became clear he would not be able to post the additional bond on that charge. Regardless, the recidivist statute serves the purpose of punishing repeat offenders more severely. In furtherance of that goal, it is rational to exclude periods of time spent in custody from calculation of the 10-year term because a person's conduct in custody is not indicative of whether he or she has recidivist tendencies in the world at large.

People v. Mosley, 2023 IL App (1st) 200309 Generally, UUWF is a Class 3 felony with a 2-to-10-year sentencing range, but if the defendant has previously been convicted of a forcible felony, then UUWF is a Class 2 felony with a 3-to-14-year range. Forcible felonies are defined at 720 ILCS 5/2-8, and include robbery but not attempt robbery. In addition to listing specific offenses which qualify, section 2-8 also includes a residual clause for "any other felony which involves the use or threat of physical force or violence against any individual."

As a matter of second-prong plain error, the appellate court agreed with defendant that the State failed to prove that his prior attempt robbery conviction was a forcible felony. Not every attempt to commit a forcible felony will be itself a forcible felony. Because attempt robbery may be committed without using or threatening violence, it does not necessarily involve the use or threat of force of violence sufficient to bring it within reach of the residual clause of Section 2-8. In reaching this conclusion, the court looked to the United States Supreme Court's recent decision in **United States v. Taylor**, 142 S. Ct. 2015 (2022), which concluded that an attempt robbery with similar elements did not constitute a "crime of violence" where proof of the offense did not require proof that the defendant "used, attempted to use, or threatened to use force."

Because defendant's attempt robbery conviction was not a forcible felony, the court erred in sentencing him for a Class 2 UUWF rather than a Class 3 UUWF. While defendant's 10-year sentence fell within the range for either, the court's conclusion that defendant had a "violent" background may have influenced the severity of the sentence it imposed and thus a remand for resentencing was required.

People v. Prather, 2022 IL App (4th) 210609 Defendant was charged with Class 2 aggravated DUI. The State sought an extended term of 7 to 14 years under 730 ILCS 5/5-5-3.2(b)(1), based on defendant's prior Mississippi conviction for attempt aggravated assault. After an open plea, the court imposed an extended-term sentence of 8 years.

Defendant maintained on appeal that he was not eligible for an extended term. Under section 5-5-3.2(b)(1), he would be extendable only if the Mississippi attempt aggravated assault was "the same or similar class felony" as the Class 2 aggravated DUI. Defendant maintained that aggravated assault in Illinois, a crime with similar elements as the Mississippi crime, is a Class 4 felony, and therefore of a lesser class than Illinois aggravated DUI. He cited **People v. Bailey**, 2015 IL App (3d) 130287, where the court compared the out-of-jurisdiction conviction to its Illinois analogue, then compared the classes and sentencing ranges of the analogue with the current offense to determine whether it was as or more serious.

The State countered by citing **People v. Cavins**, 288 Ill. App. 3d 173 (1997), which found it was necessary to compare only the sentencing range of the out-of-jurisdiction conviction with the sentencing range of the current offense. Because Mississippi attempt aggravated assault carried an indeterminate term of 20 years, the State argued it was more serious.

The appellate court agreed with the **Cavins** approach, finding it more faithful to the plain language of section 5-5-3.2(b)(1), which refers to "class" rather than elements. Notably, other provisions in the Code of Corrections use "elements," meaning the legislature deliberately chose "class" in section 5-5-3.2(b)(1). Thus, the sentencing court did not abuse its discretion in finding the Mississippi attempt aggravated assault, with an indeterminate 20-year range, was of the same or greater class as the Class 2 aggravated DUI with a 3- to 7-year range. Defendant could not show clear or obvious error to merit review under the plain error doctrine.

People v. Foreman, 2019 IL App (3d) 160334 A conviction for driving while license revoked, fifteenth or subsequent offense, which is sentenced as a Class 2 felony, is not a Class 2 felony for purposes of the Class X sentencing statute. The Class X sentencing provision requires that the prior convictions be for offenses that contain the same elements as an offense classified as a Class 2 or greater felony, but the elements of defendant's driving violation

constituted a misdemeanor which was enhanced to a Class 2 felony based on prior convictions.

People v. Cisco, 2019 IL App (4th) 160515 Trial court erred in finding defendant extended-term eligible based on his criminal history. Defendant had been found guilty of theft previously but did not actually have a conviction for theft because he had been sentenced to "second chance probation" pursuant to 730 ILCS 5/5-6-3.4. There was no showing that second chance probation had been revoked prior to sentencing in the instant case. Therefore, the record failed to establish defendant's eligibility for extended-term sentencing. Defendant's sentence was reduced to the maximum, non-extended term.

People v. Young, 2018 IL App (3d) 160003 Where a prior conviction is the basis for finding defendant eligible for extended-term sentencing, the record must affirmatively show that the prior conviction was within 10 years, excluding time spent in custody. Here, the relevant prior conviction was 10 years, 7 months, and 14 days prior. Defendant received a 6-year sentence on that prior conviction, and also received a 6.5-year sentence for another lower class felony during the years between the relevant prior conviction and the instant conviction. Because the record was devoid of any evidence about the amount of time defendant actually spent in custody for either of those convictions, however, the Appellate Court found second-prong plain error in the trial court's imposition of an extended-term sentence. The sentence was vacated and the matter was remanded for a new sentencing hearing.

Categorizing defendant's argument as "there might have been an error" where defendant had not argued that he was not extended-term eligible, the dissent rejected the application of plain error. Instead, the dissent suggested that defendant should file a post-conviction petition if he could show he was not extended-eligible.

People v. Bailey, 2015 IL App (3d) 130287 730 ILCS 5/5-5-3.2(b)(1) authorizes an extended term where the defendant is convicted of any felony "after having been previously convicted in Illinois or any other jurisdiction of the same or similar class felony or greater class felony," where the instant conviction occurred within 10 years of the prior conviction not counting time spent in custody. The court noted that the statute does not define the term "same or similar class" felony, and that in other statutes the legislature specifically provided that in comparing sentences between jurisdictions courts are limited to examining the elements of the respective offenses. Because the legislature did not include a similar limitation here, the court concluded that the trial judge was required to consider both the sentencing ranges and elements of the crimes to determine whether a conviction in another jurisdiction is of "the same or similar class felony" as a conviction in Illinois.

Because in this case the trial court considered only the elements of a California conviction for unlawful taking or driving of a vehicle before finding that the offense was equivalent to the Class 2 Illinois offense of possession of a stolen or converted vehicle, the cause was remanded with instructions that the court also consider the sentencing range of the California offense before determining whether extended term sentencing applied.

People v. Jones, 2015 IL App (3d) 130053 As a matter of first impression in Illinois, the Appellate Court found that **Apprendi's** exception for prior convictions applies to juvenile adjudications. The prior-conviction exception was justified by the procedural safeguards (fair notice, right to jury trial, proof beyond a reasonable doubt) in place at the time of the prior conviction. An adjudication of juvenile delinquency, while not containing all the procedural

safeguards of a criminal trial, provided "a no less reliable basis for the enhancement of a sentence than is a standard adult criminal conviction," and was "sufficiently analogous to a prior criminal conviction to fall under the exception in **Apprendi**." Accordingly, the State was not required to include the fact of defendant's prior adjudication in the indictment, present the fact to a jury, or prove it beyond a reasonable doubt.

People v. Wooden, 2014 IL App (1st) 130907 Under 725 ILCS 5/111-3(c) when the State seeks to impose an enhanced sentence due to a prior conviction, the charge must state the intent to seek the enhanced sentence and set forth the prior conviction to give the defense notice. In **People v. Easley**, 2014 IL 115581, the Illinois Supreme Court held that notice under §111-3(c) is required only if the prior sentence that would enhance the sentence is not an element of the charged offense.

Here, the State charged defendant with unlawful use of a weapon by a felon, alleging that the prior felony was vehicular hijacking. The prior conviction for vehicular hijacking was used to elevate the offense from a Class 3 to a Class 2 felony on the basis that it was a forcible felony. 720 ILCS 5/24-1.1(e).

Defendant argued that he was improperly convicted of a Class 2 felony because the State did not give him notice that it would seek an enhanced sentence. Defendant further argued that **Easley** did not apply to his case because vehicular hijacking is not per se a forcible felony. Vehicular hijacking is not one of the specifically enumerated offenses in the forcible felony statute and, according to defendant, does not fall within the residual clause definition of forcible felony.

Vehicular hijacking falls squarely within the definition of forcible felony. A defendant commits vehicular hijacking when he knowingly takes a motor vehicle from a person by the use or imminent threat of force. 720 ILCS 5/18-3(a). A forcible felony includes several specifically enumerated felonies and any other felony which involves the use or threat of physical force or violence against any person. 720 ILCS 5/2-8.

The act of taking a motor vehicle from a person by force or threat of imminent force necessarily involves at least the contemplation that violence might be used. Defendant could not provide, and the court could not conceive of, a situation where a defendant could commit vehicular hijacking without using or threatening physical force or violence. Vehicular hijacking thus falls within the definition of forcible felony and **Easley** controls the outcome of this case. Defendant's sentence was affirmed.

People v. Johnson, 2013 IL App (1st) 120413 730 ILCS 5/5-5-3.2(b)(1) authorizes an extended term for a defendant who is convicted of any felony after having been previously convicted of the "same or similar class felony or greater class felony" within the past 10 years, excluding time in custody. 730 ILCS 5/5-5-3.2(b)(7) authorizes an extended term for a person who is at least 17, commits "a felony," and within the past 10 years (excluding time in custody) was "adjudicated a delinquent minor . . . for an act which would be a Class X or Class 1 felony if committed by an adult." Thus, under the plain language of the statute, an adult who commits any felony within 10 years of having been adjudicated delinquent for a Class X or Class 1 felony is subject to an extended term, while an adult repeat offender is subject to an extended term only if the second conviction is for "the same or greater class offense" as the original conviction.

Although the State conceded that the statute was unconstitutional on its face when applied to the defendant, who was convicted of armed robbery while armed with a firearm after having been adjudicated delinquent for residential burglary, the court elected to reject

the concession and find that the legislature's failure to include the phrase "same or greater class felony" in section (b)(7) was inadvertent. The court concluded that the legislative intent underlying both sections (b)(1) and (b)(7) was to impose harsher sentences on offenders whose repeat offenses show that they are resistant to correction. The legislature could not have intended to authorize an extended term for a repeat offender who is convicted of any felony after having been adjudicated delinquent, but exclude extended term sentences for adult repeat offenders unless the prior conviction was for the same or greater class felony. Thus, the court concluded that the phrase "same or greater class felony" should be read into section (b)(7).

Because defendant's delinquency adjudication for residential burglary was not for the same or greater class felony as armed robbery while armed with a firearm, defendant was not eligible for an extended term under section (b)(7).

People v. Chambers, 2011 IL App (3d) 090949 The State conceded that the trial court erred by imposing extended term sentences where a single prior conviction was used both to elevate domestic battery to a felony and to impose extended term sentences.

People v. Vaughn, 301 Ill.App.3d 242, 703 N.E.2d 916 (4th Dist. 1998) Where defendant pleaded guilty in a single plea agreement to counts arising from unrelated cases, he was "convicted" of the first offense (for purposes of 730 ILCS 5/5-5-3.2(b)(1)) when the trial court accepted his guilty plea and imposed a sentence for that offense. When defendant immediately thereafter pleaded guilty to a second offense, he stood previously convicted of the "same . . . or greater class felony" for purposes of extended-term sentencing. If the legislature intended to make an extended term available only if defendant committed the second offense after having been convicted of the first, it would have imposed the sort of "specific timing requirements" contained in the Habitual Criminal Act. Also, the proceedings satisfied the statutory requirements that the convictions be "separately brought and tried" and "arise out of different series of acts" where the first charge was completely unrelated to the second one. Because "no trial occurred regarding either" charge and the charges were combined in a single guilty plea proceeding "simply as a matter of judicial efficiency," the offenses were separately brought and tried within the meaning of the statute.

People v. Frey, 126 Ill.App.3d 484, 467 N.E.2d 302 (5th Dist. 1984) Extended-term sentence vacated because the judge did not properly consider the full range of sentencing alternatives available, where the only applicable aggravating factor under the extended-term provision was defendant's 1977 burglary conviction and the trial judge believed he was required to impose the extended term in light of the aggravating factor, though the factor merely authorized the judge to impose an extended term.

People v. Lieberman, 107 Ill.App.3d 949, 438 N.E.2d 516 (1st Dist. 1982) There is a "judgment of conviction" only *after* sentence is imposed. Defendant's extended-term sentence based on defendant's prior conviction of rape was improper because that rape conviction had not proceeded to sentencing at the time of defendant's sentencing hearing. Because no sentence had yet been imposed on the prior conviction, it did not constitute a "conviction" and could not trigger an extended-term sentence. See also, **People v. Lieberman**, 332 Ill.App.3d 193, 772 N.E.2d 896 (1st Dist. 2002) (eligibility for extended-term sentencing is to be determined on the date a final sentence is ordered; where defendant's extended term was vacated on appeal because it was based on a prior conviction which was not "final" at the time

of sentencing because no sentence had been entered, but by the time defendant was sentenced on remand he had been sentenced on the "prior conviction," an extended term was authorized on remand).

People v. Lenninger, 88 Ill.App.3d 801, 410 N.E.2d 1157 (2d Dist. 1980) Defendant's extended-term sentence (based on factors that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or that defendant had been convicted within 10 years of the same or greater class felony) vacated and cause remanded for resentencing where the record did not show that the trial judge considered either factor.

§44-10(c)(3)
Brutal and Heinous

Illinois Supreme Court
People v. Nielson, 187 Ill.2d 271, 718 N.E.2d 131 (1999) An extended-term sentence is authorized under the "exceptionally brutal and heinous" factor only where defendant's behavior demonstrates "wanton cruelty," which requires proof that defendant "consciously sought to inflict pain and suffering on the victim of the offense." Because one cannot consciously seek to inflict pain and suffering on a corpse, the "exceptionally brutal or heinous" aggravating factor is inapplicable to concealment of a homicidal death.

People v. Andrews, 132 Ill.2d 451, 548 N.E.2d 1025 (1989) Judge erroneously imposed extended-term sentence based on finding that murder was senseless and unresisted where facts did not show a brutal or heinous offense to justify the extended sentence. Though defendant could have achieved his goal of robbing the victim without shooting the victim, every murder by its nature is unnecessary. Also, all murders are brutal and heinous to a certain degree, and murdered robbery victims are defenseless when killed. Statute authorizing extended sentence for brutal and heinous behavior was not intended to convert every offense into an extraordinary offense subject to an extended-term sentence. **People v. LaPointe**, 88 Ill.2d 482, 431 N.E.2d 344 (1981), is distinguishable. Unlike **LaPointe**, defendant's criminal history contained no crimes of violence, there is no evidence that defendant indicated before the crime that he intended to kill the victim or that he exhibited a callous attitude or complete lack of remorse following the murder.

See also, **People v. Curtis**, 244 Ill.App.3d 241, 614 N.E.2d 389 (1st Dist. 1993) (extended term improper where defendants had no history of violence and did not act in such a way as to indicate a lack of remorse); **People v. Phillips**, 244 Ill.App.3d 237, 614 N.E.2d 256 (1st Dist. 1992) (under **Andrews**, extended-term sentence was improper for first degree murder of armed robbery victim); **People v. Anderson**, 200 Ill.App.3d 75, 559 N.E.2d 267 (3d Dist. 1990) (extended murder sentence unwarranted; if extended-term statute applied to this killing, it would be difficult to conceive of a murder to which the extended-term sentence would not apply); **People v. Fields**, 198 Ill.App.3d 438, 555 N.E.2d 1136 (5th Dist. 1990) (because circumstances of murder were no more indicative of wanton cruelty than those in **Andrews**, trial court abused its discretion in sentencing defendant to an extended term); **People v. Lindsay**, 247 Ill.App.3d 518, 617 N.E.2d 389 (2d Dist. 1993) (defendant's "conscious indifference" to the decedent's fate cannot support a finding of exceptionally brutal or heinous behavior, because indifference to the fate of the victim is inherent in most murders; **Andrews** held that conscious disregard of the life of a defenseless victim is not necessarily exceptionally brutal or heinous even where first-degree murder is charged, and

the same rule applies to second degree murder); **People v. Cunningham**, 253 Ill.App.3d 642, 625 N.E.2d 413 (3d Dist. 1993) (though there was "no reason" for defendant's conduct, the mere fact that an offense was unnecessary does not mean that it was "exceptionally" brutal; sentence reduced to maximum non-extended term).

People v. Smallwood, 102 Ill.2d 190, 464 N.E.2d 1049 (1984) The fact that defendant shot victim after receiving fruits of armed robbery from victim supported imposition of extended sentence under enhancement where offense is accompanied by exceptionally brutal or heinous acts, notwithstanding defendant's argument that the armed robbery was completed prior to the shooting and fact that the shooting gave rise to the lesser crime of aggravated battery.

People v. Evans, 87 Ill.2d 77, 429 N.E.2d 520 (1981) The greater offense of which defendant was convicted (involuntary manslaughter) was not accompanied by wanton cruelty, and extended-term sentence for this offense was improper because the victim was an unintended victim and none of defendant's actions was directed toward him.

Defendant's conduct in the lesser offense (aggravated battery) was not indicative of wanton cruelty where his actions were committed under a subjective belief, albeit unreasonable, that they were in self defense. See also, **People v. Lindsay**, 247 Ill.App.3d 518, 617 N.E.2d 389 (2d Dist. 1993) (**Evans** does not preclude a finding of exceptional brutality and heinousness when defendant acted in an unreasonable belief of self-defense; **Evans** was a fact-specific finding that all of defendant's actions were committed in unreasonable belief of self-defense and could not have been exceptionally brutal or heinous, but because the mental state requirement of second degree murder focuses on one's state of mind at the time of the actual killing and the extended-term statute focuses on the behavior that accompanies the offense, acts other than those that caused death may show exceptional brutality or heinousness; trial court erred by basing finding of exceptional brutality or heinousness on fact that defendant strangled decedent twice, for the evidence showed that both acts of strangulation were committed while defendant unreasonably believed that he was acting in self-defense).

Illinois Appellate Court

People v. Henslick, 2022 IL App (4th) 200481 Defendant was convicted and sentenced to life in prison for a murder in which the female victim was found nearly naked, with defendant's semen on her body, and 60 stab wounds. Defendant challenged the imposition of a life sentence, alleging that the sentencing court improperly considered the possibility that the murder was preceded by a sexual assault, and that the State provided insufficient evidence of brutal and heinous behavior. The Appellate Court disagreed.

The consideration of a potential sexual assault was not improper where there was evidence of sexual contact between defendant and the victim, and the defendant's explanation that he murdered the victim after a consensual sexual encounter was not credible. The court found no abuse of discretion in inferring a sexual assault where the desire to cover up a sexual assault provided the only possible motive for the killing.

Nor would the court disturb the jury finding that the killing was brutal and heinous and indicative of wanton cruelty. Defendant argued that the stab wounds tended to be located around major organs, suggesting he wanted the victim to die quickly. The Appellate Court disputed the accuracy of this argument, finding several other stab wounds to the arms and

face. Regardless, under a deferential standard of review, the court found no reason to question the brutal and heinous finding in a case with 60 stab wounds and a sexual assault.

People v. Douglas, 362 Ill.App.3d 65, 839 N.E.2d 1039 (1st Dist. 2005) Defense counsel was not ineffective for failing to request a jury instruction defining the terms, "brutal," "heinous," and "wanton cruelty." The trial court was not required to *sua sponte* define these terms. The trial court does not have the duty to submit a jury instruction over defense counsel's specific objection, and the trial court appropriately balanced defense counsel's objection and the need for instructions on the legal principles of the case by concluding that definitions of the terms would be given if the jury asked for them during deliberations.

People v. Jackson, 299 Ill.App.3d 104, 700 N.E.2d 736 (1st Dist. 1998) The trial judge committed plain error by imposing an extended-term sentence for heinous battery under the "exceptionally brutal or heinous" aggravating factor. Because heinous battery "is by definition heinous," the nature of the offense is presumed to have been taken into account by the legislature in establishing the penalty for the offense.

People v. Taylor, 278 Ill.App.3d 696, 663 N.E.2d 1126 (2d Dist. 1996) Defendant pulled a knife during a fight in a bar, and defendant and the victim brought the fight outside. The men eventually made up and gave each other a hug. But, as the men "broke apart," defendant slashed the victim's neck and throat with a second knife, which he had been holding behind his leg. While an offense is not exceptionally brutal and heinous merely because a knife is used, the crime was exceptionally brutal and heinous here because defendant lulled the victim into a false sense of security by a conciliatory embrace, all the while planning to inflict a potentially mortal wound with a utility knife which defendant concealed during the embrace. This "places the wounding in the category of shockingly evil, flagrantly criminal, or cruel and cold-blooded conduct which may be considered to be exceptionally brutal or heinous behavior indicative of wanton cruelty."

People v. Rodriguez, 275 Ill.App.3d 274, 655 N.E.2d 1022 (1st Dist. 1995) Murder was not exceptionally brutal or heinous where defendant struck a three-year-old when she defecated in her pants and would not stop crying. The fatal blows were "swift and her death relatively quick," and there was no evidence of torture or premeditation. Although there was evidence that defendant had previously abused the child, the prior acts of abuse could not be used to impose an extended term where those acts neither caused death nor were inflicted contemporaneously with the acts that caused death. But, the trial judge failed to consider whether an extended term should be imposed because the victim was under 12 years of age, so the cause was remanded for the trial judge to consider whether to reimpose an extended term sentence under that factor.

People v. Mangum, 260 Ill.App.3d 631, 632 N.E.2d 1097 (2d Dist. 1994) Behavior was not exceptionally brutal and heinous. The jury believed that defendant was either acting under a sudden or intense passion resulting from serious provocation or in an unreasonable belief that self-defense was justified when he killed the victim. Defendant expressed regret at the sentencing hearing. Further, the expert testimony indicated that the decedent's injuries were consistent with a fist fight and that death could have resulted from a single blow.

Also, the offense was not exceptionally brutal or heinous based on defendant's pursuit of the decedent (when decedent tried to flee defendant after fight) or because defendant bound the decedent after the latter fell to the ground. Given the victim's greater size and the "turmoil which inevitably characterizes such physical confrontations," defendant could reasonably perceive the decedent as a continuing threat. The fact that defendant left a helpless victim does not establish exceptionally brutal or heinous behavior, because indifference to the survival of the victim is inherent in the crime of murder. Finally, defendant did not leave the decedent to die where he believed that the latter was not fatally injured and turned him on his stomach to prevent him from choking.

People v. Lindsay, 247 Ill.App.3d 518, 617 N.E.2d 389 (2d Dist. 1993) In determining whether an offense is accompanied by exceptionally brutal or heinous behavior, the trial court should consider the presence of premeditation or torture, the infliction of unnecessary pain, the amount of force used, defendant's age and prior record, and any expression of remorse. Extended sentence unwarranted.

See also, **People v. Wilson**, 303 Ill.App.3d 1035, 710 N.E.2d 408 (1st Dist. 1999) (the record did not justify an extended-term sentence under the "exceptionally brutal and heinous behavior" factor where defendant's behavior did not exhibit the characteristics of "prolonged pain, torture, or premeditation" required for a finding of "brutal and heinous" behavior); **People v. Bedony**, 173 Ill.App.3d 613, 527 N.E.2d 916 (1st Dist. 1988) (beating and shooting of victim was not brutal and heinous, and there were persuasive mitigating factors, such as defendant's family background, education, work record, lack of drug or alcohol abuse, and lack of criminal history). But see **People v. Douglas**, 362 Ill.App.3d 65, 839 N.E.2d 1039 (1st Dist. 2005) (defendant's remorse and lack of a serious prior record are not factors which the jury is required to consider in determining whether an offense is exceptionally brutal and heinous; in determining whether an offense is exceptionally brutal or heinous, courts focus on the totality of the facts surrounding the offense, including whether the attack was unprovoked or senseless, the number of wounds inflicted, and the extent of the victim's injuries).

People v. Gleason, 240 Ill.App.3d 249, 608 N.E.2d 344 (1st Dist. 1992) The trial judge erred by imposing extended-term sentence based on the victims' serious injuries, fact that defendant brought a gun into a tavern, and on defendant's failure to call the police after the shootings. Defendant's behavior was not exceptionally brutal or heinous. Defendant was a first-time offender who still lived with his parents and who had been employed by the same company for 10 years, and 40 witnesses were present at sentencing to testify to his good character. He also expressed remorse and testified that he had believed that his life was in danger. Further, the circumstances surrounding the incident were emotionally charged. See also, **People v. Gonzalez,** 231 Ill.App.3d 1071, 596 N.E.2d 783 (1st Dist. 1992).

People v. Fyke, 190 Ill.App.3d 713, 546 N.E.2d 1101 (5th Dist. 1989) An extended-term sentence for murder was upheld where the victim was lured to the scene and killed to protect defendant's drug business. "The dispassionate and calculated manner in which [the victim's] murder was planned and carried out, and the motive behind it, demonstrates a lack of regard for human life which is so fundamentally evil that it cannot be said to be anything but brutal, heinous, and indicative of wanton cruelty."

People v. Clemons, 179 Ill.App.3d 667, 534 N.E.2d 676 (2d Dist. 1989) Trial court properly found that the offense was brutal and heinous where defendant beat the victim with a hammer.

People v. Green, 177 Ill.App.3d 492, 532 N.E.2d 442 (1st Dist. 1988) Judge sentenced defendant to extended term after finding defendant's conduct was brutal and heinous because of defendant's use of a knife, the victim's young age, defendant's relationship to victim (his daughter), and specific acts that were by their very nature heinous behavior indicative of wanton cruelty. Extended sentence improper, for victim was not cut by the knife or physically abused (she was slapped once), and the other factors on which the judge relied were elements of the offenses of which defendant was convicted. In so concluding, the court noted defendant's remorse, lack of prior convictions, and his history of mental illness.

People v. Thomas, 139 Ill.App.3d 163, 486 N.E.2d 1362 (1st Dist. 1985) Extended-term sentence unwarranted because murder was not so cold-blooded as to constitute exceptionally brutal or heinous behavior indicative of wanton cruelty where murder occurred during an attempted armed robbery and defendants were not so calm and cold-blooded. Sentences reduced. See also, **People v. Kane**, 140 Ill.App.3d 928, 489 N.E.2d 500 (1st Dist. 1986).

People v. Killen, 106 Ill.App.3d 65, 435 N.E.2d 533 (4th Dist. 1982) Trial court erred in imposing the maximum non-extended term sentence based on its finding that the crime was accompanied by exceptionally heinous behavior indicative of wanton cruelty. The trial court may consider the "exceptionally heinous" factor as a reason to impose an extended term, not a non-extended term. The offense in this case was not accompanied by heinous behavior indicative of wanton cruelty. Although the crime is "repugnant to society," the victim "was not battered and apparently received no physical injury." Sentence vacated and remanded for resentencing.

People v. Warfel, 67 Ill.App.3d 620, 385 N.E.2d 175 (4th Dist. 1979) Trial court properly imposed an extended term after finding the existence of "wanton cruelty." Regardless of the propriety of the trial court's definition of wanton cruelty (as "reckless indifference or disregard of others' personal integrity"), the trial court did not abuse its discretion in finding that defendant's conduct (assaulting without provocation, grabbing by the throat, throwing to sidewalk, and beating against the sidewalk) constituted "wanton cruelty."

§44-10(c)(4)
Other Bases

Illinois Supreme Court
People v. Almore, 241 Ill.2d 387, 948 N.E.2d 574 (2011) Under 720 ILCS 5/9-3(d), involuntary manslaughter is a Class 3 felony for which a term of two to five years imprisonment may be ordered. Where the victim was a "family or household member," however, the offense is a Class 2 felony with an extended term of not less than three or more than 14 years. "Persons who share or formerly shared a common dwelling" are included within the definition of "family or household members." (725 ILCS 5/112A-3(3)).

By authorizing an extended term based on the decedent's status as a "family or household member," the legislature intended to capture all types of past and present

"familial" relationships as well as various forms of cohabitation and shared living arrangements. Whether persons are "family or household members" by virtue of having "shared a common dwelling" is decided on specific facts of each case. The factors to be considered include: (1) the amount of time the parties resided together, (2) the nature of the living arrangements, (3) whether the parties had other living accommodations, (4) whether the parties kept personal items at the shared residence, and (5) whether the parties shared in the privileges and duties of a common residence such as contributing to household expenses and helping with maintenance. Persons who have no real connection other than occasionally sleeping under the same roof, such as occupying the same homeless shelter, do not share a common dwelling. (See **People v. Young**, 362 Ill.App.3d 843, 840 N.E.2d 825 (2d Dist. 2005)).

On this record, the two-year-old child of the defendant's girlfriend "shared a common dwelling" with the defendant. The mother and the defendant had dated for 18 months, and on several occasions lived together at her family's residence or at the defendant's temporary residence. Whenever the defendant and the mother stayed together, the child stayed as well. Furthermore, the defendant provided child care when the mother went to work.

Illinois Appellate Court

People v. Morgan, 2023 IL App (4th) 220377 Defendant pled guilty to Class 1 unlawful delivery of a controlled substance under 720 ILCS 570/401(c)(2), was sentenced to probation, and subsequently had his probation revoked. He was then sentenced to 10 years of imprisonment and appealed. Initially, the appellate court remanded for resentencing, agreeing with defendant that the trial court erroneously believed defendant was eligible for an extended-term sentence of up to 30 years in prison under 730 ILCS 5/5-5-3.2 and 5/5-8-2. The State then filed a petition for rehearing, arguing for the first time that defendant was eligible for a sentence of up to 30 years in prison under a different statute, 720 ILCS 570/408(a), and thus the sentencing court had not misapprehended the available sentencing range. The appellate court ultimately agreed with that argument, granted rehearing, and affirmed defendant's 10-year sentence.

First, the court acknowledged that the State had forfeited its argument regarding Section 408 by not raising it during the original briefing. Under Rule 341(h)(7), parties may not raise new arguments in a petition for rehearing. But, that rule is an admonition to the parties and not a limit on the court, and the appellate court concluded that the circumstances compelled it to overlook forfeiture where both the court and the parties initially failed to recognize its application.

Further, while the court did not specifically cite to Section 408 when it imposed sentence upon revocation of probation, the judge did state that Section 408 applied at defendant's original guilty plea hearing. Thus, defendant had notice of the applicable sentencing range. And, the sentencing judge was not required to note the applicability of Section 408 at defendant's post-revocation sentencing because defendant ultimately was not sentenced to an enhanced penalty under that section.

Finally, the court rejected defendant's argument that Section 408 was in conflict with Section 5-8-2. Section 408 applies independently of the general sentencing provisions contained in the Code of Corrections.

People v. Phagan, 2019 IL App (1st) 153031 The trial court improperly applied both an extended Class X term of 30 years, and a firearm enhancement of 20 years, in sentencing defendant to 50 years for attempt murder of a peace officer. The firearm enhancements of

section 8-4(c)(1)(B), (C), and (D) do not apply when the court imposes the extended class X term of 20 to 80 years under section 8-4(c)(1)(A). Agreeing with **People v. Douglas**, 371 Ill. App. 3d 21, 26 (1st Dist. 2007), and disagreeing with **People v. Jackson**, 2018 IL App (1st) 150487, the court held that the various subsections to section 8-4(c)(1) must be read in the disjunctive so that multiple enhancements aren't applied to the same sentence. The court affirmed the 30-year sentence under (c)(1)(A), and vacated the 20-year firearm enhancement under (c)(1)(C).

People v. Brewer, 2018 IL App (1st) 160155 To prove that the murder victim was a police officer killed in the course of performing his official duties, the State need not prove that the officer was in uniform or on duty. An officer's official duties include stopping the commission of crimes, even when off duty. Here, the defendant attacked the off-duty officer and killed him with the officer's own gun. The court rejected the defendant's argument that the officer was not performing his official duties but was instead the victim of a crime. The official duties of police officers include stopping crime, even those perpetrated against themselves. The Appellate Court upheld defendant's natural life sentence.

People v. Anderson, 142 Ill.App.3d 240, 488 N.E.2d 557 (1st Dist. 1985) Section authorizing an extended-term sentence for crime where the victim is over 60 years of age or under 12 years of age applies to residential burglary.

§44-10(d)
Class X Sentencing

Illinois Supreme Court
People v. Stewart, 2022 IL 126116 In 2016, defendant was charged with the Class 2 offense of possession of a stolen motor vehicle. Defendant was 20 years old at the time of the offense and turned 21 while the charge was pending. After he was convicted, the court found defendant was subject to mandatory Class X sentencing pursuant to 730 ILCS 5/5-4.5-95(b) and subsequently imposed the minimum Class X sentence of six years of imprisonment.

> Section 5-4.5-95(b) provides, in part:
> (b) When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender.

Defendant's two prior felony convictions were a 2013 Class 1 residential burglary and a 2014 Class 2 possession of a stolen motor vehicle.

On appeal, defendant argued that he was not eligible for Class X sentencing where he was only 17 years old on the date of his 2013 offense. While he was prosecuted in adult court in 2013, the Juvenile Court Act had subsequently been amended to increase the age for exclusive juvenile jurisdiction from 16 to 17. Accordingly, defendant would have been subject to delinquency proceedings for that offense under the law as it existed on the date of his current offense, and thus his 2013 offense was not a qualifying felony under Section 5-4.5-95(b). The appellate court agreed.

The Supreme Court affirmed. The plain language of the 2016 version of Section 5-4.5-95(b) was silent, and therefore ambiguous, on the question of whether the legislature

intended a prior felony conviction to be a qualifying offense for Class X sentencing if it would have resulted in a juvenile adjudication had it been committed on the date of the present offense. But, the Court held that subsequent legislation clarified the legislature's intent. Specifically, the Court found that the legislature did not intend for convictions of juveniles in adult court to be considered qualifying offenses for Class X sentencing.

In particular, the Court noted that in 2021, the statue was amended to provide that an offender qualifies for Class X sentencing on a third Class 2 or greater conviction only where the first qualifying offense was committed after the individual had reached the age of 21. While a statutory amendment generally creates a presumption that it was intended to change existing law, circumstances may indicate that an amendment was meant as a clarification rather than a substantive change in certain instances. Here, there was a conflict in the appellate court as to the statute's meaning prior to the amendment, and thus it was construed as a clarification rather than a change. Accordingly, the Court agreed that defendant was improperly sentenced as a Class X offender.

People v. Smith, 2016 IL 119659 730 ILCS 5/5-4.5-95(b) provides that in specified circumstances, a defendant "over the age of 21 years" who is convicted of a Class 1 or Class 2 felony after having twice been convicted of an offense which contains the same elements as a Class 1 or Class 2 felony is sentenced as a Class X offender. Noting a conflict in Appellate Court precedent, the Supreme Court held that eligibility for Class X sentencing is determined by the age of the defendant at the time of conviction. The court rejected Appellate Court precedent holding that the defendant must be over the age of 21 at either the time of the offense or the time of the charge in order to be eligible for Class X sentencing.

The court concluded that the plain language of the statue was unambiguous and holds that a defendant is eligible for Class X sentencing if he is 21 at the time of conviction. Because this defendant was 21 both when he was found guilty and when he was sentenced, the court found that it was not required to decide whether a defendant is "convicted" at the time he is found guilty or at the time of sentencing.

People v. Thomas, 171 Ill.2d 207, 664 N.E.2d 76 (1996) The recidivist statute applies to second degree murder.

People v. Jameson, 162 Ill.2d 282, 642 N.E.2d 1207 (1994) A defendant sentenced as a Class X felon has not been *convicted* of a Class X offense.

People v. Levin, et al., 157 Ill.2d 138, 623 N.E.2d 317 (1993) Double jeopardy does not apply to resentencing under the Class X sentencing provision.

People v. Williams, 149 Ill.2d 467, 599 N.E.2d 913 (1992) The State does not bear the burden of proving the order of the prior convictions for Class X sentencing (where a defendant has two prior Class 2 or greater class felonies in Illinois, with the first committed after the law's effective date, the second committed after conviction on the first, and the third committed after conviction on the second). The statute does not specifically require the State to prove the prior convictions, and prior criminal records are normally proven by presentence report rather than by introducing evidence. A defendant has the obligation to bring inaccuracies in the presentence report to the trial court's attention; by failing to inform the trial judges that the presentence reports did not include the order of the convictions, defendants waived any right to raise the issue on appeal.

Morrow v. Dixon, 108 Ill.2d 223, 483 N.E.2d 876 (1985) Trial judge was aware of defendant's prior convictions, as the State offered certified copies of them to impeach defendant at his bench trial and the priors were listed in the presentence report, and was, therefore, required to sentence defendant as a Class X offender.

Illinois Appellate Court

People v. Golden, 2021 IL App (2d) 200207 Defendant's prior conviction of unlawful use or possession of a weapon by a felon was properly used to make him eligible for Class X sentencing on his Class 2 conviction of aggravated domestic battery. While UUWF is normally a Class 3 felony, it was a Class 2 felony here because the underlying felony which disqualified defendant from firearm possession was "a Class 2 or greater felony under the Illinois Controlled Substances Act." 720 ILCS 5/24-1.1(e). The Appellate Court concluded that this language means that the underlying drug felony was an element of the defendant's Class 2 UUWF conviction, and not merely the basis for a sentence enhancement. Accordingly, defendant's UUWF conviction was a Class 2 felony, not merely a Class 3 felony with enhanced sentencing. That, in turn, meant that defendant's Class 2 UUWF conviction could properly be used to make him Class X eligible in the instant case.

People v. Martinez, 2021 IL App (1st) 182553 Defendant received a Class X sentence for UUWF, based on prior convictions for PSMV, robbery (committed at age 17), and UUWF. The latter two convictions did not satisfy section 5-4.5-95(b), and therefore defendant's Class X sentence was vacated. As in **People v. Miles**, 2020 IL App (1st) 180736, and **People v. Williams**, 2020 IL App (1st) 190414, the Appellate Court held that a prior conviction committed as a juvenile that would now be resolved exclusively in juvenile court, does not qualify as a prior Class 1 or 2 conviction for purposes of Class X sentencing under section 5-4.5-95(b). And the prior UUWF conviction could not be used to make him Class X eligible because it was already used to prove the current charge of UUWF, thereby constituting an impermissible double enhancement.

People v. Johnson, 2020 IL App (1st) 171638 Defendant's 1995 Class 2 drug offense could not be used as a predicate for Class X eligibility under 730 ILCS 5/5-4.5-25(a) because he successfully completed first-offender probation for that offense. While the PSI indicated a conviction for the 1995 offense, docket entries for that offense showed that the trial court entered a finding of not guilty once defendant's probation was successfully terminated. Therefore it could not be used as a predicate for enhancing his sentence. This issue was not raised below but was reached as second-prong plain error. Defendant's 18-year sentence for robbery was vacated, and the matter was remanded for resentencing. The Appellate Court noted that defendant would be eligible for an extended-term up to 14 years on resentencing, based on a separate, 2007 Class 2 felony conviction.

People v. Williams, 2020 IL App (1st) 190414 Defendant was convicted of robbery, a Class 2 offense, but sentenced as a Class X offender pursuant to 730 ILCS 5/5-4.5-95, which mandates Class X sentencing where a defendant is convicted of a Class 1 or 2 offense and has been convicted of two prior Class 2 or greater felonies. The Appellate Court agreed with defendant that his Class X sentence was error where one of the predicate offenses, burglary, was committed when he was only 17 years old and the Juvenile Court Act had since been amended to give the juvenile court exclusive jurisdiction over 17-year-olds charged with

burglary. Following **People v. Miles**, 2020 IL App (1st) 180736, the court concluded that because defendant's 2013 burglary conviction would have resulted in a juvenile adjudication rather than a criminal conviction as of the date he committed the current offense, it did not qualify as a conviction for "an offense now...classified in Illinois as a Class 2 or greater" felony. The court vacated defendant's 9-year sentence and remanded the matter for resentencing.

People v. Reed, 2020 IL App (4th) 180533 Defendant pled guilty to a Class 1 offense, elevated to a Class X based on background pursuant to 730 ILCS 5/5-4.5-95(b). On appeal, he alleged that his plea was involuntary because he committed one of the qualifying convictions, a Class 2 burglary, when he was 17 years old. Citing **People v. Miles**, 2020 IL App (1st) 180736, defendant argued that an amendment in the mandatory transfer provision that went into effect prior to the instant offense would have rendered his prior burglary conviction a juvenile adjudication instead. Thus, he was not convicted of "an offense now . . . classified in Illinois as a Class 2 or greater Class felony" under section 5-4.5-95(b).

The Appellate Court rejected the argument and declined to follow **Miles.** The court reasoned that the juvenile court did not have exclusive jurisdiction, and transfer to adult court was still possible. It also found that a "juvenile conviction is a conviction" and nothing in section 5-4.5-95(b) suggested an intent to exclude juvenile adjudications. It further noted the prospective language of the amendment to the automatic transfer provision. Finally, reviewing the language of section 5-4.5-95(b), it would have found the prior burglary had the same elements of a crime still considered a Class 2 felony, because age is not an element of the offense.

People v. Miles, 2020 IL App (1st) 180736 Defendant, convicted of Class 2 burglary, was not eligible for Class X sentencing based on prior convictions for aggravated vehicular hijacking with a firearm and armed robbery, committed when defendant was 15 years old. Pursuant to 730 ILCS 5-4.5-95(b), Class X sentencing is mandatory if defendant commits a Class 1 or 2 offense and has twice been convicted "of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony." Here, defendant committed a Class 2 burglary, and had another qualifying offense, but argued that the crimes committed at age 15 no longer contain the same elements as a Class 2 or greater felony, because the statutes requiring automatic transfer of those cases to adult court have since been amended.

The Appellate Court agreed with defendant. The prior convictions for aggravated vehicular hijacking and armed robbery would not have resulted in a Class 2 or greater felony conviction under current law, because the offenses no longer trigger automatic transfer to adult court. The offenses would have been resolved with delinquency proceedings in juvenile court if committed under current law. Thus, second-prong plain error occurred and the case was remanded for resentencing as a Class 2 offense.

People v. Holmes, 405 Ill.App.3d 179, 937 N.E.2d 762 (3d Dist. 2010) 730 ILCS 5/5-5-3(c)(8) mandates Class X sentencing for a person who is over the age of 21, convicted of a Class 1 or Class 2 felony, and twice "convicted" of a Class 2 or greater felony, provided that: (1) the convictions resulted from charges that were separately brought and tried and which arose from different series of acts, (2) the second felony was committed after "conviction" on the first, and (3) the third felony was committed after "conviction" on the second.

A "conviction" occurs only when a sentence is imposed. (730 ILCS 5/5-1-5; 5/5-1-12). Thus, a defendant who at the time of the third offense had pleaded guilty on the second

charge, but who was awaiting sentencing, had not yet been "convicted" of the second charge. Thus, §5-5-3(c)(8) did not authorize Class X sentencing on the third offense.

People v. McKinney, 399 Ill.App.3d 77, 927 N.E.2d 116 (2d Dist. 2010) Where the defendant stands convicted of a Class 2 felony but is sentenced as a Class X offender due to his criminal history, the mandatory supervised release term applicable to a Class X felony must be imposed. The court rejected the argument that only the Class 2 MSR term is authorized.

People v. Mendoza, 342 Ill.App.3d 195, 795 N.E.2d 316 (2d Dist. 2003) Statute mandating Class X sentencing for a Class 1 or Class 2 felony where defendant is "over the age of 21 years" and has been previously convicted of separate Class 2 or greater felonies, applies to a defendant who has passed his 21st birthday but not yet turned 22.

People v. Baaree, 315 Ill.App.3d 1049, 735 N.E.2d 720 (1st Dist. 2000) A defendant is "convicted" for purposes of mandatory Class X sentencing when he is adjudicated guilty. Defendant, who turned 21 between his trial and sentencing was only 20 when "convicted"; thus, Class X sentencing was not mandatory.

People v. Baumann, 314 Ill.App.3d 947, 733 N.E.2d 417 (2d Dist. 2000) In determining whether a defendant is eligible for a Class X or extended-term sentence, unclassified offenses are classified according to the sentences they carry. Accord, **People v. Gonzales**, 314 Ill.App.3d 993, 734 N.E.2d 77 (2d Dist. 2000).

People v. Keene, 296 Ill.App.3d 183, 693 N.E.2d 1273 (4th Dist. 1998) Out-of-state convictions may not be used to satisfy the prior conviction requirements of 730 ILCS 5/5-5-3(c)(8) even if they are the "equivalent" of Class 2 or higher felonies in Illinois.

People v. Jackson, 223 Ill.App.3d 331, 584 N.E.2d 836 (4th Dist. 1991) Defendant's prior convictions did not occur in the chronological order required for Class X sentencing where his first conviction was reversed on appeal and he was not reconvicted until after he had committed the second felony.

§44-10(e)
Firearm Enhancements

United States Supreme Court
Castillo v. U.S., 530 U.S. 120, 120 S.Ct. 2090, 147 L.Ed.2d 94 (2000) Under 18 USC §924(c)(1), which authorizes an additional prison term of five years where the perpetrator of a crime of violence "uses or carries a firearm" and an additional term of 30 years if the firearm is a machine gun, use of a weapon is an element of a separate, aggravated crime rather than a sentencing factor that may be determined by the trial judge. See also, **Jones v. U.S.**, 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999) (the legislative intent of the federal carjacking statute was to make the enhanced sentencing requirements elements of the offense, rather than mere sentencing factors; thus, an enhanced sentence can be imposed only where serious bodily injury or death is alleged in the indictment, proven beyond a reasonable doubt, and submitted to the trier of fact at trial).

Smith v. U.S., 507 U.S. 223, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993) Offering to trade an automatic weapon and silencer for cocaine qualifies as "us[ing]" the weapon "during and in relation to" a drug crime, so as to mandate a 30-year-sentence under 18 USC §924(c)(1). Congress did not intend to limit the mandatory sentence to situations in which a firearm is used as a weapon, and use of a weapon occurs "in relation to" an offense when it has some "purpose or effect" with respect to that offense. See also, **Bailey v. U.S.**, 516 U.S. 137, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995) (the term "used" was intended to cover only the "active employment" of a firearm, and not mere storage of a weapon in the general area of a drug offense; neither defendant "used" a weapon within the meaning of §924(c)(1) where one defendant had a loaded gun in the trunk of his car and drugs were found in the passenger compartment of his car and the other defendant had an unloaded gun in a locked trunk in her bedroom and she sold drugs out of her bedroom).

Busic v. U.S., 446 U.S. 398, 100 S.Ct. 1747, 64 L.Ed.2d 381 (1980) Defendants were convicted of assaulting a federal officer using a deadly weapon, in violation of 18 USC 111, which provides for an enhanced penalty when the perpetrator uses a deadly weapon. Defendants were also convicted of using or carrying a firearm in the commission of a felony (the same armed assault) in violation of 18 USC 924(c), which also authorizes an enhanced penalty. Defendants received sentences under both §111 and §924(c). The Court held that §924(c) may not be applied to a defendant who uses a firearm in the course of a felony that is proscribed by a statute that itself authorizes enhancement if a dangerous weapon is used. Thus, the sentence in such a case may only be enhanced under the enhancement provision in the statute defining the felony (§111), and not under §924(c).

Illinois Supreme Court

People v. Taylor, 2023 IL 128316 The firearm enhancements of the attempt statute, 720 ILCS 5/8-4(c)(1)(B)-(D), can be imposed in conjunction with the already-enhanced sentence for attempt murder of a peace officer, 720 ILCS 5/8-4(c)(1)(A). Applying both does not constitute an improper double enhancement. Under the plain language of the statute, section 8-4(c)(1)(A) sets forth the baseline sentence for attempt murder of a peace officer, and other aggravated forms of attempt murder, of 20-to-80 years of imprisonment. Subsections (B)-(D) of that section then provide firearm enhancements which "shall be added to the term of imprisonment imposed by the court." Thus, the plain language supports the conclusion that both the increased baseline sentence and the firearm enhancements can be applied together.

Further, this interpretation is consistent with the legislature's intent to punish attempt murder of a peace officer more severely than the same offense against an ordinary citizen. And, adopting defendant's interpretation could result in circumstances where the minimum sentence for attempt murder of a peace officer (20 years, no firearm enhancement) could actually be less than the minimum for attempt murder of an ordinary citizen (26 years, consisting of 6-year minimum and 20-year mandatory firearm enhancement), where both involved firearms. There was no error here where the court imposed a 30-year base sentence and a 20-year firearm enhancement.

People v. Taylor, 2015 IL 117267 Under 720 ILCS 5/18-2(a)(2), a 15-year term is added to the sentence for armed robbery where the perpetrator was armed with a firearm. In **People v. Hauschild**, 226 Ill.2d 63, 871 N.E.2d 1 (2007), the court concluded that the sentencing add-on violated the proportionate penalties clause of the Illinois constitution. The General Assembly then cured the proportionate penalties violation by enacting P.A. 95-688 (eff.

10/23/07).

Where defendant's offense and sentencing occurred after **Hauschild** but before the legislature enacted P.A. 95-688, the 15-year enhancement could not be imposed. Because the sentence enhancement was unconstitutional, defendant's sentence was void. The cause was remanded for re-sentencing without the sentencing enhancement.

People v. Rodriguez, 229 Ill.2d 285, 891 N.E.2d 854 (2008) The mandatory 15-year statutory enhancement to a sentence for first degree murder committed while armed with a firearm applies to a defendant who is convicted on an accountability theory. See also, **People v. Dixon**, 359 Ill.App.3d 938, 835 N.E.2d 925 (4th Dist. 2005) (statute providing that a person who "personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person" must receive a 25-year to life enhancement in addition to the term of sentence imposed for the murder, requires such an enhancement when defendant discharges a firearm and causes harm to a person *other than himself*).

People v. Sharpe, 216 Ill.2d 481, 839 N.E.2d 492 (2005) Overruling numerous cases, the Court abolished the cross-comparison test for proportionate penalties analysis (thus, the proportionate penalties clause of the state constitution cannot be used to judge a penalty in relation to the penalty for an offense with different elements). See also, **People v. Klepper**, 234 Ill.2d 337, 917 N.E.2d 381 (2009)

But, proportionate penalties challenges may still be raised where the penalty for a particular offense is "cruel" or "degrading," or where a penalty is harsher than the sentence for a different offense which has identical elements. Also, a defendant may challenge a penalty under the due process clause by showing that the sentence is not reasonably designed to remedy the particular evil that the legislature was targeting.

The "15-20-25-year to life" sentencing enhancements are not so cruel and degrading as to violate the proportionate penalties clause when applied to first degree murder. Also as applied to first degree murder, the 25-year to life enhancement does not violate the "identical elements" test of proportionate penalties analysis. See also, **People v. Sawczenko-Dub**, 345 Ill.App.3d 522, 803 N.E.2d 62 (1st Dist. 2003) (the 25-year to life component of the "15-20-25 to life" provision as applied to first degree does not violate the proportionate penalties clause (not cruel or degrading), the separate of powers doctrine, double jeopardy, or the rule against double enhancement).

People v. Guevara, 216 Ill.2d 533, 837 N.E.2d 901 (2005) "A double enhancement occurs when either (1) a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or (2) the same factor is used twice to elevate the severity of the offense itself." Double enhancement is not permitted unless clearly intended by the legislature. See also, **People v. Phelps**, 211 Ill.2d 1, 809 N.E.2d 1214 (2004); **People v. Chaney**, 379 Ill.App.3d 524, 884 N.E.2d 783 (1st Dist. 2008).

An impermissible double enhancement does not occur where possession of a firearm is used both as an element of home invasion and to enhance the sentence with a mandatory 15-year sentencing provision. See also, **People v. Dixon**, 359 Ill.App.3d 938, 835 N.E.2d 925 (4th Dist. 2005) (the 25-year to life addition applicable to murder for one who personally discharges a firearm that proximately causes great bodily harm or death is not a double enhancement - although death is an element of the offense, only the use of a firearm triggers

the enhancement).

People v. Hill, 199 Ill.2d 440, 771 N.E.2d 374 (2002) The 15-year "add-on" provision for home invasion, under which a mandatory term is added to the sentence where the intruder was armed with a firearm and used force or threatened the imminent use of force against a person within a dwelling place, does not violate the separation of powers doctrine.

Illinois Appellate Court

People v. Miller, 2019 IL App (1st) 161687 Where defendant's case had been remanded under **Arna** for imposition of mandatory 15-year firearm enhancement, but then **Castleberry** was decided after the Appellate Court's mandate issued but prior to resentencing, **Castleberry** applied to preclude resentencing. The law-of-the-case doctrine did not obligate the Appellate Court to maintain its prior decision ordering resentencing because the prior appeal did not involve the impact of **Castleberry** since **Castleberry** had not yet been decided. And, while trial courts are bound to follow the mandate from the Appellate Court, here, the impact of **Castleberry** presented a new question which the trial court could have, and should have, considered.

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

People v. Felton, 2019 IL App (3d) 150595 The 25-years-to-life firearm enhancement {730 ILCS 5/5-8-4(c)(1)(D)] is not unconstitutionally vague because it allows the sentencing judge wide discretion in determining what length of enhancement to impose. While a specific list of criteria is not included in the statute, courts are implicitly required to consider the unique facts and circumstances of each case because the enhancement's imposition is limited to cases involving great bodily harm, permanent disability, permanent disfigurement, or death. And, consideration of the degree of injury is not an improper double enhancement because the legislature expressly intended that the sentencing court do so by enacting the firearm enhancements. In dissent, Justice McDade found the statute's failure to provide guidance to judges as to where in the range a particular sentence should fall renders the enhancement unconstitutionally vague.

People v. Jackson, 2018 IL App (1st) 150487 The firearm enhancements apply to attempt murder of a peace officer. 720 ILCS 5/8-4(c)(1) defines attempt murder as a Class X felony, and section 8-4(c)(1)(A) sets out an enhanced range for attempt murder of a peace officer, 20-

80 years. The appellate court concluded that the firearm enhancements contained in subsections (B) through (D), were intended to apply not just to the Class X range set out in subsection (c)(1), but also the enhanced range in (c)(1)(A), because this is "the most natural reading" of the text, breaking with **People v. Douglas**, 371 Ill. App. 3d 21 (1st Dist. 2007). Moreover, imposition of the firearm enhancement did not violate **Apprendi**. Although the attempt murder charge did not contain the firearm enhancement, it included the phrase "shot at." Also, the remaining counts, as well as the evidence at trial, made clear that the State was alleging defendant used a firearm, such that in finding him guilty, the jury would have necessarily found defendant eligible for the enhancement.

People v. Thomas, 2017 IL App (1st) 142557 Defendant, who was 18 years old at the time of the offense, was convicted of first degree murder of one victim, attempt first degree murder of another, and attempt armed robbery. Defendant used a firearm that proximately caused the death of the murder victim and proximately caused great bodily harm to the attempt victim. The court sentenced defendant to the minimum sentence of 45 years for murder (20 years plus a 25-year firearm enhancement), a minimum consecutive term of 31 years for attempt murder (six year plus a 25-year firearm enhancement), and a minimum consecutive term of four years for attempt armed robbery, for a total of 80 years. The parties agreed that defendant would have to serve at least 73 years of imprisonment.

The court held that defendant's sentence did not violate the proportionate penalties clause. The two mandatory firearm enhancements in this case totaled 50 years, more than half of defendant's sentence, and the Illinois Supreme Court has upheld the constitutionality of mandatory firearm enhancements under the proportionate penalties clause. In enacting those mandatory enhancements, the legislature properly considered both the seriousness of the use of firearms and the rehabilitative potential when the enhancements are applied. In this case, where defendant was the active shooter and was not convicted based on accountability, his sentence was proper.

People v. Jackson, 2016 IL App (1st) 133823 The sentences for aggravated vehicular hijacking and attempted armed robbery must be vacated because they included firearm enhancements that had been declared unconstitutional at the time of the offenses. Although the General Assembly enacted curative legislation, that legislation did not take effect until several months after the offense. Thus, at the time of the offense the sentencing enhancement had been held unconstitutional.

People v. Gipson, 2015 IL App (1st) 122451 Defendant, who was 15 years old at the time of the offense, was automatically transferred to adult court and convicted of two counts of attempt first-degree murder. The facts at trial showed that defendant approached the driver's side of a car where two victims were sitting and fired shots at one of the victims, hitting him once. At the same time, the co-defendant approached the passenger side of the car and fired shots at the other victim, hitting him several times.

The trial court found that the 20-year enhancement applied to both of defendant's convictions under 720 ILCS 5/8-4(c)(1)(C), requiring that 20 years be added to the sentence where the defendant "personally discharged a firearm" during the commission of the offense. The court imposed the minimum sentence of 26 years (including the 20-year firearm enhancement) for both convictions, to be served consecutively for a total of 52 years.

Defendant argued on appeal that the firearm add-on only applied to one of his convictions since his personal discharge of a firearm injured only one victim and he was

merely accountable for the other attempt murder. The Appellate Court rejected this argument. Although the add-on only applies when an accountable defendant personally discharges a firearm, it does not require that he personally discharge his firearm at the victim or injure the victim. The word "personally" only modifies the clause "discharged a firearm." The trial court thus properly imposed two firearm enchantments in this case.

The Court found, however, that the statutory scheme was unconstitutional as applied to defendant under the proportionate penalties clause of the Illinois Constitution.

People v. Smith, 2014 IL App (1st) 103436 The 15-year-enhancement was held unconstitutional in **People v. Hauschild**, 226 Ill. 2d 63, 871 N.E.2d 1 (2007), but was revived by Public Act 95-688. **People v. Blair**, 2013 IL 114122. The court concluded that the revived enhancement did not apply in this case, however, because P.A. 95-688 became effective after the offense was committed. Thus, the enhancement was revived after the occurrence of the criminal conduct for which defendant was charged.

Generally, an amendment to a statute is presumed to apply prospectively rather than retroactively. This presumption may be rebutted by either express statutory language or necessary implication. A statute which specifies that it is to take effect upon becoming a law does not contain a clear expression of legislative intent that it is to apply retroactively.

Because the proportionate penalties violation identified in **Hauschild** had not been cured at the time of the criminal conduct in question, the 15-year enhancement had not been revived. The sentence for armed robbery was vacated and the cause remanded for re-sentencing.

People v. Guyton, 2014 IL App (1st) 110450 The State charged defendant with first degree murder of one man and attempt first degree murder of another. At trial, defendant argued that he acted in self-defense when he shot the two men. The jury found defendant guilty of second degree murder (based on imperfect self defense) as to the first man and attempt first degree murder of the second. Defendant was sentenced to 18 years' imprisonment for second degree murder and 36 years' imprisonment (including a mandatory 20-year add-on for personal discharge of a firearm) for attempt first degree murder.

On appeal, defendant argued that his 36-year sentence for attempt first degree murder violated due process and equal protection since it "shocks the conscience" to punish an attempt to kill more severely than the completed offense of murder.

The proportionate penalties clause of the Illinois constitution is violated in two ways: (1) where the penalty is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community; and (2) where offenses with identical elements are given different sentences. Defendant's due process argument was based on the first of these tests. He argued that his sentence for attempt first degree murder was grossly disproportionate to the offense, and hence violated due process, since it was twice as long as his sentence for second degree murder.

The Appellate Court rejected this argument. The Illinois Supreme Court has already held that because Illinois does not recognize the crime of attempt second degree murder, it does not violate the first test of the proportionate penalties clause to sentence a defendant to a longer term for attempt first degree murder than for the completed offense of second degree murder. **People v. Lopez**, 166 Ill. 2d 441 (1995). Accordingly, the sentence disparity between the two offenses in this case did not violate due process.

People v. Daniel, 2014 IL App (1st) 121171 The State charged defendant with armed

robbery while armed with a firearm, but the jury was incorrectly instructed that the charge was armed robbery while armed with a dangerous weapon. Defendant argued that due to this instructional error a fact used to enhance his sentence (that he was armed with a firearm) was not properly submitted to the jury as required by **Apprendi v. New Jersey**, 530 U.S. 466 (2000).

An **Apprendi** violation occurred here because the fact of being armed with a firearm (which increased defendant's sentence by 15 years) was never submitted to the jury since the instructions erroneously referred to being armed with a dangerous weapon, not a firearm. This error, however, failed to satisfy either prong of the plain-error test. There was overwhelming evidence that defendant was armed with a firearm, and indeed it was undisputed at trial that he carried a firearm. And the Illinois Supreme Court has specifically held that **Apprendi** errors do not fall within the narrow category of structural errors that qualify for the second prong of plain error. **People v. Crespo**, 203 Ill.2d 335 (2003).

People v. Alvarado, 2013 IL App (3d) 120467 730 ILCS 5/3-6-3(a)(2)(i) provides that an individual who is serving a term of imprisonment for first-degree murder "shall receive no good conduct credit." 730 ILCS 5/5-8-1(a)(1)(iii) provides that a 25-year to natural life term "shall be added to the term of imprisonment imposed by the court" if the defendant personally discharged a firearm which caused great bodily harm, permanent disability, permanent disfigurement, or death.

Under §5-8-1(a), the firearm enhancement is part of the sentence for first-degree murder, and not a separate sentence. Thus, a defendant who receives a sentence for first-degree murder which includes a mandatory firearm enhancement is not eligible for good conduct credit for any part of the sentence.

People v. Butler, 2013 IL App (1st) 120923 "If during the commission of the offense [of first-degree murder], the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court." 730 ILCS 5/5-8-1(a)(1)(d)(3).

A statute is unconstitutionally vague if the terms as so ill defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts. In the context of a vagueness challenge, due process is satisfied if: (1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited; and (2) the statute provides sufficiently definite standards for law enforcement officers and triers of fact that its application does not depend merely on their private conceptions.

The firearm enhancement for first-degree murder provides sufficiently definite standards for its application by triers of fact to withstand a vagueness challenge, even though confusion could be avoided if the legislature provided more explicit guidance. While the enhancement provides for a wide range of sentences, the scope of the sentencing range is clear and definite. The court has no discretion whether to impose the enhancement. The standards for imposing the enhancement are clear. Depending on the injury caused by the firearm, the trial court exercises its discretion to impose a sentence in the 25-years-to-life range, allowing the trial court to engage in fact-based determinations based on the unique circumstances of each case.

The Appellate Court rejected the argument that because all defendants convicted of

first-degree murder cause death, the injury standards of great bodily harm, permanent disability, permanent disfigurement, or death provide the court with no guidance. Situations could exist where the firearm would not be the proximate cause of death.

People v. Flynn, 2012 IL App (1st) 103687 Section 5-8-1(a)(1)(d) of the Unified Code of Corrections provides for three firearm sentencing enhancements for first degree murder: (i) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court; (ii) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court; (iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

Under the plain language of the statute, the 20-year enhancement of subsection (ii) applies to a defendant who is accountable for first degree murder who personally discharges a firearm during its commission. Subsection (i) contains no language limiting its application to persons who personally discharge a firearm, and thus applies to one who is convicted by accountability of committing the offense of first degree murder while armed with a firearm. Subsection (ii) requires that the accountable defendant personally discharge a firearm, but, unlike subsection (iii), contains no language that restricts its application to those who actually cause the injury or death.

Similar enhancements apply to attempt to commit first degree murder. 720 ILCS 5/8-4(c)(1). Defendant was therefore also subject to a 20-year enhancement for attempt first degree murder where he was accountable for that offense and personally discharged a firearm during its commission, even though the shots he fired were not directed toward the victim of the attempt first degree murder.

People v. Smith, 2012 IL App (1st) 102354 Attempt first degree murder is generally a Class X felony which carries a sentence of six to 30 years. However, 720 ILCS 5/8-4(c)(1)(A) authorizes an enhanced Class X sentence of 20 to 80 years for the attempt first degree murder of a peace officer.

In addition, 720 ILCS 5/8-4(c)(1)(B), (C) and (D) authorize mandatory terms of 15 years, 20 years, and 25 years to natural life to be added to the sentence imposed by the trial court for attempt first degree murder. The additional terms are required where the defendant committed attempt first degree murder while armed with a firearm, while personally discharging a firearm, or while personally discharging a firearm which proximately caused great bodily harm, permanent disability, permanent disfigurement, or death.

The court concluded that under the plain language of §5/8-4, the 20-year enhancement for personally discharging a firearm applies to the enhanced Class X sentence under subsection (A) for attempt murder of a peace officer. The court rejected the reasoning of **People v. Douglas**, 371 Ill. App. 3d 21, 861 N.E.2d 1096 (1st Dist. 2007), which concluded that in the absence of some indication that the legislature intended otherwise, the firearm enhancements of subsections (B), (C) and (D) do not apply to the offense of attempt murder of a peace officer.

Thus, where the defendant was convicted of attempt murder of a police officer, the trial court properly applied the 20-year firearm sentencing enhancement for discharging a firearm to the defendant's enhanced 35-year enhanced sentence for attempt murder of a peace officer.

People v. Edgecombe, 2011 IL App (1st) 092690 Defendant was convicted of attempt first-degree murder. By statute, an attempt to commit first-degree murder during which the defendant "personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person" is a Class X felony for which a term of 25 years to natural life shall be added to the term of imprisonment imposed by the trial court. 720 ILCS 5/8-4(c)(1)(D).

The State forfeited any argument that defendant was subject to this mandatory enhancement by failing to request that the jury return a special verdict on whether the State proved the enhancement factor, to ask for imposition of the enhancement at sentencing, and to raise the issue at any post-sentencing proceeding or appeal.

The jury's finding that defendant committed aggravated battery with a firearm of the attempt-murder victim did not supply the requisite finding of the enhancement factor by the jury. To convict defendant of aggravated battery with a firearm, the jury was only required to find that the defendant caused an injury by discharging a firearm. An "injury" is not the same as "great bodily harm, permanent disability, permanent disfigurement, or death." Similarly, to convict defendant of attempt first-degree murder, the jury was required only to find that defendant performed an act constituting a substantial step toward the killing of the victim, which did not require a finding of any injury.

Even if the elements of the enhancement factor and the convicted offenses were identical, the convictions would not suffice for compliance with 725 ILCS 5/111-3(c-5), which requires that the enhancing fact be "submitted to the trier of fact *as an aggravating factor*," not as the elements of an offense. This "statute provides the benefit of placing the defendant on notice as to the exact potential sentencing range he is facing."

People v. Tolentino, 409 Ill.App.3d 598, 949 N.E.2d 1167 (1st Dist. 2011) Attempt first degree murder is a Class X felony which carries a sentence of six to 30 years. However, 720 ILCS 5/8-4(c)(1)(A) authorizes an enhanced Class X sentence of 20 to 80 years for the attempt first degree murder of a peace officer.

In addition, 720 ILCS 5/8-4(c)(1)(B), (C) and (D) authorize mandatory additional terms of 15 years, 20 years, and 25 years to natural life to be added to the sentence imposed by the trial court for attempt first degree murder. The additional terms are required where the defendant committed attempt first degree murder while armed with a firearm, while personally discharging a firearm, or while personally discharging a firearm which proximately caused great bodily harm, permanent disability, permanent disfigurement, or death.

The court concluded that under the plain language of §5/8-4, the 20-year enhancement for personally discharging a firearm applies to the enhanced Class X sentence under subsection (A) for attempt murder of a peace officer. The court rejected the reasoning of **People v. Douglas**, 371 Ill.App.3d 21, 861 N.E.2d 1096 (1st Dist. 2007), which concluded that in the absence of any indication that the legislature intended the firearm enhancements of subsections (B), (C) and (D) to apply to the enhanced sentence under subsection (A), subsections (B), (C) and (D) apply only to simple attempt murder involving a firearm.

In finding that the enhancements applied, the court noted that separate public policy issues are involved in subsection (A) and the firearm enhancement subsections. The court also found that **Douglas** is based on mere speculation concerning the legislature's intent and not on the language of the statute.

People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 (2d Dist. 2010) The proportionate penalties clause of the Illinois Constitution requires that all penalties be determined according to the seriousness of the offense and the objective of restoring the offender to useful citizenship. The proportionate penalties clause is violated if the sentence for an offense is greater than the sentence for an offense composed of identical elements. The court accepted the State's concession that the proportionate penalties clause was violated by the 15-year enhancement for being armed with a firearm while committing aggravating kidnapping, which resulted in a sentencing range of 21 to 45 years, because armed violence predicated on kidnapping is comprised of identical elements but is punishable by a prison term of only 15 to 30 years.

The court rejected defendant's argument that the appropriate remedy was to strike the enhancement and leave intact the 12-year unenhanced sentence. The proper remedy for a proportionate penalties violation is to remand for resentencing to allow the trial court to re-evaluate defendant's sentence in light of the available sentencing options once the unconstitutional provision is omitted. The court noted that at sentencing the trial court did not state that it would have sentenced defendant to 12 years even if the 15-year enhancement was unavailable.

People v. Lavelle, 396 Ill.App.3d 372, 919 N.E.2d 392 (1st Dist. 2009) 730 ILCS 5/5-8-1(a)(1)(d)(iii) provides that a minimum of 25 years shall be added to the sentence imposed for first degree murder where the defendant personally discharged a firearm which proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person. The enhancement was held to be inapplicable here; although the evidence showed that two persons fired at the decedent, it was unclear which person fired the bullet which caused the fatality. Thus, the evidence was insufficient to show that defendant's gunshot was the proximate cause of the death.

§44-10(f)
Other Enhanced Penalties

United States Supreme Court
Erlinger v. United States, 602 U.S. ___, ___ S. Ct. ___ (No. 23-370) Under the Armed Career Criminal Act (ACCA), a defendant may be subject to a more severe sentence for a firearm offense if he has three prior convictions for either violent felonies or serious drug offenses that were committed on separate occasions. The question before the court was whether the judge may decide that the past offenses were committed on separate occasions under a preponderance standard or whether the question must be submitted to the jury for a unanimous finding beyond a reasonable doubt. The court held that the fifth and sixth amendments require the latter.

Here, the State pursued an ACCA sentence against defendant, relying on burglaries he had committed when he was 18. In the district court, the State pointed to evidence that defendant burglarized a pizza shop, sporting goods store, and two restaurants within a span of days, and argued that each occurred on a different occasion and thus satisfied the ACCA. Defendant, on the other hand, argued that the burglaries had occurred during a single criminal episode and thus were not committed on separate occasions. And, defendant argued that a jury should make the ultimate determination on that issue. The district court rejected that request, however, and went on to find that each of his burglaries occurred on a separate

occasion, thus qualifying him for a lengthier sentence under the ACCA. And, the Seventh Circuit affirmed, despite the government's confession of error in that court.

Given the government's concession the Supreme Court appointed an *amicus* to defend the judgment below. Ultimately, the court agreed with defendant that the "occasions" determination must be made by a jury and requires proof beyond a reasonable doubt, relying heavily on its prior decisions in **Apprendi v. New Jersey**, 530 U.S. 466 (2000) and **Alleyne v. United States**, 570 U.S. 99 (2013). In reaching this conclusion, the court rejected the *amicus*'s argument that the occasions inquiry is merely a fact related to past offenses and thus appropriate for a judicial determination under **Almendarez-Torres v. United States**, 523 U.S. 224 (1998). The occasions inquiry will often be more complicated than the narrow determination of whether defendant was previously convicted and of what offense; it can involve questions of timing and location, as well as "a qualitative assessment about 'the character and relationship' of the offenses."

Justice Kavanaugh authored a dissent, joined by Justices Alito and Jackson, on the basis that **Almendarez-Torres** should permit the judge to make the occasions finding under the ACCA. Justice Jackson separately dissented on the basis that **Apprendi** was wrongly decided because juries are ill equipped to "deal with the fine-grained, nuanced determinations" required to adjudicate complex factual questions such as the occasions-inquiry here.

Burgess v. United States, 553 U.S. 124, 128 S.Ct. 1572, 170 L.Ed.2d 478 (2008) The Federal Controlled Substances Act doubles the mandatory minimum sentence for certain drug offenses if defendant has been previously convicted of a "felony drug offense." A State drug conviction constitutes a "felony drug offense" if it is punishable by a prison sentence in excess of one year, even if the offense was classified as a misdemeanor by state law.

Begay v. United States, 553 U.S. 137, 128 S.Ct. 1581, 170 L.Ed.2d 490 (2008) New Mexico felony offense of DUI is not a "violent felony" under the section of the Armed Career Criminal Act imposing special mandatory 15-year prison term on felons who unlawfully possess a firearm and who have three or more convictions for violent felonies. Whether a crime is a "violent felony" is determined by the definition of the crime, not the manner in which an individual might have committed it. As defined by New Mexico law, DUI was a felony because of defendant's prior record, not because the offense involved the use of physical force against another person. Even if DUI could be presumed to involve conduct which presents a serious risk of physical injury, it is "simply too unlike" the other crimes listed in the statute to be included in the definition of a "violent felony." The inclusion of specified crimes within the Act indicates that the statute was intended to cover only similar crimes, and not every crime which presents a serious potential risk of physical injury.

Illinois Supreme Court

People v. Lane, 2023 IL 128269 Defendant was convicted of murder and intentional homicide of an unborn child arising out of his shooting and killing his pregnant girlfriend. At issue was whether 730 ILCS 5/5-8-1(a)(1)(c)(ii) applied to mandate a sentence of life in prison or not.

> Section 5-8-1(a)(1)(c)(ii) provides that:
> ...the court shall sentence the defendant to a term of natural life imprisonment...if the defendant,...at the time of the commission of the murder,

had attained the age of 17 or more and...is found guilty of murder of more than one victim.

The circuit court imposed a life sentence based on this provision. Defendant appealed, arguing that because he was only convicted of one murder, this section does not apply.

The appellate court agreed with the circuit court and upheld defendant's life sentence. The appellate court pointed to the penalty provision of 720 ILCS 5/9-1.2(d), which provides that "the sentence for intentional homicide of an unborn child shall be the same as for first degree murder...," as indicative of the legislature's intent to treat it as "another form of first degree murder."

In the Supreme Court, the State conceded that intentional homicide of an unborn child is not murder, essentially abandoning the appellate court's holding. But, the State argued that defendant's life sentence should be affirmed because Section 9-1.2(d) effectively amends Section 5-8-1(a)(1)(c)(ii) and requires a life sentence where a defendant is convicted of both murder and intentional homicide of an unborn child. The Supreme Court disagreed.

Just as sentencing provisions do not change the classification of an offense, the sentencing provision of the intentional homicide of an unborn child statute could not convert that offense into a type of murder for purposes of the multiple-murder sentencing statute. Because defendant was found guilty of only one murder, his life sentence was vacated and the matter was remanded for resentencing.

The dissent would have found that treating intentional homicide of an unborn child the "same" as murder for sentencing purposes, pursuant to the plain language of Section 9-1.2(d), should have led to defendant's sentence being affirmed because any sentence other than life here actually treats intentional homicide of an unborn child as different from murder rather than the same.

People v. Taylor, 2023 IL 128316 The firearm enhancements of the attempt statute, 720 ILCS 5/8-4(c)(1)(B)-(D), can be imposed in conjunction with the already-enhanced sentence for attempt murder of a peace officer, 720 ILCS 5/8-4(c)(1)(A). Applying both does not constitute an improper double enhancement. Under the plain language of the statute, section 8-4(c)(1)(A) sets forth the baseline sentence for attempt murder of a peace officer, and other aggravated forms of attempt murder, of 20-to-80 years of imprisonment. Subsections (B)-(D) of that section then provide firearm enhancements which "shall be added to the term of imprisonment imposed by the court." Thus, the plain language supports the conclusion that both the increased baseline sentence and the firearm enhancements can be applied together.

Further, this interpretation is consistent with the legislature's intent to punish attempt murder of a peace officer more severely than the same offense against an ordinary citizen. And, adopting defendant's interpretation could result in circumstances where the minimum sentence for attempt murder of a peace officer (20 years, no firearm enhancement) could actually be less than the minimum for attempt murder of an ordinary citizen (26 years, consisting of 6-year minimum and 20-year mandatory firearm enhancement), where both involved firearms. There was no error here where the court imposed a 30-year base sentence and a 20-year firearm enhancement.

People v. Smith, 2015 IL 116572 The court concluded that **People v. White**, 2011 IL 109616, which held that the trial court must impose a mandatory sentencing enhancement which is supported by the factual basis for a guilty plea even if the plea agreement provides that the enhancement will not be sought, imposed a "new" rule that does not apply retroactively to convictions which were already final when **White** was decided.

People v. Zimmerman, 239 Ill.2d 491, 942 N.E.2d 1228 (2010) 720 ILCS 5/24-1.6(a)(3)(D) creates the offense of aggravated unlawful use of a weapon for possession of a weapon by a person who has been adjudicated delinquent for an act which would have been a felony if committed by an adult. The court concluded that the plain language of §24-1.6 establishes that the prior juvenile adjudication is an element of aggravated unlawful use of a weapon, and not merely a factor enhancing the sentence for misdemeanor unlawful use of a weapon.

The court noted that §24-1.6 defines the offense of aggravated unlawful use of a weapon, and does not merely enhance the sentence for misdemeanor UUW, which is defined in a different section. The court also noted that §24-1.6 contains eight other factors, all of which constitute elements of the offense, and that it would have been illogical for the General Assembly to include one sentence enhancing factor.

Because the prior juvenile adjudication was an element of the offense, 725 ILCS 5/111-3(c) does not apply. (Section 111-3(c) states that the charge must include a prior conviction used to enhance the sentence for an offense, but the prior conviction is not to be disclosed to the jury.) Thus, the trial court did not err by informing the jury of a stipulation that defendant had a prior juvenile adjudication which satisfied the requirement of the offense.

People v. Donoho, 204 Ill.2d 159, 788 N.E.2d 707 (2003) The trial court's enhancement of defendant's sentence for criminal sexual assault (under 720 ILCS 5/12-13(b)(4)) from a Class 1 felony to a Class X felony, based on defendant's prior conviction of indecent liberties with a child, was improper. Section 12-13(b)(4) provides that a second or subsequent conviction of certain criminal sexual assaults, or of convictions "under any similar statute of this State or any other state for any offense involving criminal sexual assault that is substantially equivalent to or more serious than the sexual assault prohibited" under certain subsections of the Illinois statute, constitutes a Class X felony. Under this statute, criminal sexual assault may be enhanced to a Class X felony for sentencing only if defendant's prior conviction is for criminal sexual assault, aggravated criminal sexual assault, or rape.

People ex rel. Daley v. Strayhorn, 119 Ill.2d 331, 518 N.E.2d 1047 (1988) A natural life sentence is mandatory for a defendant convicted of multiple murders. See also, **People v. Taylor**, 102 Ill.2d 201, 464 N.E.2d 1059 (1984) (statute requiring a sentence of natural life upon a conviction for murdering more than one victim does not violate Art. I, §11 of the Illinois Constitution).

Illinois Appellate Court

People v. Lane, 2022 IL App (1st) 182672 Defendant was convicted of first degree murder and intentional homicide of an unborn child, after fatally shooting Jwonda Thurston, whom he knew was three months pregnant. He was sentenced to two concurrent terms of natural life.

Defendant argued that he was not subject to mandatory natural life sentencing for being found guilty of murdering more than one victim under 730 ILCS 5/5-8-1(a)(1)(c)(ii). Defendant asserted that the homicide of the unborn child was not a "murder" and the unborn child was not a "victim," within the meaning of the statute.

Section 5-8-1(a)(1)(c)(ii) provides, "[f]or first degree murder, the court shall sentence the defendant to a term of natural life imprisonment if the defendant, at the time of the commission of the murder, had attained the age of 18, and is found guilty of murdering more

than one victim." And, the intentional homicide of an unborn child statute provides that the sentence shall be the same as for first degree murder. 720 ILCS 5/9-1.2(d).

The court concluded that the two statutes, considered together, require a life sentence where a defendant is found guilty of both first degree murder and intentional homicide of an unborn child, particularly given the language that the available sentences for the two offenses shall be the same. The court also noted that the first degree murder and intentional homicide of an unborn child statutes use nearly identical language in setting forth the elements of the offenses, demonstrating the legislature's intent to treat the unborn child offense as another form of first degree murder despite the fact that it is not called "murder" in the statute.

The court also rejected defendant's argument that the unborn child is not a "victim" for purposes of the mandatory life sentencing statute, noting it was similar to the one-act, one-crime argument rejected on like facts in **People v. Shum**, 117 Ill. 2d 317 (1987). Both the mother and the fetus qualified as victims of the separate offenses here.

People v. Belmont, 2018 IL App (2d) 150886 On appeal following his open plea of guilty to murder and aggravated criminal sexual assault with a dangerous weapon, defendant challenged for the first time his 12-year sentence for the sexual assault offense because it was improperly low. Aggravated criminal sexual assault with a dangerous weapon is a Class X felony which also requires the addition of 10 years to the sentence because of the use of the dangerous weapon, making the minimum term 16 years of imprisonment.

The Appellate Court declined to find plain error, and thus denied resentencing, because defendant was not prejudiced by the too-low sentence and he was not denied a fair sentencing hearing. The Court noted that the outcome of the sentencing hearing was only unfair to the State. In response to defendant's argument that his sentence remained uncertain because the State might seek to increase his sentence via *mandamus* at some future date closer to his release, the Appellate Court noted that any such action by the State would be subject to a valid *laches* argument. The Appellate Court also accepted a concession from the State that it would be estopped from seeking an increased sentence in the future based on the State's opposition to defendant's arguments in the instant appeal.

People v. Smith, 2016 IL App (1st) 140496 Defendant was convicted of Unlawful Use of a Weapon by a felon, which carries a Class 2 felony sentence when committed by a person who is not confined in a penal institution but who has been convicted of a forcible felony. 720 ILCS 5/24-1.1(e). The court concluded that because in 1990 the legislature amended the definition of "forcible felony" to include only aggravated batteries resulting in great bodily harm or permanent disability or disfigurement, it did not intend that all aggravated batteries were included in the definition of "forcible felonies." Thus, where defendant's prior conviction of aggravated battery to a peace officer was based on aggravated battery causing bodily harm to a police officer and not on great bodily harm or permanent disability or disfigurement, it was not a forcible felony.

The court rejected the argument that aggravated battery of a peace officer is a forcible felony under the residual clause for felonies that are not specifically listed but which involve the use or threat of violence or force. The court concluded that the residual clause is limited to offenses that are not specifically listed in the statute.

Because the trial court erred by using the prior conviction to enhance the aggravated battery conviction to a Class 2 offense, the cause was remanded for re-sentencing on a Class 3 felony.

People v. Whalum, 2014 IL App (1st) 110959-B Section 111-3(c) of the Code of Criminal Procedure requires the prosecution to specifically state in the charging instrument its intention to seek an enhanced sentence based on a prior conviction. 725 ILCS 5/111-3(c). In **People v. Easley**, 2014 IL 115581, the Illinois Supreme Court held that notice to defendant under section 111-3(c) only applies when the prior conviction used to enhance the sentence is not an element of the offense.

Both **Easley** and the present case involved the offense of unlawful use of a weapon by a felon (UUWF). 720 ILCS 5/24-1.1(a). To prove UUWF the State must show that defendant possessed a weapon or ammunition and had a prior felony conviction. The sentence for UUWF is dictated by subsection (e) and depends on the nature of the prior felony. If the prior felony is UUWF or a number of other felonies listed in subsection (e) (including forcible felonies and a Class 2 or greater felony drug offense), then UUWF is a Class 2 felony; otherwise it is a Class 3 felony.

In **Easley** the charging instrument specifically listed UUWF as the prior felony that would be used to prove the prior conviction element of the offense. Here, by contrast, the prior felony was a drug conviction from Wisconsin. The Appellate Court held that this prior offense did not fall under any of the felonies listed in subsection (e) and therefore the prior conviction did not make defendant's UUWF offense a Class 2 felony.

Because the State relied on another prior conviction (other than the prior Wisconsin drug conviction that was charged as an element of the offense) to enhance defendant's sentence to a Class 2 felony, **Easley** did not control the outcome of this case. Instead, the State was required to provide defendant with notice under section 111-3(c) that it intended to seek an enhanced sentence. Since it failed to do so, defendant's case was remanded for re-sentencing as a Class 3 felon.

People v. Anderson, 402 Ill.App.3d 186, 931 N.E.2d 773 (3d Dist. 2010) 730 ILCS 5/5-8-1(d)(5) requires a four-year-term of mandatory supervised release where the defendant is convicted of a "second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse" and the victim was under the age of 18. A defendant who pleads guilty in a single proceeding to separate counts of aggravated criminal sexual abuse stemming from a single incident has not been convicted of a "second or subsequent offense," and is therefore not subject to an enhanced MSR term.

Although §5-8-1(d)(5) concerns the enhancement of an MSR term, the court applied principles which govern the enhancement of other sentences after the commission of subsequent crimes. Under these principles, an enhanced MSR term is available under § 5-8-1(d)(5) only if the second or subsequent offense occurs after the first conviction has been entered.

People v. Winningham, 391 Ill.App.3d 476, 909 N.E.2d 363 (4th Dist. 2009) 625 ILCS 5/11-501(d)(2), which requires a sentence of 3 to 14 years imprisonment for aggravated driving under the influence which results in death unless the court determines that "extraordinary circumstances exist and require probation," is neither unconstitutionally vague on its face nor unconstitutionally vague because it is susceptible to arbitrary and discriminatory application.

People v. Carmichael, 343 Ill.App.3d 855, 799 N.E.2d 401 (1st Dist. 2003) Defendant's sentence for unlawful use of a weapon by a felon could not be enhanced due to a prior armed

violence conviction because armed violence is a "forcible felony" only where it is committed by the use or threat of violence and the State failed to present any evidence of the circumstances of the previous arrest. Resentencing was required because it was unclear from the record whether the sentence was influenced by the trial court's mistaken belief that a Class 2 sentencing range applied.

People v. West, 323 Ill.App.3d 858, 753 N.E.2d 510 (1st Dist. 2001) Statute mandating a natural life sentence for first degree murder where defendant has been previously convicted of first degree murder under a state or federal law requires a natural life sentence where defendant pleaded guilty to "murder" before the name of that offense was changed to "first degree murder."

People v. Jones, 306 Ill.App.3d 793, 715 N.E.2d 256 (2d Dist. 1999) A defendant is subject to a Class 4 felony sentence for domestic battery where he has a previous "violation" of the domestic battery statute, whether or not the prior violation resulted in a criminal conviction.

People v. Dicostanzo, 304 Ill.App.3d 646, 710 N.E.2d 173 (1st Dist. 1999) Statute authorizing enhancement of retail theft under $150 to a Class 4 felony when defendant has a prior conviction of any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools, or home invasion does not include attempt burglary. Alternatively, the court found that inchoate offenses (including attempt) are not "types" of completed offenses, because "inchoate forms of offenses lack fulfillment of intent or completion."

People v. Gapski, 283 Ill.App.3d 937, 670 N.E.2d 1116 (2d Dist. 1996) Judge erred by imposing Class X sentence under 720 ILCS 5/12-13(b) based on a Wisconsin conviction for second degree sexual assault. The evidence concerning the Wisconsin offense showed that had the offense been charged in Illinois, it would have been aggravated criminal sexual abuse (a Class 2 felony) rather than criminal sexual assault. Because the Wisconsin defense was not "substantially equivalent to or more serious" than the instant offense, defendant was not eligible for a Class X sentence.

People v. Austin, 267 Ill.App.3d 469, 641 N.E.2d 970 (1st Dist. 1994) Trial judge erroneously sentenced defendant to natural life under Ch. 38, §1005-8(1)(a)(1)(b), which permits a natural life sentence where death penalty aggravating factors are present but a death sentence was not imposed. The judge found that Ch. 38, §9-1(b), which makes a defendant eligible for death where he was been convicted of murdering "two or more individuals under subsection (a) of this Section or any law . . . of any state which is substantially similar to subsection (a) of this Section," applied because defendant had been convicted of second degree murder in Michigan in 1977. But, because Michigan does not recognize the defense of imperfect self-defense, a second degree murder conviction from Michigan is not "substantially similar" to first degree murder in Illinois. Therefore, the natural life sentence was improper.

People v. Magnus, 262 Ill.App.3d 362, 633 N.E.2d 869 (1st Dist. 1994) Statute requiring natural life sentence for first degree murder where defendant "is found guilty of murdering more than one victim" requires a natural life sentence only where defendant is found guilty of multiple *first* degree murders, and not where he is convicted of two murders of differing

degrees. Because defendant here had been convicted of one first degree murder and one second degree murder, a natural life sentence was not mandatory.

People v. Gaines, 235 Ill.App.3d 239, 601 N.E.2d 949 (1st Dist. 1992) Natural life sentence based on aggravating factor that defendant was the triggerman and the offense occurred during an armed robbery vacated where the State failed to prove that defendant was the triggerman. The only witness to so identify defendant had a brief opportunity to observe the offense, was under the influence of marijuana and alcohol, gave incredible testimony concerning his location and actions, and had never met defendant or his co-defendant. Further, there was substantial evidence that co-defendant fired the fatal shots.

People v. Phillips, 56 Ill.App.3d 689, 371 N.E.2d 1214 (5th Dist. 1978) The trial court erred by imposing an enhanced penalty (under Ch. 56½, §1408) where defendant was convicted twice on the same day for drug offenses. An enhanced penalty may only be imposed when: (1) defendant is convicted of a specified drug offense, (2) defendant then commits another drug offense which leads to his second or subsequent conviction, and (3) the enhanced penalty provision is specifically invoked by the trial court when imposing sentence.

§44-11
Delay in Execution of Sentence

Illinois Supreme Court
People v. Sanders, 131 Ill.2d 58, 544 N.E.2d 788 (1989) The trial court did not lose jurisdiction to impose sentence four and a half years after defendant's conviction where the delay was largely attributable to defendant's own actions.

Walker v. Hardiman, 116 Ill.2d 413, 507 N.E.2d 849 (1987) Once the appellate court mandate is spread of record in the circuit court, any delay is attributable to defendant rather than the State; thus, the delay after the State requested issuance of the appellate court mandate and moved that it be spread of record in the circuit court was chargeable to defendants. See also, **Crump v. Lane**, 117 Ill.2d 181, 510 N.E.2d 893 (1987); **People v. Santos**, 146 Ill.App.3d 818, 497 N.E.2d 374 (1st Dist. 1986).

People ex rel. Millet v. Woods, 55 Ill.2d 1, 302 N.E.2d 32 (1973) Petitioner was convicted in 1963 and released on appeal bond. His conviction was affirmed, and leave to appeal was denied in 1965. Petitioner, who was employed at all times, surrendered himself to the Sheriff in 1970. Writ of *habeas corpus* issued discharging petitioner, because an unreasonable delay between pronouncement and imposition of sentence may be a circumstance warranting release. There was no reasonable explanation for the delay, and incarceration at such a late date would not serve the principles of fundamental justice or petitioner's rehabilitation.

People ex rel. Rudin v. Ruddell, 46 Ill.2d 248, 263 N.E.2d 48 (1970) An undue delay between entry of judgment and execution of sentence deprives a court of jurisdiction. Here, a three-year-delay was unexplained and unreasonable. Petitioner discharged.

Illinois Appellate Court
People v. Schlabach, 2012 IL App (2d) 100248 Seven years after the court had entered no sentence on an aggravated DUI conviction per a plea agreement, the defendant filed a §2-

1401 petition seeking vacation of his conviction. The court rejected defendant's argument that due process required that the conviction be vacated due to the extraordinary delay in sentencing.

Unlike cases where the court unreasonably delayed pronouncing sentence, the court in this case did not arbitrarily delay sentencing or attempt to retain jurisdiction indefinitely. Defendant controlled the timing of the filing of his §2-1401 petition, which restored jurisdiction to the trial court.

People v. Williams, 309 Ill.App.3d 1022, 723 N.E.2d 852 (2d Dist. 2000) Where no specific time limits are provided by law, "reasonable promptness" is required. A trial court may not indefinitely postpone a criminal proceeding. Whether a particular delay is unreasonable depends on the circumstances of the case. Here, defendant bore no responsibility for the four-year delay before sentencing, though defendant requested a continuance for an alcohol dependency evaluation, where the judge agreed to defendant's request but mistakenly set sentencing for a Saturday and the State offered no explanation for its failure to correct the error for four years. Defendant had no obligation to request a sentencing hearing or otherwise alert the trial court to its scheduling error.

Also, a "trial court has the inherent authority to dismiss the charge when an unreasonable delay clearly violates a defendant's due process rights."

People v. Tonaldi, 297 Ill.App.3d 116, 696 N.E.2d 1184 (2d Dist. 1998) Due process was not violated where a 22-month delay occurred between the time the appellate court issued its mandate and the State moved for defendant to surrender his appeal bond. Defendant had a duty to surrender, regardless of whether the State moved to spread the mandate of record, where defendant signed an appeal bond requiring him to surrender if the judgment was affirmed, the mandate was properly filed in the circuit court, and defendant had actual knowledge that the court had affirmed the judgment. See also, **People v. Barrett**, 307 Ill.App.3d 812, 718 N.E.2d 341 (4th Dist. 1999).

Alternatively, the facts did not warrant discharging the judgment as a matter of due process. Illinois law permits a sentence to be vacated where, due to the passage of time, incarceration would serve neither the principles of fundamental justice nor defendant's rehabilitation. The changes in defendant's life, which included the absence of any further arrests and the fact that defendant's daughter was recovering from cancer, did not meet this standard.

In re E.J., 78 Ill.App.3d 918, 397 N.E.2d 918 (4th Dist. 1979) Respondent was adjudicated delinquent and committed to the Department of Corrections. The order was not executed for about three years, and the commitment order was then executed without a new dispositional hearing. Remanded for a hearing to determine whether sound reasons existed for execution of the commitment order after such a lengthy delay.

§44-12
Modification of Sentence by Trial Judge

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order

or other parts of record resulting in discrepancy between record and actual judgment of the court.

Illinois Supreme Court

People v. Kilpatrick, 167 Ill.2d 439, 657 N.E.2d 1005 (1995) After defendant was sentenced to consecutive terms of six years and nine years, the trial court granted his motion to reconsider sentences, which alleged that consecutive sentences were improper. The trial court vacated the consecutive sentences and imposed a single sentence of 15 years on the two counts. This was an improper increase in defendant's sentence.

The Court rejected the State's argument that a sentence is not "increased" so long as the total aggregate of the sentences remains the same. The date on which a defendant becomes eligible for release may change with a single, longer sentence, and a criminal defendant should not "have to run the risk that a challenge to his consecutive sentencing will result in a resentencing of increased length."

See also, **People v. Jones**, 168 Ill.2d 367, 659 N.E.2d 1306 (1995) (affirming **Kilpatrick**, and finding that the trial court erred by replacing consecutive 25-year sentences with a single 30-year sentence to cure its error of failing to admonish defendant at time he pled guilty of the possibility of consecutive sentences); **People v. Knowles**, 76 Ill.App.3d 1004, 395 N.E.2d 706 (5th Dist. 1979) (the trial court improperly increased defendants' sentences (four concurrent terms of imprisonment) 11 days after the sentences were imposed by making them consecutive; resentencing defendants from concurrent to consecutive sentences "was in the very real sense an increase in the length of [their] sentence because [their] earliest possible parole release will necessarily be delayed"); **People v. Didier**, 306 Ill.App.3d 803, 715 N.E.2d 321 (2d Dist. 1999) (statute prohibiting a court from increasing a sentence once it has been imposed was not violated where the trial court modified concurrent 10-year sentences to consecutive terms of three and seven years).

People ex rel. Carey v. Collins, 81 Ill.2d 118, 405 N.E.2d 774 (1980) The trial court lacked jurisdiction to reduce defendant's sentences pursuant to defendant's motion after defendant filed a notice of appeal and the reviewing court affirmed defendant's convictions and issued its mandate. Sentence reductions were vacated and trial court was ordered to issue a new mittimus conforming to the original sentences.

People v. Hills, 78 Ill.2d 500, 401 N.E.2d 523 (1980) The trial judge may not make any "modification" or "correction" that has the effect of increasing the sentence. Thus, a subsequent denial of sentence credit is improper.

People ex rel. Carey v. Rosin, 75 Ill.2d 151, 387 N.E.2d 692 (1979) A trial judge is without power to reduce or modify a sentence in a proceeding commenced more than 30 days after the sentence was originally imposed. The trial court erred in granting defendant's motion to modify his unexecuted misdemeanor sentence, on grounds not raised or addressed by the appellate court, after receiving the appellate court's mandate.

Illinois Appellate Court

People v. Smith, 2022 IL App (2d) 200055 Defendant pled guilty to two counts of aggravated DUI, receiving two consecutive six-year terms. After sentencing, the court agreed that the charges must merge under the one-act, one-crime rule. The court vacated the sentences and merged the counts. Defendant received a nine-year sentence on the one remaining count.

The Appellate Court reduced the sentence to six years. Pursuant to **North Carolina v. Pearce**, 395 U.S. 711 (1969), and section 5-4.5-50(d) of the Code of Corrections, a sentencing court may not increase the defendant's sentence unless the increase is based on defendant's conduct after the time of the original sentencing proceeding. Here, for purposes of resentencing, the original sentence was the six years of imprisonment imposed on the remaining count, not the 12-year aggregate length of the consecutive sentences. **People v. Kilpatrick**, 167 Ill. 2d 439 (1995). Thus, the nine-year term represented an improper increase.

People v. Amans, 2018 IL App (2d) 170405 Defendant pled guilty to possession of cannabis and was sentenced to four years of imprisonment. The court subsequently granted defendant's motion to reconsider and reduced his sentence to 48 months of probation. Then, on the State's motion, the court vacated the probation sentence and reimposed the original four-year prison term, concluding it had erred in considering defendant's intervening good conduct when it reduced the sentence. While the State can move to reconsider a sentence that does not conform to the law, the probation sentence was not illegal. The court violated 730 ILCS 5/5-4.5-50(d) by granting the State's motion to reconsider because it increased defendant's sentence.

People v. Sweeney, 2012 IL App (3d) 100781 730 ILCS 5/5-8-1 permits the trial court to modify or reduce the sentence within 30 days after it is imposed. The authority of the trial court to modify a sentence terminates after 30 days. Here, the trial court acted without authority where 45 months after the original sentence was entered and stayed, it vacated the original sentence and imposed a 30-month term of probation. Because the 30-month term of probation was void, it was required to be vacated.

People v. Gray, 363 Ill.App.3d 897, 845 N.E.2d 113 (4th Dist. 2006) Requirement that the judge who presided at the trial or who accepted the guilty plea "shall impose a sentence" upon a probation revocation unless he or she is no longer sitting as a judge is directory, not mandatory. The judge improperly increased defendant's sentence when the judge who had ordered the revocation vacated the sentence the presiding judge had imposed and substituted a longer term.

People v. Wyatt, 305 Ill.App.3d 291, 712 N.E.2d 343 (2d Dist. 1999) Although a motion to reconsider sentence must be filed within 30 days after sentencing, a court may grant a continuance if required by the interests of justice. Here the judge granted a continuance because defense counsel needed additional time to communicate with defendant, who was in the Department of Corrections.

People v. Taggart, 268 Ill.App.3d 84, 644 N.E.2d 31 (2d Dist. 1994) A *pro se* motion to reduce sentence that was filed within 30 days of sentencing, but not called to the trial court's attention until after the direct appeal was finished (more than four years later), was not effectively made. The proponent of a motion to reduce sentence must "exercise due diligence in seeking a determination on the motion and the court shall thereafter decide such motion within such reasonable time." A notice of hearing must also be filed with the motion. Because defendant did not comply with the statutory requirements, the trial court did not err by denying the motion to reduce sentence. See also, **People v. Jennings**, 279 Ill.App.3d 406, 664 N.E.2d 699 (4th Dist. 1996) (the trial court did not err by failing to act on *pro se* motion

to reduce sentence where defendant made no effort to bring it to trial court's attention by arranging for a hearing on the motion).

People v. Hook, 248 Ill.App.3d 16, 615 N.E.2d 6 (2d Dist. 1993), which held that a motion to reduce the sentence filed while a notice of appeal is pending can be treated as an "implicit dismissal" of the appeal, did not apply where the trial court failed to decide the motion because defendant never sought a ruling. Thus, defendant's failure to timely request a hearing was not excused under **Hook**.

People v. Elliott, 225 Ill.App.3d 747, 587 N.E.2d 639 (4th Dist. 1992) Trial court lacked authority to change defendant's sentence after he pled guilty from sentence of two-year term of periodic imprisonment consisting of work release while confined in the county jail (a sentence which violated the limit on term of periodic imprisonment to one year) to sentence of two years' probation with the first year to be served on work release. "[T]he trial court was without power to do anything other than to reduce defendant's sentence to the maximum periodic imprisonment allowed by law and, thus, correct the error in the original sentence."

§44-13
Misapprehension of Range; Unauthorized Sentences; Void/Voidable

Illinois Supreme Court
People *ex rel* Smith v. Tobin, *et al.*, 2025 IL 131213 Casey Ross was found guilty of driving while license revoked. Because Ross also had two prior convictions for driving while license revoked, the Illinois Vehicle Code (IVC) required a sentence of "a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court." 625 ILCS 5/6-303(d-1). The County Jail Good Behavior Allowance Act (Behavior Act) provides that defendants imprisoned for offenses with a "mandatory minimum sentence" cannot be given good-behavior credit that would reduce the sentence below the mandatory minimum.

Here, Judge Tobin found that because the IVC permitted community service as a sentence, it did not establish a mandatory minimum and thus authorized him to impose a lesser jail term of 14 days, with good-behavior credit to apply. The State's Attorney, Smith, responded by filing the instant *mandamus* action in the Illinois supreme court, asking the court to direct the circuit court to enter a sentence that complies with the IVC and the Behavior Act.

The court first held that the language of Section 6-303(d-1) of the IVC is unambiguous. The circuit court has discretion to sentence a defendant to either a term of imprisonment or a term of community service. If the judge chooses incarceration, the sentence must be for at least 30 days, and if the judge chooses community service, it must be for at least 300 hours. The statute does not permit the court to impose a term of imprisonment less than 30 days.

Similarly, Section 3 of the Behavior Act is unambiguous in excepting from the general day-for-day credit provision any person "sentenced for an offense for which the law provides a mandatory minimum sentence" to the extent that the credit would reduce the sentence served below the mandatory minimum. Accordingly, Ross can not earn good-behavior credit against his sentence if such credit would result in his being released before serving the mandatory minimum of 30 days of imprisonment.

In reaching this conclusion, the court disavowed language from **People v. Smith**, 2013 IL App (3d) 110477. The issue before the court in **Smith** was whether that defendant was entitled to credit for time served against his jail sentence for resisting or obstructing a peace officer under 720 ILCS 5/31-1(a-5), which requires a minimum of either 48 consecutive

hours of imprisonment or at least 100 hours of community service. The majority held that, in accordance with 730 ILCS 5/5-4.5-100(b), the defendant was entitled to credit for time spent in custody before sentencing. In response to the special concurrence's discussion of the possibility of good-behavior credit, the majority stated that Section 31-1(a-5) did not set a mandatory minimum because the court also had discretion to impose community service. This statement had no bearing on the dispositive holding in **Smith** and thus was *obiter dicta*. The supreme court clarified that both section 6-303(d-1) of the IVC and section 31-1(a-5) of the Criminal Code set mandatory minimum sentences if the court chooses to impose a term of imprisonment.

Because the circuit court sentenced Ross to a term that failed to comply with the statutorily required mandatory minimum, the court vacated the sentencing order and issued a writ of *mandamus* directing the circuit court to resentence Ross in compliance with the IVC and the Behavior Act.

People v. Yankaway, 2025 IL 130207 Defendant received a sentence of 44 years for attempted murder. The offense was a Class X felony with a range of six to 30 years, and the jury found that defendant possessed a gun during the commission of the crime, requiring a 15-year add-on. At sentencing, the court stated that the minimum sentence was 26 years rather than 21, apparently under the misconception that the defendant received a 20-year add-on for discharge of the firearm.

Defendant argued the sentencing court committed plain error by sentencing defendant under an inaccurate sentencing range. The appellate court held that defendant could not show the mistaken range influenced the sentence. The supreme court agreed. In so finding, the supreme court looked to the sentencing court's oral pronouncements at sentencing: it believed defendant was "overwhelmingly guilty," that his crime was "stunning" because he shot at his cousin and friends, that based on his record, he strikes fear not only in the community, but in his own family, and that defendant was "the reason prisons are built." Based on these statements, defendant could not establish "he would have received a lower sentence but for the court's misunderstanding; therefore he cannot satisfy his burden of showing a clear and obvious error."

People ex rel. Berlin v. Bakalis, 2018 IL 122435 Frank Gilio entered an open plea to violating an order of protection and was sentenced to 3 years of imprisonment and a year of MSR. When the State later learned that the one-year MSR term was improper and a 4-year MSR term was mandated by statute, the trial court corrected the mittimus to reflect the proper MSR term at the State's request. The court subsequently vacated that correction in light of **Castleberry**'s abrogation of the void sentence rule, and the State sought a writ of *mandamus*.

Gilio agreed that correction of the MSR term was required but requested a complete resentencing, arguing that the trial judge might have imposed a lesser prison term had he known of the longer MSR requirement. The Supreme Court rejected Gilio's assertion, noting that the trial court had not indicated a desire to reconsider the prison term when it originally corrected the MSR term and thus there was no likelihood that the trial court would decrease the prison sentence. *Mandamus* was awarded.

In the *mandamus* action, the State also asked the Supreme Court to announce a new rule that would allow "statutorily unauthorized sentences to be corrected at any time by motion in the circuit court" to "fill the void" from **Castleberry**'s abrogation of the void sentence rule. The Court declined to bypass the normal rulemaking process set out in Illinois

Supreme Court Rule 3. Instead, the Court referred the State's proposal to its rules committee.

People ex rel Alvarez v. Gaughan, 2016 IL 120110 *Mandamus* is an extraordinary remedy used to compel a public official to perform a nondiscretionary official duty. The Supreme Court will award *mandamus* only where there is a clear right to the relief requested, the public official has a clear duty to act, and there is clear authority requiring the official to comply with the writ.

At sentencing, the trial court/respondent refused to apply a mandatory 15-year firearm enhancement to defendant's sentence. On appeal, the State successfully argued in the Appellate Court that the sentence was void. The Supreme Court however granted leave to appeal in this case and struck down the void judgment rule. **Castleberry**, 2015 IL 116916. The Cook County State's Attorney then filed a petition for writ of *mandamus* asking the Supreme Court to order the trial court/respondent to impose the mandatory firearm enhancement.

Defendant made three arguments in opposition to the writ of *mandamus*: (1) the writ was barred by *laches*; (2) there was no clear right to relief; and (3) the Cook County State' Attorney did not have standing to sue in the Supreme Court on behalf of the People of the State of Illinois. The Supreme Court rejected all three arguments. The Court awarded the writ of *mandamus* ordering the trial court/respondent to resentence defendant and apply the mandatory firearm enhancement to his sentence.

People v. Price, 2016 IL 118613 During trial, the court denied defendant's request for separate verdict forms for each of the State's theories of first degree murder (intentional, knowing, and felony). The jury returned a general verdict finding defendant guilty of first degree murder. Years later, defendant filed an untimely 2-1401 petition arguing that the trial court erred in denying his request for separate verdict forms under **People v. Smith**, 233 Ill. 2d 1 (2009). Defendant further argued that the statutory time bar on 2-1401 petitions did not apply because the instructional error created a void judgment under the void sentence rule. By the time defendant's case reached the Illinois Supreme Court, the Court had abolished the void sentence rule in **People v. Castleberry**, 2015 IL 116916.

Defendant argued that the decision in **Castleberry** should not be applied retroactively to his case, leaving the void sentence rule intact and allowing defendant to raise his issue in an untimely 2-1401 petition. Specifically defendant argued that the rule announced in **Castleberry** did not qualify as a new substantive rule or watershed rule of criminal procedure under **Teague v. Lane**, 489 U.S. 288 (1989) and thus did not apply retroactively.

The Supreme Court rejected defendant's argument and held that **Castleberry** applied retroactively to defendant's case and thus he could not use the void sentence rule as a way to raise his issue in an untimely 2-1401 petition. The Court held that **Teague** did not control the retroactivity question in this case. **Teague's** analysis only applies in situations where a new rule could have made a difference in the outcome of a criminal trial. The rule adopted in **Castleberry**, however, has no effect on the outcome of a trial. Neither the void sentence rule nor its absence impacts the accuracy of a defendant's conviction or the fairness of his trial.

In situations where **Teague** does not apply, the general rule of retroactivity holds that appellate decisions apply to all cases pending when the decisions are announced. **Castleberry** thus applies to defendant's case. Since defendant's 2-1401 petition was untimely and he provided no reason other than the void sentence rule for excusing his failure

to timely file the petition, the Court affirmed the judgment of the trial court dismissing defendant's petition.

People v. Thompson, 2015 IL 118151 Defendant filed an untimely 2-1401 petition 17 years after his conviction and sentence. In his petition, defendant raised several issues challenging his representation at trial. The trial court denied the petition. On appeal, defendant abandoned the claims he raised in his petition and argued instead that the sentencing statute mandating natural life imprisonment (for murdering more than one person) was unconstitutional as applied to him since he was 19 years old at the time of the offense, had no criminal history, and impulsively committed the offense after years of abuse by his father.

Defendant argued that his as-applied constitutional challenge constituted a challenge to a void judgment. Since a voidness challenge can be raised at any time, defendant argued that his claim was excused from the two-year limitations period and could be raised for the first time on appeal from the dismissal of his petition.

The Supreme Court disagreed. A voidness challenge to a final judgment under section 2-1401 is only available in two specific situations. First, a judgment is void where the court that entered the judgment lacked personal or subject matter jurisdiction. Second, a judgment is void when it based on a facially unconstitutional statute that is void ab initio. (A third type of voidness claim, where a sentence does not conform to statutory requirements, was recently abolished in **People v. Castleberry**, 2015 IL 116916.)

Defendant did not rely on either of the two situations where a voidness challenge could be made. He did not argue that the court lacked jurisdiction or that the sentence mandating natural life was facially unconstitutional. Defendant's claim was thus subject to the typical procedural bars of section 2-1401 and could not be raised for the first time on appeal from the dismissal of an untimely 2-1401 petition.

The court specifically rejected defendant's argument that an as-applied constitutional challenge should be treated the same as a facial challenge and be equally exempt from ordinary forfeiture rules. A facial challenge requires a showing that the statute is unconstitutional under any set of facts. An as-applied challenge, by contrast, only applies to the facts and circumstances of the particular case. In the latter case, it is paramount that the record be sufficiently developed in the trial court to establish the necessary facts for appellate review.

People v. Castleberry, 2015 IL 116916 The issue of whether a judgment is void or voidable presents a question of jurisdiction. Jurisdiction is a fundamental prerequisite to a valid judgment and any judgment rendered by a court that lacks jurisdiction is void and may be attacked at any time. By contrast, an erroneous judgment entered by a court having jurisdiction is merely voidable.

Jurisdiction generally consists of two parts: subject matter and personal jurisdiction. Subject matter jurisdiction refers to the court's power "to hear and determine cases of the general class to which the proceeding in question belongs." Personal jurisdiction refers to the court's power "to bring a person into its adjudicative process."

Decisions in Illinois have also held that the power to render a particular judgment is "as important an element of jurisdiction" as personal and subject matter jurisdiction. Based on this concept, Illinois courts have developed a rule (the void sentence rule) holding that a circuit court acts without "inherent authority" or "inherent power" if it imposes a sentence that violates a statutory requirement.

Here, the Illinois Supreme Court abolished the void sentence rule. It held that the "inherent power" idea of jurisdiction, on which the void sentence rule was based, was at odds with the grant of jurisdiction given to the circuit courts under Illinois' constitution. The constitution provides that circuits courts "shall have original jurisdiction of all justiciable matters." Ill. Const. 1970, art VI, § 9. Since jurisdiction is granted by the constitution, the failure to satisfy a statutory requirement cannot deprive the court of its power or jurisdiction to hear a cause of action. A judgement is void only if the court lacks jurisdiction over the parties or the subject matter.

Subject matter jurisdiction extends to all "justiciable matters." To invoke the court's "subject matter jurisdiction, a party need only present a justiciable matter, *i.e.*, a controversy appropriate for review by the court." This rule applies to criminal as well as civil cases since in granting jurisdiction Illinois' constitution does not distinguish between civil and criminal cases.

The Supreme Court reversed the Appellate Court's judgment increasing defendant's sentence by 15 years. The State may, however, seek relief in appropriate circumstances via a writ of *mandamus*. *Mandamus* is an extraordinary remedy to enforce the performance of official duties where no exercise of discretion is involved. Only issues of law are considered in *mandamus*. Factual questions or issues of discretion or judgment are not permitted. The State may use *mandamus* where the circuit court violated a mandatory sentencing requirement, but may not challenge discretionary sentencing decisions.

People v. Breen, 62 Ill.2d 323, 342 N.E.2d 31 (1976) A trial judge may only impose a sentence that is authorized by statute. The trial judge had no authority to place defendant on "supervision" where such a disposition was not authorized by statute.

People v. Brown, 225 Ill.2d 188, 866 N.E.2d 1163 (2007) Where defendant's sentence complied with the mandatory sentencing guidelines in effect when the sentence was imposed, defendant is not entitled to a new sentencing hearing merely because some aspect of the law was subsequently determined to be void on the ground that it violated the single-subject rule. Because defendant's sentence is not void, his right to bring a post-conviction challenge to that sentence must conform to the normal requirements governing post-conviction petitions.

Where the court imposes an excessive sentence because of a mistake of law or fact, the sentence is merely voidable and the error can be waived.

People v. Arna, 168 Ill.2d 107, 658 N.E.2d 445 (1995) A sentencing order which fails to impose a statutorily mandated sentence is void, and a void order may be corrected any time. (**Note:** The void sentence rule was abolished by **People v. Castleberry**, 2015 IL 116916.)

People ex rel Daley v. Strayhorn, 119 Ill.2d 331, 518 N.E.2d 1047 (1988) The trial judge erred by not imposing a natural life sentence where such a sentence was mandatory.

People ex rel. Carey v. Bentivenga, 83 Ill.2d 537, 416 N.E.2d 259 (1981) The trial judge erred by imposing probation where the statute prohibited probation for the offense.

People v. Eddington, 77 Ill.2d 41, 394 N.E.2d 1185 (1979) "A misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision." Sentence upheld.

People v. Cross, 77 Ill.2d 396, 396 N.E.2d 812 (1979) Where defendant was sentenced to the lowest penitentiary sentence authorized and the trial judge was under the misapprehension that periodic imprisonment was not an authorized sentence, the cause was remanded for consideration of periodic imprisonment.

People v. Moore, 69 Ill.2d 520, 372 N.E.2d 666 (1978) Resentencing ordered where the trial judge erroneously believed that the lowest allowable minimum sentence for attempt murder was four years, and imposed a sentence of four to ten years. See also, **People v. Clifford**, 88 Ill.App.3d 305, 410 N.E.2d 537 (3d Dist. 1980).

People v. Holzapple, 9 Ill.2d 22, 136 N.E.2d 793 (1956) The imposition of a life sentence for burglary was "clearly erroneous"; the statute authorized a maximum sentence of up to 20 years. See also, **People v. Turk**, 101 Ill.App.3d 522, 428 N.E.2d 510 (1st Dist. 1981).

Illinois Appellate Court

People v. Morgan, 2023 IL App (4th) 220377 Defendant pled guilty to Class 1 unlawful delivery of a controlled substance under 720 ILCS 570/401(c)(2), was sentenced to probation, and subsequently had his probation revoked. He was then sentenced to 10 years of imprisonment and appealed. Initially, the appellate court remanded for resentencing, agreeing with defendant that the trial court erroneously believed defendant was eligible for an extended-term sentence of up to 30 years in prison under 730 ILCS 5/5-5-3.2 and 5/5-8-2. The State then filed a petition for rehearing, arguing for the first time that defendant was eligible for a sentence of up to 30 years in prison under a different statute, 720 ILCS 570/408(a), and thus the sentencing court had not misapprehended the available sentencing range. The appellate court ultimately agreed with that argument, granted rehearing, and affirmed defendant's 10-year sentence.

First, the court acknowledged that the State had forfeited its argument regarding Section 408 by not raising it during the original briefing. Under Rule 341(h)(7), parties may not raise new arguments in a petition for rehearing. But, that rule is an admonition to the parties and not a limit on the court, and the appellate court concluded that the circumstances compelled it to overlook forfeiture where both the court and the parties initially failed to recognize its application.

Further, while the court did not specifically cite to Section 408 when it imposed sentence upon revocation of probation, the judge did state that Section 408 applied at defendant's original guilty plea hearing. Thus, defendant had notice of the applicable sentencing range. And, the sentencing judge was not required to note the applicability of Section 408 at defendant's post-revocation sentencing because defendant ultimately was not sentenced to an enhanced penalty under that section.

Finally, the court rejected defendant's argument that Section 408 was in conflict with Section 5-8-2. Section 408 applies independently of the general sentencing provisions contained in the Code of Corrections.

People v. Crawford, 2023 IL App (4th) 210503 As in **People v. Johnson**, 2013 IL App (1st) 120413, the court found an inadvertent omission from 730 ILCS 5/5-5-3.2(b)(7) after considering the doctrine of constitutional avoidance and other principles of statutory construction. Under section 5-5-3.2(b)(7), a defendant is eligible for an extended term based on a prior juvenile adjudication that would be a Class X or Class 1 felony if committed as an adult. The provision is not limited to those prior juvenile adjudications that, if committed by

an adult, would be the same or greater class as the current conviction – a limitation that does apply in the provision pertaining to prior adult convictions.

Here, defendant was convicted of a Class X, but was deemed extendable under section 5-5-3.2(b)(7) for a prior juvenile adjudication that would be a Class 1 if committed as an adult. As in **Johnson,** the court read into the provision the "same or greater class" language that would resolve this potentially unconstitutional anomaly. Applying this language, defendant was not extended-term eligible.

No remand for re-sentencing was necessary, however, because defendant did not receive an extended term, and because the circuit court's misapprehension of the law did not influence the sentence. When a trial court misunderstands the sentencing range, a new sentencing hearing is necessary only if the mistaken belief arguably influenced the sentencing decision. In making this determination, courts of review pay particular attention to what the sentencing court says. In this case, neither the parties nor the court noted defendant's eligibility for an extended-term at the sentencing hearing, and the court imposed a sentence in the lower-middle of the 6 to 30 range, consistent with its finding of two factors each in aggravation and mitigation.

People v. Richards, 2021 IL App (1st) 192154 The trial court erred in applying an enhanced sentencing range for unlawful use of a weapon by a felon under 730 ILCS 5/5-4.5-110 because defendant's prior conviction of second degree murder is not a qualifying predicate offense under that provision. This constituted second-prong plain error because it affects the defendant's fundamental right to liberty. Even though defendant's 8-year sentence was also within the proper sentencing range, remand for resentencing was required because the trial court misapprehended the appropriate range when fashioning defendant's sentence.

UUWF is generally a Class 3 felony, carrying a sentencing range of 2 to 10 years of imprisonment. For a person who has previously been convicted of a forcible felony, UUWF is a Class 2 felony with a range of 3 to 14 years of imprisonment. And, under 730 ILCS 5/5-4.5-110, the range becomes 7 to 14 years where the weapon involved is a firearm and the person has previously been convicted of a qualifying predicate. The statute defines "qualifying predicate offense" as any of 26 specifically listed offenses in sections 5-4.5-110(a)(A)-(Z). Second degree murder is not among those listed.

The State argued that second degree murder was a qualifying predicate where the subsection listing first degree murder as a qualifying predicate states, "first degree murder under Section 9-1 or similar offense under the Criminal Code of 1961." The Appellate Court disagreed and held that rather than expanding the list of qualifying predicate offenses, this language was meant to clarify that the elevated sentencing range applied even if the prior offense was committed before the effective date of the current criminal code. The court noted that the "or similar offense" language is included in each of the 26 enumerated qualifying predicate offenses in order to account for any differences between the Criminal Code of 2012 and the Criminal Code of 1961.

People v. Tolliver, 2021 IL App (1st) 190129 A court cannot indefinitely extend a period of probation based on the filing of a petition for violation of probation ("VOP"). Here, three months before the expiration of an 18-month term of probation, the State filed a petition for VOP alleging incomplete community service and failure to pay fines. At a proceeding where defendant appeared without counsel, the court continued the matter without a hearing. At subsequent court dates over the next several months, the court continued the petition for VOP, and by extension the probation term, even after defendant established that he had

completed the terms of his probation. Ultimately, defendant was convicted of a crime, and, in addition to the sentence for that offense, was separately found guilty of three counts of VOP, for which he received a total term of 10 years in prison.

On appeal, defendant argued that, while no objection was lodged below, the finding of VOP and subsequent sentences were void because the trial court did not have authority to extend the term of his probation without a hearing that comported with due process. The State argued that defendant was not denied due process because defendant's probation term was not extended beyond the original expiration date but instead was properly tolled by the filed petitions for VOP.

Citing **People v. Castleberry**, 2015 IL 116916, the Appellate Court concluded that any error below would render the sentence voidable, not void. The trial court had jurisdiction when it entered its order, regardless of whether it complied with due process. The court instead reviewed the issue for plain error.

The Appellate Court found obvious error. The trial court cannot alter the length of a defendant's probation term without notice and hearing and a finding that defendant has violated his probation. Pursuant to 730 ILCS 5/5-6-2(d), upon the expiration or termination of the period of probation or of conditional discharge, the court must enter an order discharging the defendant. Here, the court repeatedly continued the case based on the pending petition for VOP, even after learning that defendant had completed the terms of his probation, and without ever requiring the State to prove its allegations. This had the effect of extending the probation term whether the court formally did so or not.

Although the Supreme Court in **In re Thompson**, 79 Ill. 2d 262 (1980), has upheld a VOP entered after expiration of the probation term, based on the filing of the petition prior to expiration, the Appellate Court found **Thompson** distinguishable. **Thompson** makes clear that the purpose of tolling under the Code is to preserve the court's jurisdiction, not as a later justification for the failure to timely conduct the requisite violations hearing. The trial court here violated due process. This was plain error and required the reversal of defendant's convictions and sentences.

People v. Miller, 2019 IL App (1st) 161687 Where defendant's case had been remanded under **Arna** for imposition of mandatory 15-year firearm enhancement, but then **Castleberry** was decided after the Appellate Court's mandate issued but prior to resentencing, **Castleberry** applied to preclude resentencing. The law-of-the-case doctrine did not obligate the Appellate Court to maintain its prior decision ordering resentencing because the prior appeal did not involve the impact of **Castleberry** since **Castleberry** had not yet been decided. And, while trial courts are bound to follow the mandate from the Appellate Court, here, the impact of **Castleberry** presented a new question which the trial court could have, and should have, considered.

People v. Belmont, 2018 IL App (2d) 150886 On appeal following his open plea of guilty to murder and aggravated criminal sexual assault with a dangerous weapon, defendant challenged for the first time his 12-year sentence for the sexual assault offense because it was improperly low. Aggravated criminal sexual assault with a dangerous weapon is a Class X felony which also requires the addition of 10 years to the sentence because of the use of the dangerous weapon, making the minimum term 16 years of imprisonment.

The Appellate Court declined to find plain error, and thus denied resentencing, because defendant was not prejudiced by the too-low sentence and he was not denied a fair sentencing hearing. The Court noted that the outcome of the sentencing hearing was only

unfair to the State. In response to defendant's argument that his sentence remained uncertain because the State might seek to increase his sentence via *mandamus* at some future date closer to his release, the Appellate Court noted that any such action by the State would be subject to a valid *laches* argument. The Appellate Court also accepted a concession from the State that it would be estopped from seeking an increased sentence in the future based on the State's opposition to defendant's arguments in the instant appeal.

People v. Breeden, 2016 IL App (4th) 121049-B The trial court imposed a fine of $255 for Sexual Offender Registration, less than the minimum fine of $500 required by the statute. 730 ILCS 150/10(a). The Appellate Court held that following the decision in **Castleberry**, 2015 IL 116916, the challenged fine was voidable rather than void and the State lacked the authority to request on appeal an increase in the amount of the fine imposed. The Appellate Court thus left the $255 fine in place.

People v. Cashaw, 2016 IL App (4th) 140759 Under **Teague v. Lane**, 489 U.S. 288 (1989), new rules of criminal procedure generally do not apply retroactively to final convictions and hence cannot be used in a postconviction attack on a conviction that became final prior to the announcement of the new rule. Illinois has adopted the **Teague** rule to govern retroactivity in State collateral proceedings.

Teague's purpose is to protect the State's interest in final judgments. **Teague** thus only applies when a defendant seeks to overturn his conviction by retroactively applying a new rule that is favorable to him. Under **Teague**, the State, but not the defendant, may object to the application of a new rule to a case on collateral review.

The court held that **People v. Castleberry**, 2015 IL 116916, applied retroactively to defendant's postconviction case for two reasons. First, **Castleberry** did not announce a new rule. Instead, it merely abolished the void sentence rule and thereby reinstated the rule in effect before the void sentence rule was created. Second, in this case defendant sought to prevent the application of a new rule to a collateral proceedings not to preserve the finality of a judgment, but to disturb its finality. A defendant cannot use **Teague** to argue that a new rule should not apply when the defendant is seeking to overturn a judgment.

The court thus concluded that although defendant's fine would have been considered void prior to **Castleberry**, once the rule in **Castleberry** applied to his case, the fine was no longer void and could not be challenged in a successive collateral proceeding.

People v. Mitros, 2016 IL App (1st) 121432 A section 2-1401 petition must be filed no more than two years after the entry of the final judgment in a case. 735 ILCS 5/2-1401(c). Until recently, a defendant had been able to challenge as void a sentence that did not conform to statutory requirements even where his petition was filed after the expiration of the two-year deadline. The Illinois Supreme Court, however, abolished the void sentence rule in **Castleberry**, 2015 IL 116916.

In May 1989, defendant entered an open guilty plea to first degree murder. Defendant stipulated that he was eligible for the death penalty since the murder had occurred during the commission of the felony of residential burglary. The court sentenced defendant to natural life imprisonment. Defendant did not move to vacate his guilty plea and did not file a direct appeal.

In December 2011, defendant filed a 2-1401 petition asserting that his life sentence was void. When defendant committed his offense in 1988, a life sentence could be imposed if the victim was killed in the course of one of the forcible felonies listed in the statute, but

residential burglary was not one of the listed felonies. Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(b)(6)(c). Defendant was thus not eligible for life imprisonment.

The court held that under **Castleberry** defendant's sentence was no longer void and thus he could not challenge his sentence in an untimely 2-1401 petition. The court rejected defendant's argument that **Castleberry** should not apply retroactively to his case. A new rule should almost never be applied retroactively to cases on collateral review. A rule is new if it was not dictated by precedent existing at the time defendant's conviction became final.

The court held that **Castleberry** did not announce a new rule. Instead, **Castleberry** merely abolished the prior void sentence rule and reinstated the rule that existed beforehand. Since **Castleberry** did not announce a new rule, it applied to defendant's collateral case, and prevented him from attacking his improper sentence in an untimely 2-1401 petition.

People v. Nelson, 2016 IL App (4th) 140168 Defendant argued for the first time on appeal from the second-stage dismissal of his post-conviction petition that he did not receive the correct pre-sentence credit against his sentence. The State did not challenge defendant's claim that he was entitled to more credit, but argued that sentence credit is a statutory claim that cannot be raised in a post-conviction petition.

The court agreed that defendant was entitled to the additional credit, but held that it did not have authority to award defendant the credit. The Post-Conviction Hearing Act is jurisdictional in nature limiting the subject matter reviewable under the act to claims of a substantial denial of constitutional rights. 725 ILCS 5/122-1. The denial of a statutory right is not cognizable under the act.

Although the Illinois Supreme Court held that a sentence with incorrect sentence credit is void and may be attacked at any time, **People v. Roberson**, 212 Ill. 2d 430 (2004), that holding no longer correctly reflects the law after **People v. Castleberry**, 2015 IL 116916, abolished the void judgment rule.

Since the court had no jurisdiction over defendant's statutory claim, it could not grant him the relief he requested. The court noted however that defendant could petition the trial court to correct the "simple error in arithmetic, as trial courts retain jurisdiction to correct non-substantial matters of inadvertence or mistake."

People v. Stafford, 2016 IL App (4th) 140309 Noting a conflict in Appellate Court authority, the Fourth District Appellate Court held that **People v. Castleberry**, 2015 IL 116916 did not create a new rule and therefore applies retroactively. Because **Castleberry** abolished the void sentence rule, the previous rule is reinstated. Thus, a sentence can be challenged as void only if the court lacked personal or subject matter jurisdiction.

People v. Wallace, 2016 IL App (1st) 142758 A defendant typically waives on appeal any claim not raised in his postconviction petition. Until recently, a defendant had been able on appeal to challenge as void a sentence that did not conform to statutory requirements even if he had not raised the issue in his petition. The Illinois Supreme Court, however, abolished the void sentence rule in **Castleberry**, 2015 IL 116916.

Here defendant argued for the first time on appeal that his negotiated concurrent sentences were void because they were required by statute to be served consecutively. Defendant recognized that **Castleberry** abolished the void sentence rule but argued that it should not apply retroactively to his collateral case. A new rule of criminal procedure generally does not apply to cases on collateral review. A rule is new if it was not dictated by precedent existing at the time defendant's conviction became final.

The court held that **Castleberry** did not announce a new rule. Instead, **Castleberry** merely abolished the prior void sentence rule and reinstated the rule that existed beforehand. **Castleberry** thus applied to this case, making defendant's erroneous sentence merely voidable not void. Defendant was thus barred from challenging his sentence for the first time on appeal from the dismissal of his postconviction petition.

People v. Scarbrough, 2015 IL App (3d) 130426 Under 730 ILCS 5/5-6-1(j), a defendant who has been charged with driving while his license is revoked (625 ILCS 6-303(a)) is ineligible for supervision if: (1) his license was revoked because of a violation of 625 ILCS 11-501 (driving under the influence); and (2) he has a prior conviction under section 6-303 within the last 10 years.

Defendant entered a blind guilty plea to driving on a revoked license. The trial court sentenced him to 12 months of conditional discharge with 30 days in jail, finding that he was ineligible for supervision. On appeal, defendant argued that he was eligible for supervision for two reasons: (1) his license had not been revoked because of a section 11-501 violation; and (2) his prior conviction under section 6-303 had not occurred within the last 10 years. The Appellate Court upheld defendant's sentence, rejecting both of his arguments.

Defendant's license had been revoked because of a bond forfeiture conviction based on an underlying DUI case. The Court held that for purposes of the Illinois Driver Licensing Law (625 ILCS 5/6-100 to 6-1013) bond forfeitures constitute convictions. Defendant's bond forfeiture in a DUI case was thus the equivalent of a conviction for DUI. Accordingly, his license had been revoked because of a violation of section 11-501.

People v. Monson, 2012 IL App (3d) 100868 A sentence that does not conform to the statutory authority is void. The County Jail Good Behavior Allowance Act provides for one day of good behavior credit for each day of service of sentence in the county jail, with certain exceptions. 730 ILCS 130/3.

Defendant pled guilty and was ordered to serve probation and a jail term of 180 days without good-conduct credit. The court had no statutory authority to deny that credit to defendant. The Appellate Court directed the clerk to amend the mittimus to reflect that defendant was entitled to good-conduct credit.

People v. Morfin, 2012 IL App (1st) 103568 A statute that is unconstitutional on its face – that is where no set of circumstances exists under which it would be valid – is void *ab initio*. A statute that is merely unconstitutional as applied is not void *ab initio*.

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012), held that the Eighth Amendment is violated by mandatory life imprisonment without the possibility of parole for offenders under the age of 18. **Miller** does not affect the validity of the statute mandating natural-life imprisonment for nonminor defendants, so the statute is not unconstitutional on its face. Nor does it deprive a court of the authority to sentence a minor defendant to natural-life imprisonment.

People v. Anderson, 402 Ill.App.3d 186, 931 N.E.2d 773 (3d Dist. 2010) 730 ILCS 5/5-8-1(d)(5) requires a four-year-term of mandatory supervised release where the defendant is convicted of a "second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse" and the victim was under the age of 18. The Appellate Court held that a defendant who pleads guilty in a single proceeding to separate counts of aggravated criminal sexual abuse stemming from a single incident has not been convicted of a "second or

subsequent offense," and is therefore not subject to an enhanced MSR term.

730 ILCS 5/5-9-1.7(b)(1), which authorizes a $200 fine for a person convicted of sexual assault or attempted sexual assault, gives the trial court discretion to impose multiple $200 fines in a multi-count aggravated criminal sexual abuse prosecution. Thus, the trial court was not limited to a single $200 fine where the defendant pleaded guilty to multiple counts arising from a single occurrence.

Because the imposition of fines not authorized by statute challenges the integrity of the judicial process, the court found as a matter of plain error that the trial judge erred in calculating fines under the Violent Crimes Victims Assistance Act (725 ILCS 240/10). Applying **People v. Jamison**, 229 Ill.2d 184, 890 N.E.2d 929 (2008), the court found that the maximum additional fine for each $200 fine ordered under 730 ILCS 5/5-9-1.7(b)(1) was $20, rather than the $40 ordered by the trial court.

The trial court's order imposing an enhanced four-year mandatory supervised release term under 730 ILCS 5/5-8-1(d)(5), and imposing fines, was "voidable" rather than "void." A judgment is void only if entered by a court which lacks jurisdiction. Defendant challenged only the specific term of MSR and the amount of the fines, and did not challenge the authority of the court to impose such sentences. Because the sentencing order was clearly within the court's jurisdiction, it was merely "voidable."

People v. Effler, 349 Ill.App.3d 217, 811 N.E.2d 291 (2d Dist. 2004) The final clause of 720 ILCS 5/8-2(c) was intended to provide a maximum punishment of a Class 3 or 4 felony sentence for felony conspiracy offenses that are not specifically enumerated in the statute, and the first clause of the statute was intended to limit the maximum punishment for conspiracy to commit a misdemeanor to the maximum provided for the underlying misdemeanor. Because the trial court erroneously sentenced defendant to a Class 3 felony for conspiracy to commit forgery, the trial court vacated the five-year sentence and modified the sentence to three years, the maximum term for a Class 4 felony.

People v. Myrieckes, 315 Ill.App.3d 478, 734 N.E.2d 188 (3d Dist. 2000) As a matter of plain error, resentencing was required where the trial court misstated the eligibility requirements for extended-term sentencing and did not correct the parties' impression that extended-term sentences were authorized; the judge apparently believed that defendant was eligible for extended terms.

People v. Didier, 306 Ill.App.3d 803, 715 N.E.2d 321 (2d Dist. 1999) The trial judge erred by imposing 10-year sentences for burglary; burglary carries a non-extended sentencing range of three to seven years, and defendant was ineligible for extended terms.

People v. Hausman, 287 Ill.App.3d 1069, 679 N.E.2d 867 (4th Dist. 1997) As a matter of plain error, the trial court's misstatement of the authorized sentence required reversal. A defendant is entitled to be sentenced by a judge who is aware of the correct minimum and maximum sentences; a misunderstanding of the appropriate sentencing limits constitutes fundamental error that is cognizable under the plain error rule.

People v. Beard, 287 Ill.App.3d 935, 679 N.E.2d 456 (1st Dist. 1997) Resentencing was required because the trial judge's remarks indicated that 15-year-sentences for armed robbery and aggravated vehicular hijacking were imposed in the belief that the same sentences were required for armed violence. Because it was not clear that such sentences

would have been imposed had the trial court been aware that the armed violence convictions were improper, the court remanded the cause for resentencing on the remaining counts.

People v. Jones, 284 Ill.App.3d 975, 673 N.E.2d 456 (4th Dist. 1996) Because the trial judge appeared to be mistaken as to whether supervision was authorized for DUI, the conditional discharge sentence was vacated and the cause remanded for a new sentencing hearing.

People v. Fales, 247 Ill.App.3d 681, 617 N.E.2d 421 (3d Dist. 1993) Because only persons who are "convicted" may be assessed costs or fines, and because a sexually dangerous person proceeding is not a criminal prosecution and does not result in a "conviction," cost and fine orders may not be entered against an individual who has been adjudicated a sexually dangerous person.

People v. Watters, 231 Ill.App.3d 370, 595 N.E.2d 1369 (5th Dist. 1992) The trial court erred in believing that a prison sentence was mandatory for defendant, who was mentally retarded and found guilty but mentally ill of a Class X felony. Although probation generally cannot be imposed for a Class X felony, a prison sentence should not be imposed when an offender is found guilty after special provisions are taken to assure competency and imprisonment would cause severe hardship or would not serve the ends of justice and the interests of society. Where defendant is of borderline fitness, the trial judge has discretion to forego what would otherwise be a mandatory sentence.

People v. Davis, 125 Ill.App.3d 568, 466 N.E.2d 331 (5th Dist. 1984) The judge erred in imposing concurrent 30-year-sentences "unless the Board of Prisoner Review decides to release defendant in less than half the time, then the sentence for home invasion is to be served consecutively to the sentence for rape." A trial judge must sentence a defendant to either a concurrent or a consecutive sentence, and the sentencing statute "does not provide for a sentence based on a contingent subsequent event as provided for in the case at bar." Order modified for sentences to run concurrently.

People v. Marquis, 54 Ill.App.3d 209, 369 N.E.2d 372 (4th Dist. 1977) Remanded for resentencing where the judge erroneously believed that the offense of which defendant was convicted was a Class A misdemeanor, with a possible sentence of not more than a year, instead of a Class B misdemeanor, with a possible six-month sentence, even though the sentence was within the authorized limits for a Class B misdemeanor. Defendant was entitled to "the benefit of being sentenced under circumstances where there is no misunderstanding as to the limits of the sentence to be imposed." See also, **People v. Frey**, 126 Ill.App.3d 484, 467 N.E.2d 302 (5th Dist. 1984) (trial court erroneously believed that extended-term sentence was required).

§44-14
Excessive Sentences

§44-14(a)
Generally

Illinois Supreme Court
People v. Alexander, 239 Ill.2d 205, 940 N.E.2d 1062 (2010) The power of a reviewing court

to reduce a sentence should be exercised cautiously and sparingly. A reviewing court may not alter a sentence absent an abuse of discretion by the trial court. A sentence is an abuse of discretion where it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. The reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed aggravating and mitigating factors differently.

People v. Fern, 189 Ill.2d 48, 723 N.E.2d 207 (1999) An excessive sentence argument may not be based on a comparison of defendant's sentence to sentences in unrelated cases. See also, **People v. Bien**, 277 Ill.App.3d 744, 661 N.E.2d 511 (4th Dist. 1996) (disagreeing with the "analytical approach" of **People v. Norfleet**, 259 Ill.App.3d 381, 630 N.E.2d 1231 (1st Dist. 1994), which compares sentences imposed in allegedly similar cases to determine whether the trial court in the particular case on appeal has abused its discretion).

§44-14(b)
Sentences Found Excessive

United States Supreme Court
Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) Sentencing mentally retarded persons to death constitutes "cruel and unusual" punishment under the Eighth Amendment.

Illinois Supreme Court
People v. Geiger, 2012 IL 113181 Defendant was sentenced to 20 years' imprisonment for criminal contempt after refusing to testify at a retrial as a witness for the prosecution, even though the prosecutor offered him use immunity for his testimony and the court informed defendant that he had no Fifth Amendment privilege. Defendant had not been called as a witness at the original trial, but when he was 15 years old had testified at a co-defendant's trial.

The 20-year sentence was an abuse of discretion and manifestly disproportionate to the nature of the offense. Defendant willfully and deliberately refused to testify, but based on his mistaken belief that he had a right to do so. His belief was not unreasonable given that his own attorney maintained that defendant could assert the privilege. His refusal may also have been driven by the fact that as a gang member, he feared retaliation. Defendant's testimony was cumulative of other evidence, and his refusal to testify did not hamper the State's ability to prosecute, as it obtained a conviction without defendant's testimony. Defendant's conduct was nonviolent and he was not fragrantly disrespectful to the trial judge.

The court remanded to afford the circuit court the opportunity to enter a more reasonable sentence.

People v. Maggette, 195 Ill.2d 336, 747 N.E.2d 339 (2001) Defendant's 10-year prison term for residential burglary was disproportionate to the offense. Although defendant's behavior "was appalling and harmful, it was not severe enough to warrant" more than a five-year-term.

People v. Stacey, 193 Ill.2d 203, 737 N.E.2d 626 (2000) Consecutive 25-year terms for aggravated criminal sexual abuse were manifestly disproportionate, though within the statutory limits, because defendant's conduct consisted of momentarily grabbing the breasts

of two young girls, who were fully clothed at the time, and making lewd comments and gestures.

People v. Viser, 62 Ill.2d 568, 343 N.E.2d 903 (1975) Murder sentence reduced because the original sentence frustrated the statutory purpose of an indeterminate sentence, which "is to encourage rehabilitation of prisoners on parole," and because the sentence was unduly severe.

People v. Gokey, 57 Ill.2d 433, 312 N.E.2d 637 (1974) Sentence for unlawful use of weapons reduced in light of defendant's uncontradicted explanation that he had the gun because of the large amount of money he carried, and due to the "typical sentences which have been imposed for this offense under more aggravated circumstances."

People v. Walcher, 42 Ill.2d 159, 246 N.E.2d 256 (1969) Death penalty inappropriate and sentence reduced where defendant shot victim during an attempt armed robbery, co-defendants pleaded to lesser charges and testified against defendant, defendant was on parole at the time of the incident, and defendant was an alcoholic who drank before the incident.

People v. Crews, 42 Ill.2d 60, 244 N.E.2d 593 (1969) Death sentence excessive in light of defendant's background and character – a 34-year-old first offender, a good wife, and attentive parent, who consumed excessive quantities of drugs at the time of the offense. Although society is "outraged by the murder of a child," the punishment must be "appropriate and just."

Illinois Appellate Court

People v. Woodson, 2024 IL App (1st) 221172 The circuit court abused its discretion by failing to adequately consider defendant's youth and rehabilitative potential at sentencing. The appellate court remedied this error by reducing defendant's sentence.

In a previous post-conviction petition, defendant contended that his aggregate 60-year sentence, imposed in 2003 for a murder and carjacking committed at age 17, was unconstitutional. The appellate court remanded for resentencing in compliance with **People v. Buffer**, 2019 IL 122327, and 730 ILCS 5/5-4.5-105. At the resentencing hearing, defendant presented mitigating evidence showing that he was developmentally disabled, had an IQ of 74, suffered blunt force trauma to the head at age 5, had been abusing marijuana since age 11, and came from a broken family. The defense presented expert testimony suggesting his criminality was a function of his youth and cognitive impairments, and that he was unlikely to re-offend. Three IDOC employees, including its former director, testified that defendant was essentially the hardest-working and most trustworthy inmate they had ever encountered. They detailed the numerous educational and employment achievements he obtained in his 16 years in prison, including barber certification and his status as the "number one barber" in his institution, and his unusually low number of "tickets." The former director concluded that he checked every box for rehabilitation. Three witnesses testified that they could find jobs for defendant upon release, and defendant spoke in allocution to express his remorse for committing the offense.

The circuit court imposed a 40-year term (30 for murder and 10 for carjacking), the maximum under **Buffer**. In response to the mitigating testimony from IDOC employees, the court noted it was giving defendant only a "half mark" because his good behavior and hard

work "could just be a way to release [him from] boredom." When considering the statutory required factors of defendant's age, potential for rehabilitation, impetuosity, level of maturity, family history, and prior criminal activity, the court found none of the factors were significantly mitigating. The court reasoned that defendant was almost 18 and the conduct was not impetuous because defendant and his friends had mentioned they wanted to steal a car before leaving the house.

The appellate court majority reduced defendant's sentence to 25 years for murder and 5 for vehicular hijacking. The court found that the circuit court's sentence failed to give adequate weight to **Miller** and the factors required under section 5-4.5-105, which are necessary to ensure juvenile sentences reflect these defendants' diminished culpability and heightened capacity for change. Instead, the sentencing court "deliberately and unreasonably discounted" the significant evidence of defendant's diminished capacity and rehabilitation, stating that none of this evidence "mitigates a murder." This comment, and others made by the sentencing court which emphasized the seriousness of the offense and the need for retribution, ignored the decreased penological justification for the harshest sentences, even for the most serious crimes, when the offender is a juvenile.

A dissent would have found no abuse of discretion given that defendant originally faced a maximum of 95 years, and the sentencing court showed its adequate consideration of defendant's youth and rehabilitative potential by removing the firearm enhancement and reducing defendant's sentence to 40 years. The record demonstrated that the sentencing court considered all of the factors, and that the majority's only quarrel with the sentencing court was with the way those factors were weighed, which is not the role of the reviewing court. The dissent also would have found the 40-year sentence justified by the defense's "imprudent strategy" of attempting to minimize or excuse defendant's role in the offense – blaming his friend, calling defendant a "scapegoat," and describing the shooting as an accident – rather than taking full responsibility. Finally, the dissent criticized the majority's use of Supreme Court Rule 615(b)(4)'s resentencing power, which it felt should be used more sparingly and not in cases where the appellate court is merely re-weighing the factors considered by the sentencing court.

People v. Garcia, 2023 IL App (1st) 172005 Defendant alleged that his 100-year aggregate sentence for aggravated criminal sexual assault and kidnaping was unconstitutional, excessive, and a "trial tax" for rejecting a plea offer and going to trial. The appellate court found the sentence constitutional, but agreed that second-prong plain error occurred. The sentence was excessive in that it did not adequately take into account defendant's intellectual disabilities or prospects for rehabilitation, and the plea-trial sentencing disparity suggested defendant was penalized for exercising his right to trial.

Defendant was charged with four Class X counts requiring consecutive sentencing. He rejected a 36-year plea offer, and after trial, received four consecutive terms of 25 years.

The appellate court agreed that the record showed an impermissible plea-trial sentencing disparity. The 100-year sentence represented a 177% increase over the 36 year offered at the plea conference. Rather than a sentence allowing for release at age 56, defendant received a *de facto* life sentence.

While a plea-trial sentencing disparity, standing along, generally cannot form the basis of a "trial tax" claim, this disparity was so excessive (the court found an increase of 15-60% the norm) that it could not be explained by anything other than punishment for going to trial. In support, the appellate court noted the displeasure expressed by the trial judge, who made several antagonistic comments about defense counsel during trial. The State, on the

other hand, suggested that the increase could be attributed to additional aggravating facts adduced at trial, or to the victim's statement at sentencing. But these potential factors could not explain the disparity because the trial court already knew the major details about the case when it made the 36-year offer.

Though the State argued that a "plea discount" is a benefit to defendants, the appellate court found the argument unavailing given that almost all criminal defendants now plead guilty. The court concluded that a sentencing court should give proper consideration for a prior plea offer when determining punishment after trial, and noted that the ABA has proposed, and several states have adopted, a rule whereby sentencing courts must explicitly list the factors relied upon when increasing the sentence beyond the term offered in a plea.

The appellate court further found in regard to defendant's intellectual disabilities (low IQ, ADHD, behavioral issues) that, while defendant's constitutional claim must fail under **People v. Coty**, 2018 IL App (1st) 162383, his argument that the court failed to adequately consider them in sentencing was meritorious. First, the court erred when it sentenced defendant without all necessary information, having accepted the pre-sentence investigator's excuse that he couldn't secure defendant's signature for release of medical records because defendant was in jail. Second, the court misapprehended the nature of an intellectual disability by dismissing certain documents as "14 years old," ignoring the **Coty** holding that such disabilities are immutable.

Finally, the sentencing court failed to consider defendant's potential for rehabilitation. A life sentence suggests no prospect for rehabilitation, yet defendant had no violent criminal history, and the court failed to explore how his intellectual disabilities may have influenced his behavior.

People v. Bruce, 2022 IL App (1st) 210811 The sentencing court abused its discretion when, on a remand for resentencing pursuant to **Miller v. Alabama**, it rejected the parties' agreement to a reduction from natural life to 23 years' imprisonment, and instead imposed a 28-year term.

Defendant was convicted for a double-murder committed at age 16. He was found guilty on a theory of accountability, having pushed the gunman to the scene in a wheelchair at the behest of a 25-year-old. Defendant left the scene prior to any shooting. He had significant cognitive impairments, including a 76 IQ. At the resentencing hearing, the defense presented substantial evidence of mitigation and rehabilitation, including the fact that defendant had become a model inmate.

Although a dissent would have affirmed because defendant took part in a murder that had been planned days in advance, the majority did not view the offense as fully thought out. The 25-year-old made a single comment about killing one of the victims, and defendant's role wasn't conceived until the moment he was ordered to push the wheelchair. Defendant never touched the weapon and wasn't there for the shooting, two facts the resentencing judge failed to consider. The trial court also abused its discretion when it refused to consider defendant's explicit apology as evidence of remorse.

When reviewing a trial court's rejection of a plea agreement, the question is not what the trial court would have done were it the prosecuting attorney, but whether the decision of the prosecuting attorney is such a departure from sound prosecutorial principle as to make it an abuse of prosecutorial discretion. The 23-year sentence in this case was not an abuse of prosecutorial discretion where it was supported by defendant's limited role in the offense and the substantial mitigating evidence presented at resentencing.

People v. Hill, 2022 IL App (1st) 171739-B After challenging his natural life sentence under **Miller**, defendant, who was 15 years old at the time of his crimes, was sentenced to terms of imprisonment totaling 60 years, eligible for day-for-day credit. Initially, the appellate court found that his 60-year sentence exceeded the *de facto* life threshold established in **Buffer**, despite the availability of good-time credit. The court was directed to reconsider its decision, however, after the Illinois Supreme Court issued its opinion in **People v. Dorsey**, 2021 IL 123010, which held that courts must consider the possibility of early release in determining whether a sentence is a *de facto* life term. The appellate court then concluded that defendant's 60-year term, subject to good-time credit, was not a *de facto* life sentence which violated **Miller**.

But, the appellate court went on to apply traditional sentencing review and held that the trial court abused its discretion at sentencing. Specifically, the trial court minimized the "veritable mountain" of evidence as to defendant's youth and its attendant characteristics. The appellate court noted that at resentencing, the court heard expert testimony explaining defendant's particular diminished culpability and rehabilitative potential. The expert concluded that defendant's juvenile behavior had virtually no predictive value on his likelihood to re-offend and instead noted that defendant's present-day behavior, which was "exemplary," was far more indicative of his current character.

The appellate court also concluded that deterrence was an inapt consideration where expert testimony demonstrated that defendant's criminal behavior, at the age of 15, was based primarily on the impetuousness of youth, as opposed to considered adult decision-making. Accordingly, a lengthy prison sentence was unlikely to deter other juveniles with the same degree of impetuosity and equally unlikely to deter adults capable of making reasoned decisions about their behavior.

While defendant's offense was serious – he personally shot and killed two individuals – courts must consider both the seriousness of the offense and the objective of restoring the offender the useful citizenship in fashioning an appropriate sentence. Here, the trial court abused its discretion in minimizing the effects of youth on defendant's commission of the offense, as well as his demonstrated ability as an adult to conform his conduct to the requirements of the law. Thus, the matter was remanded for resentencing.

People v. Hardy, 2020 IL App (1st) 172485 The trial court abused its discretion when it imposed consecutive 25-year terms of imprisonment for defendant's two attempt criminal sexual assault convictions. While the offenses were serious, the goal of rehabilitation is on equal stature with the seriousness of the offense under the Illinois constitution. The sentence here failed to account for the trial court's finding that defendant possessed potential for rehabilitation. The appellate court reduced defendant's sentence to consecutive 15-year terms, concluding there was no need to remand for resentencing where the record was complete and straightforward, and neither party suggested any need to present additional information.

One judge dissented on this issue and would have upheld the sentence imposed by the trial court. The dissent also noted that the proper remedy for an excessive sentence is to remand for resentencing rather than imposing a new sentence on appeal. The dissenting justice also expressed the belief that a fellow panelist, who had dissented from the decision to affirm the defendant's convictions and would have found ineffective assistance of trial counsel, did not retain the option of concurring in the sentence reduction, stating, "[h]e has decided the conviction should not stand, and his view on the appropriate sentence matters not."

People v. McKinley, 2020 IL App (1st) 191907 Defendant's 39-year sentence for murder, imposed on remand for resentencing in accordance with **Miller**, was an abuse of discretion because the judge gave little regard to defendant's significant rehabilitation. Defendant had obtained his GED, had completed various educational courses, and was on track to earn his bachelor's degree from Northwestern through the school's Prison Education Program. Defendant had been a model inmate and had shown remorse. While the judge stated generally that defendant had rehabilitative potential, he disregarded the extent of defendant's rehabilitation and did not afford it adequate weight. The judge also rejected evidence of peer pressure, gave improper weight to the need to deter future criminal conduct, and erred in concluding that the fact that defendant used a gun in the offense "made him older" than his actual age (which was 16 at the time of the offense).

The Appellate Court concluded that "defendant is the epitome of an offender who has been restored to useful citizenship." While defendant's sentence was constitutional under **Buffer**, it was still an abuse of discretion. The Appellate Court invoked its authority under Supreme Court Rule 615(b)(4) and resentenced defendant to 25 years.

People v. Allen, 2017 IL App (1st) 151540 The Appellate Court found defendant's 10.5-year sentence for burglary excessive and reduced it to the minimum of 6 years. Although defendant had 11 prior convictions, his background was primarily non-violent, and the mandatory Class X sentencing statute already takes into consideration defendant's status as a repeat offender. The instant offense - stealing cigarettes from a truck - was not serious, and therefore any sentence greater than the minimum would be "greatly at variance with the spirit and purpose of the law against burglary."

People v. Busse, 2016 IL App (1st) 142941 A reviewing court may only reduce a sentence where the trial court abused its discretion. A sentence within statutory limits is not excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. In fashioning the correct sentence, the most important factor is the seriousness of the offense.

Defendant was convicted of burglary committed in a school for stealing $44 in loose change from a vending machine located in a building on a college campus. Defendant had 28 prior convictions, including seven felonies. Several of these prior convictions were for burglary or theft from coin-operated machines. Burglary committed in a school is normally a Class 4 felony with a sentencing range of 4 to 15 years. Because of his prior convictions, defendant was sentenced as a Class X offender to 12 years imprisonment, a sentence within the Class X range of 6 to 30 years.

The court held that defendant's sentence was "grossly disproportionate" to the nature of the offense. Defendant did not break into the campus building. He simply walked inside during the day and stole money from a vending machine. He was not armed and he did not harm or threaten anyone. He did not even damage the vending machine.

Since defendant had already spent a number of years in prison due to his lengthy prior criminal history, it was "unlikely that a further 12 years of imprisonment" would rehabilitate him. The court thus reduced defendant's sentence to six years.

People v. Brown, 2015 IL App (1st) 130048 The trial court abused its discretion in sentencing defendant (who was 16 years old at the time of the offense) to 25 years for attempt first degree murder. (Defendant's sentence also included a 25-year firearm add-on sentence,

for a total of 50 years. The Appellate Court affirmed the 25-year add-on sentence.) The Appellate Court held that (1) the trial court improperly considered uncertain speculative evidence in imposing the sentence and (2) the sentence failed to satisfy the constitutional objective of restoring defendant to useful citizenship.

At trial, the victim testified that defendant followed him onto a bus, fired several shots at him, striking him twice in the left ankle and right thigh. The gun apparently jammed, so defendant walked away, played with the gun, and then fired two more shots. In sentencing defendant, the trial court found that but for the fact that gun jammed, defendant would have inflicted more violence and greater harm. The Appellate Court held that this finding was based on "uncertain speculative evidence" since the testimony actually showed that defendant successfully unjammed the gun and fired two more shots. There was thus no evidence that defendant would have inflicted more harm if the gun had not jammed.

Defendant's sentence was excessive and did not satisfy the constitutional objective of restoring defendant to useful citizenship. Ill. Const. 1970, art. I, §11. Several factors weighed in favor of defendant's rehabilitative potential, including his age, family support, education, and limited criminal background. The court also noted that a juvenile's lack of "matured judgment" has long been acknowledged by our society. Neuroscience research suggests that the human brain's capacity to govern risk and reward is not fully developed until the age of 25, and most criminals mature out of illegal behavior by middle age.

Despite this "abundance of authority supporting lessened sentences for juvenile offenders," defendant's sentence of 50 years imprisonment would not end until defendant was 66 years old. Such a sentence did not take proper account of defendant's youth and the objective of restoring him to useful citizenship.

People v. Daly, 2014 IL App (4th) 140624 A sentence may be deemed "excessive" where it is within the statutory range authorized for an offense but does not adequately account for the defendant's rehabilitative potential. The Illinois Constitution requires that penalties be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. This constitutional mandate requires the trial court to balance the retributive and rehabilitative purposes of punishment and to carefully consider all factors in aggravation and mitigation.

Because the trial court has a superior opportunity to assess a defendant's credibility and demeanor, deference is afforded to its sentencing judgment. However, "the Appellate Court was never meant to be a rubber stamp for the sentencing decisions of trial courts" and may modify a statutorily authorized sentence if the sentencing court abused its discretion.

Generally, Illinois law creates a presumption in favor of probation. For most offenses, 730 ILCS 5/5-6-1(a) requires a sentence of probation unless the court finds that a prison sentence is necessary for the protection of the public or that probation would deprecate the seriousness of the offense. In making the latter determination, the trial court is statutorily required to consider the nature and circumstances of the offense and the history, character and condition of the offender.

The trial court abused its discretion when it rejected probation and imposed a 42-month-sentence for reckless homicide. First, the trial court repeatedly stated that the public policy of the aggravated DUI statute requires incarceration, although defendant pleaded guilty to reckless homicide and the aggravated DUI counts were dismissed. In addition, the trial court compared the instant case to others in which sentences have been imposed for DUI, a further indication that the sentence was based on the dismissed charges and not on the offense to which the defendant pleaded guilty.

Second, the trial court ignored the circumstances of the reckless homicide offense of which defendant was convicted. The factual basis for the plea indicated that the ATV which defendant was driving on private property skidded when turning on wet gravel. The vehicle overturned and threw out the decedent. Although defendant admitted that she had been drinking, the factual basis did not state that she was intoxicated or that she drove under the influence of alcohol, or even that she was speeding. Under these circumstances, the trial court's emphasis on the fact that defendant chose to drink and drive ignored the circumstances of the reckless homicide and sentenced the defendant as if she had pleaded guilty to aggravated DUI.

Third, the trial court stated that it was imposing incarceration in order to deter similar offenses. However, the Illinois Supreme Court has found deterrence has little significance where an offense involves unintentional conduct. **People v. Martin**, 119 Ill. 2d 453, 519 N.E.2d 884 (1988).

Fourth, the trial judge ignored the defendant's history, character and rehabilitative potential. The evidence showed that defendant is a 24-year-old nurse with no prior convictions. In addition, she does not have a drug or alcohol problem and is the single parent of a 20-month-old son. Furthermore, the decedent was the defendant's cousin, and the decedent's family, the community, and the prosecution all supported a probation sentence.

Fifth, the trial court's comments at sentencing indicated a predisposition against probation for certain types of offenders. A trial judge may not refuse to consider an authorized sentence merely because the defendant is in a class that is disfavored by that judge. Here, the trial court appeared to believe that any offender who drives after drinking should not receive probation if a death results, no matter what offense is charged and without regard for the specific facts of the case. "Such a position results in an arbitrary denial of probation and frustrates the intent of the legislature to provide for a range of sentencing possibilities."

Sixth, the trial judge considered as aggravation a factor inherent in the offense of reckless homicide where it did not merely note the decedent's death in passing, but clearly focused on the death when imposing incarceration.

Where the trial court abused its discretion at sentencing, Supreme Court Rule 615(b)(4) authorizes the reviewing court to reduce the sentence. The Appellate Court reduced defendant's sentence to probation and remanded the cause with directions to impose appropriate probation conditions. Furthermore, to remove any suggestion of unfairness, the court ordered that the case be assigned to a different judge on remand.

People v. Nolan, 291 Ill.App.3d 879, 684 N.E.2d 832 (1st Dist. 1997) Maximum extended-term sentence for second degree murder was excessive because the decedent was the aggressor, defendant attempted several times to "extract himself from the situation," and the shooting was not premeditated. Also, the evidence was close, defendant carried his burden of proving sufficient mitigation to reduce the offense to second degree murder, and defendant's prior record did not indicate that he was a "dangerously aggressive criminal."

People v. Thomas, 277 Ill.App.3d 214, 660 N.E.2d 184 (1st Dist. 1995) The trial judge erred by imposing a five-year-extended term for failure to report an accident where neither of the aggravating factors on which the court relied justified an extended-term sentence. Defendant's prior record consisted primarily of prostitution-related misdemeanors, and are "not the type of criminality that resulted in this incident." Defendant's conduct of fleeing in fear of her life was "not the type of conduct for which a severe sentence would deter others."

People v. Margentina, 261 Ill.App.3d 247, 634 N.E.2d 29 (3d Dist. 1994) Trial court abused its discretion by failing to give adequate weight to decedent's harassment toward defendant, defendant's youth, and the circumstances of defendant's psychological and emotional problems and upbringing (he had been physically abused as a child and had lived in five or six homes during his life, his mother was an alcoholic and physically abusive, he had seen his natural father only three times in his life, and he had witnessed his mother stab his stepfather, a drug user who routinely injected drugs in front of defendant).

People v. Gonzalez, 243 Ill.App.3d 238, 611 N.E.2d 1133 (1st Dist. 1993) Arson sentence reduced. The trial court improperly considered harm inherent in the offense, and defendant had no prior criminal history, was employed, did not speak English, had a limited education, was intoxicated at the time of the crime, did not remember what happened, and expressed remorse.

People v. Gonzalez, 243 Ill.App.3d 238, 611 N.E.2d 1133 (1st Dist. 1993) Arson sentence reduced. The trial court improperly considered harm inherent in the offense, and defendant had no prior criminal history, was employed, did not speak English, had a limited education, was intoxicated at the time of the crime, did not remember what happened, and expressed remorse.

People v. Maldonado, 240 Ill.App.3d 470, 608 N.E.2d 499 (1st Dist. 1992) Murder sentence excessive where defendant was 20 years old, had two small children, was engaged to the children's mother, had completed three years of high school, and had no prior felony record. See also, **People v. Brown**, 243 Ill.App.3d 170, 612 N.E.2d 14 (1st Dist. 1993) (murder sentence reduced because the judge gave inadequate consideration to rehabilitative potential where defendant was 20 years old and had no prior criminal history).

People v. Willis, 231 Ill.App.3d 1056, 597 N.E.2d 672 (1st Dist. 1992) On defendant's second appeal (after the appellate court remanded the cause for resentencing because the trial court relied on the aggravating factor that was inherent in the offense and the trial court imposed the same sentence as it did originally), the court reduced defendant's sentence, stressing the absence of the aggravating factor originally considered and the fact that the new mitigating evidence established considerable potential for rehabilitation.

People v. Robinson, 221 Ill.App.3d 1045, 582 N.E.2d 1299 (1st Dist. 1991) 20-year-sentence for aggravated criminal sexual assault against a four-year-old was excessive, though the "facts of this crime are reprehensible and heinous," because the judge failed to consider defendant's mental condition as a mitigating factor. Also, the sentencing judge improperly considered the criminal acts of others against the victim in imposing sentence on defendant.

People v. Newell, 196 Ill.App.3d 373, 553 N.E.2d 722 (3d Dist. 1990) 60-year sentence imposed on guilty but mentally ill conviction for felony murder was excessive where defendant was in a group of people involved in the shooting, another member of the group brought and used the gun, and defendant repeatedly stated that he did not know about the gun. Also, the judge did not adequately consider defendant's rehabilitative potential in light of defendant's age (17) and mild retardation.

People v Williams, 196 Ill.App.3d 851, 544 N.E.2d 1040 (1st Dist. 1990) Judge failed to

properly consider defendants' ages and rehabilitative potential; sentences reduced.

People v. Colter, 181 Ill.App.3d 392, 536 N.E.2d 1372 (3d Dist. 1989) Trial judge erred in giving restitution little if any weight on grounds that it was "speculative," where defendant paid the restitution within two months of sentencing. Also, the judge should have viewed eight of the twelve statutory mitigating factors as favoring mitigation. "[W]e fail to see where imprisonment of the defendant will be of any benefit to her and our system of justice. That her imprisonment might serve as a deterrence to others is highly questionable. It's an academic question as to the effects of imprisonment as far as deterrence is concerned. We certainly do not believe that this is a case where imprisonment would provide any significant deterrence."

People v. Smith, 178 Ill.App.3d 976, 533 N.E.2d 1169 (3d Dist. 1989) Defendant's 30-year-sentence for murder was vacated and remanded for resentencing where the trial judge failed to give adequate consideration to defendant's rehabilitative potential. The only statutory aggravating factor the judge mentioned was that the sentence was necessary to deter others from committing the same crime. There was no evidence to support the trial judge's suggestion that the crime was gang-related, and several mitigating factors were present (defendant was 17, had no prior criminal record, was mentally retarded, and was of such character and attitude as to indicate that he was unlikely to commit another crime).

People v. Evans, 143 Ill.App.3d 236, 492 N.E.2d 1036 (5th Dist. 1986) Sentence for unlawful possession of a controlled substance with intent to deliver was excessive. The judge's emphasis on defendant's lack of remorse was "misplaced"; because defendant maintained his innocence, he could "hardly be expected to be remorseful for something he contends he did not do." Also, defendant did not have a significant criminal history, and the amount of controlled substances involved "was only slightly in excess of the minimum required to make the offense a Class X felony as opposed to a Class 1 felony."

People v. Treadway, 138 Ill.App.3d 899, 486 N.E.2d 929 (2d Dist. 1985) Extended-term sentences of 60 years for attempt murder and armed violence were reduced where the offenses were "perpetrated in a fleeting moment of intoxicated rage" and the 24-year-old defendant "has rehabilitative potential that would be poorly served by such a long sentence."

People v. Steffens, 131 Ill.App.3d 141, 475 N.E.2d 606 (1st Dist. 1985) Defendant's 30-year sentence for murder was excessive where the offense was not a "calculated murder," but arose from an altercation which escalated, defendant was 16 years old, and his only criminal record was a burglary conviction as a juvenile three years earlier.

People v. Nelson, 106 Ill.App.3d 838, 436 N.E.2d 655 (1st Dist. 1982) Sentences of 20 years for armed robbery were reduced to 10 years where the victims were not physically harmed and defendants' rehabilitative potential would not have been well served by the length of their sentences in light of their ages, prior scholastic records, work histories, and criminal records.

People v. Johnson, 104 Ill.App.3d 572, 432 N.E.2d 1232 (1st Dist. 1982) Consecutive sentences for deviate sexual assault and rape were altered to run concurrently because concurrent sentences provide "the greatest potential of restoring the offender to a useful and

productive place in society, while at the same time adequately punishing the offender for his misconduct and safeguarding the public from further offenses."

People v. Rickard, 99 Ill.App.3d 914, 425 N.E.2d 1317 (1st Dist. 1981) Sentence of 100 to 300 years for murder was vacated and remanded for resentencing. Rehabilitation was not "accorded proper consideration" in light of defendant's lack of any criminal history, his education, and his good employment history; "the sentence imposed effectively negates any possibility of defendant's rehabilitation." See also, **People v. Goodwin**, 83 Ill.App.3d 203, 403 N.E.2d 1051 (2d Dist. 1980) (attempt murder sentence reduced where the judge "did not give adequate weight to the history and character of the defendant, and defendant's potential for rehabilitation" in light of defendant's "previously unblemished record" and a doctor's testimony that "defendant should have been mentally hospitalized").

People v. Bailey, 88 Ill.App.3d 416, 410 N.E.2d 545 (3d Dist. 1980) Sentence for aiding a fugitive was reversed and remanded for resentencing where defendant was 24 years old, had no prior history of delinquency or criminal conduct, had strong support from his family, and showed a steady employment record. These strong factors in mitigation, when compared with the single aggravating factor, render the sentence excessive.

People v. Nowman, 87 Ill.App.3d 42, 409 N.E.2d 95 (3d Dist. 1980) Three-year-sentence of imprisonment (imposed upon revocation of probation) excessive and inappropriate; the judge failed to consider available sentencing alternatives. While the judge believed that defendant's attempts to obtain employment (and ability to secure employment at time of sentencing hearing) were made only to impress the judge, these factors should have been considered. Further, three years' incarceration will not help defendant's ex-wife's situation, as he will be unable to pay support of her while he is incarcerated.

People v. Mick, 86 Ill.App.3d 1022, 408 N.E.2d 1079 (5th Dist. 1980) Sentence of five years for theft of an automobile was reduced to three years. In view of defendant's youth (19-years-old), his steady employment before the offense, and his single, non-violent prior offense, the prospects of rehabilitation are good. Also, a three-year-sentence will adequately protect the public and "will not deprecate the seriousness of defendant's conduct." See also, **People v. Anderson**, 142 Ill.App.3d 240, 488 N.E.2d 557 (1st Dist. 1985) (sentences were excessive in light of defendants' ages (they were 17) and lack of significant or extensive criminal history).

People v. Oravis, 81 Ill.App.3d 717, 402 N.E.2d 297 (4th Dist. 1980) Sentence for burglary was reduced. The trial judge's disbelief of defendant's assertions of innocence did not support the sentence because defendant "has no prior juvenile or adult record, and his actions did not threaten or cause physical harm."

People v. Hastings, 72 Ill.App.3d 816, 390 N.E.2d 1273 (1st Dist. 1979) Sentence of 20 to 60 years for deviate sexual assault was reduced to 9 to 27 years in light of defendant's youth, his record of only one misdemeanor conviction, and his successful completion of trade school.

People v. Williams, 62 Ill.App.3d 966, 379 N.E.2d 1268 (1st Dist. 1978) Trial court abused its discretion in sentencing defendant to 40 to 140 years for armed robbery and attempt murder where defendant was 21 years old, had no prior convictions, was a victim of a broken home, had undergone treatment for mental problems so serious that he had contemplated

suicide, and was the father of a young child. The sentence "cannot possibly result in restoring him to any measure of useful citizenship."

People v. Kish, 58 Ill.App.3d 215, 374 N.E.2d 10 (3d Dist. 1978) Sentence for unlawful possession of 30 grams of LSD was reduced where defendant's history revealed that he was not an incorrigible criminal, but a young man with a drug problem.

People v. Merritt, 53 Ill.App.3d 929, 369 N.E.2d 113 (1st Dist. 1977) Though defendant committed repeated violent criminal acts, sentences were reduced "in the interest of his rehabilitation and so that the appearance of vengeance may be avoided," and in light of defendant's youth and prior record, "coupled with comparable sentences in like cases."

§44-14(c)
Sentences Not Excessive

Illinois Supreme Court
People v. Alexander, 239 Ill.2d 205, 940 N.E.2d 1062 (2010) The trial court sentenced defendant, who was 15 years old at the time of the offense, to 24 years' imprisonment for aggravated discharge of a firearm. Defendant had fired several shots at a fellow student in the crowded hallway of a high school with other students and teachers present. The Appellate Court reduced the sentence to six years, finding that the trial court failed to give due consideration to defendant's social background and facts evidencing his rehabilitative potential, and gave undue weight to factors in aggravation. The Supreme Court concluded that: (1) the trial court had considered the appropriate factors in aggravation and mitigation; (2) the 24-year sentence was not greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense; and (3) the Appellate Court improperly substituted its judgment for that of the trial court because it would have weighed the factors differently.

The court reversed the judgment of the Appellate Court and reinstated the 24-year sentence.

People v. Streit, 142 Ill.2d 13, 566 N.E.2d 1351 (1991) The trial judge properly considered and balanced all the mitigating and aggravating factors and reached a sentencing decision that was not an abuse of discretion; the appellate court decision, which vacated sentences after finding that the trial court ignored compelling mitigation and that imprisonment would not benefit society, was reversed.

People v. Barrios, 114 Ill.2d 265, 500 N.E.2d 415 (1986) Sentence of imprisonment for perjury was properly proportioned to the nature of the offense and was not at variance with the purpose and spirit of the law where defendant had 10 prior convictions and had lied persistently under oath.

People v. Younger, 112 Ill.2d 422, 494 N.E.2d 145 (1986) Appellate decision, which found that probation plus an appropriate period of weekend incarceration was more suitable to term of imprisonment, was reversed. The trial judge reviewed the presentence report, heard argument, reviewed the testimony, stated which statutory aggravating factors were present, and concluded that a sentence of probation or conditional discharge would deprecate the seriousness of defendant's conduct and would be inconsistent with the ends of justice.

People v. LaPointe, 88 Ill.2d 482, 431 N.E.2d 344 (1981) The trial judge's finding that defendant was not under extreme mental or emotional disturbance at the time of the murder was not against the manifest weight of the evidence where, despite evidence of defendant's drug use, an acquaintance who saw defendant before and after the murder said that he did not appear to be under the influence of drugs. The judge also properly found that defendant had a significant history of prior criminal activity based on defendant's prior conviction of burglary and that he was engaged in the illegal use and possession of drugs for two or three years.

People v. Lykins, 77 Ill.2d 35, 394 N.E.2d 1182 (1979) The trial judge did not abuse his discretion by imposing a sentence of 50 to 150 years for murder. The severity of the sentence was "justified by the brutal nature of the crime," and "conveys to the parole authorities the judge's opinion as to the serious nature of the offense" and that defendant should not be paroled after serving only the time until his eligibility. See also, **People v. Almo**, 108 Ill.2d 54, 483 N.E.2d 203 (1985) (30-year-sentence for murder upheld); **People v. Crete**, 113 Ill.2d 156, 497 N.E.2d 751 (1986) (10-year-sentence for aggravated battery upheld).

People v. Murphy, 72 Ill.2d 421, 381 N.E.2d 677 (1978) Defendant's sentence of 12 to 70 years for indecent liberties with a child was upheld where the judge said that he considered defendant's age, the nature of the offense, defendant's educational and family backgrounds, and the nature and character of defendant himself, including his limited mental acuity. The judge considered the seriousness of the offense, and concluded that defendant should be incarcerated for a sufficient length of time to be treated and that the maximum term should be long enough to protect society in the event defendant does not respond to treatment. See also, **People v. Heflin**, 71 Ill.2d 525, 376 N.E.2d 1367 (1978).

People v. Perruquet, 68 Ill.2d 149, 368 N.E.2d 882 (1977) Sentence of 1 to 20 years for burglary affirmed where the trial judge considered the proper factors in aggravation and mitigation, and his decision that the sentence would provide the opportunity and incentive for rehabilitation, yet protect the public, was not an abuse of discretion in light of defendant's history of criminal activity. See also, **People v. Cox**, 82 Ill.2d 268, 412 N.E.2d 541 (1980) (sentence of two years for reckless homicide was affirmed).

Illinois Appellate Court

People v. Minnis, 2026 IL App (1st) 232494 Defendant was convicted by a jury of two counts of aggravated kidnapping and twelve counts of aggravated criminal sexual assault based on evidence that he forced his way at gunpoint into a car occupied by two women, directed them to drive to a nearby parking lot, and sexually assaulted both multiple times. Defendant was sentenced to a total of 96 years of imprisonment.

On appeal, defendant argued that his 96-year sentence was excessive, citing his youth (23 years old), the trial court's improper reliance on his assertions of innocence as aggravation, and his rehabilitative potential. The appellate court disagreed, emphasizing that consecutive sentences were mandatory, the individual sentences on most counts were at the lower end of the available range, and the court properly considered defendant's lack of remorse in its sentencing analysis. Further, defendant had not argued in the trial court that his young age warranted a more lenient sentence, and the appellate court refused to find an abuse of discretion based on a failure to consider *sua sponte* an argument not raised below.

People v. Deleon, 2025 IL App (1st) 211454 Defendant received a mandatory life sentence for murder and 30 years for attempt murder, committed at age 17. After the statute requiring a life sentence was found unconstitutional, he was resentencted to 100 years for the murder and 30 years for the attempt murder. Following the issuance of **Miller v. Alabama**, 567 U.S. 460 (2012), defendant received another sentencing hearing, after which he received 60 years for murder and a 20 years for attempt murder. He appealed these sentences, arguing they violated the eighth amendment and the proportionate penalties clause of the Illinois Constitution. He also argued his sentence was excessive.

The appellate court affirmed. The court rejected the eighth amendment claim for several reasons. First, a life sentence imposed on a juvenile is constitutional if discretionary and the sentencing court is able to consider youth and its attendant characteristics. **Jones v. Mississippi**, 593 U.S. 98, 105 (2021). Here, the sentencing court had discretion to impose a term less than 40 years (*de facto* life), and the record did not suggest that it refused to consider youth and rehabilitative potential when it chose a term of 80 years.

Second, under section 730 ILCS 5/3-6-3(a)(2.1), defendant is eligible for one day of sentence credit for each day of his imprisonment. Defendant's 80-year sentence, with good-time credit, is effectively a 40-year sentence and he therefore did not receive a life sentence. This is true even in light of the fact that defendant has had two months of good time revoked. Defendant has the ability to regain that credit under 730 ILCS 5/3-3-2(b), 3-6-3(c), and regardless, a sentencing scheme that offers day-for-day credit allowing for a defendant to serve less than *de facto* life is one that offers a meaningful opportunity for release, thus satisfying **Miller**.

Third, in 2019, the legislature enacted a statute providing for parole review with respect to offenses committed by defendants who were under the age of 21. This too would seem to offer a meaningful opportunity for release, and render **Miller** inapplicable. However, because this issue is pending in the supreme court, and because **Miller** is inapplicable for the above reasons, the appellate did not decide whether Illinois' parole system offers a sufficiently meaningful opportunity for release.

Nor was defendant's sentence excessive or in violation of the proportionate penalties clause. Defendant's proportionate penalties clause claim largely focused on the inadequacy of the youth parole statute, arguing that its intervals of 20 and 10 years do not afford juveniles a meaningful opportunity to demonstrate rehabilitation. The court found this argument irrelevant to the proportionate penalties clause and noted that the sentence was imposed following a lengthy sentencing hearing at which the trial court heard a great deal of evidence, expressly went through the statutory factors, and stated it considered each factor in mitigation and aggravation. The court commented on defendant's allocution, finding it unimpressive, and considered the offense, in which defendant shot at a rival gang member, striking him and killing a seven-year-old girl who was standing on the sidewalk buying ice cream. For the same reason, the sentence was not excessive. While defendant argued that the court should have placed greater weight on defendant's youth and rehabilitative potential, it is not job of the appellate court to re-weigh the evidence on appeal.

People v. Dillard, 2025 IL App (4th) 230739 The sentencing court did not abuse its discretion by considering defendant's school disciplinary records during sentencing, or by imposing a 31-year sentence for aggravated vehicular high jacking with a firearm enhancement.

Regarding the school records, the majority found the defendant affirmatively waived the issue because defense counsel stated "no objection" and defendant signed for their release. A majority of the court went on to find that, contrary to the dissent in **People v. Ferguson**, 2021 IL App (3d) 200041, the consideration of school disciplinary records is not improper. A concurring justice would have simply applied waiver, expressing reservations about the use of school disciplinary records which, in **Ferguson**, was justified by pointing to 730 ILCS 5-5-3.2(a)(3) (allowing sentencing court to consider "prior delinquency"). The concurring justice found this to be a "stretch."

The appellate court also rejected the argument that a 31-year sentence imposed on a 20-year-old defendant constituted an abuse of discretion given defendant's childhood trauma, the fact that his brain was likely not fully developed, and the fact that much of his "school records can be explained, in part, because he attended school in Peoria School District 150 as a black student." He supported these latter two points with school board statistics and law review articles showing a pattern of excess disciplinary issues for black students, the impact of trauma on behavior, and brain underdevelopment in adolescents. The appellate court held that because these secondary sources were not before the trial court, it would "emphatically reject any consideration of the materials" cited for the first time on appeal. It went on to find the sentence well within the 21-45 year range and therefore not an abuse of discretion.

The court did, however, reduce defendant's MSR term from three years to 18 months, because under the relevant statute, three years of MSR could be given only if the crime resulted in great bodily harm.

People v. Anderson, 2024 IL App (1st) 220864 The circuit court did not violate the eighth amendment when, at re-sentencing ordered pursuant to **Miller**, it reduced defendant's two murder sentences from natural life and 50 years, to 40 and 37 years. Defendant argued that the aggregate 77-year consecutive sentences, imposed for two separate murders committed at age 17, violate the eighth amendment because they amount to a *de facto* life sentence. However, neither of defendant's sentences exceed the 40-year limit set by **Buffer**. Defendant has no constitutional grounds on which to argue that consecutive sentences imposed for separate offenses may be considered a single *de facto* life sentence. Regardless, defendant is statutorily eligible for parole after 20 years, so he has a meaningful opportunity for release. Finally, neither of these sentences were mandatory. See **People v. Wilson**, 2023 IL 127666, citing **Jones v. Mississippi**, 593 U.S. 98, 105 (2021) (discretionary sentencing scheme is constitutionally sufficient).

Nor did the court err in its consideration of the sentencing factors. The court explicitly considered "youth and its attendant characteristics" as well as the factors required by 730 ILCS 5/5-4.5-105(a), before imposing the sentences. Defendant argued that the court ignored or misapplied some of the factors in section 5-4.5-105(a). For example, defendant argued that the court considered a lack of remorse despite the fact that subsection 9 of the statute prohibits the court from considering in aggravation a lack of remorse if defendant does not make a statement in allocution. But this factor was inapplicable, as defendant did speak in allocution, and regardless, the court did not mention a "lack of remorse" in its remarks. The appellate court similarly rejected defendant's contentions that the court deferred to the original sentencing judge's findings; rather, the court merely noted they were "germane" before making its own findings. Finally, there was nothing improper in the sentencing court's consideration that defendant was already eligible for parole, as this is a relevant sentencing factor.

People v. Campos, 2024 IL App (2d) 230056 Defendant argued that his 48-year sentence for a homicide committed at age 20 was excessive because it failed to account for his youth, his supportive family, his mental health and substance abuse issues, and his rehabilitative potential. The appellate court affirmed.

First, the appellate court found the error forfeited because defendant did not file a motion to reconsider his sentence. Defendant countered that sentencing errors affect the right to liberty and are therefore reviewable as second-prong plain error. The appellate court disagreed that a defendant can avoid forfeiture of sentencing errors merely by invoking the right to liberty, as this would make every sentencing error reviewable as plain error. Rather, defendant must provide some rationale beyond "sentencing error" before invoking the second prong. Here, defendant failed to do so and the appellate court therefore found the second prong inapplicable.

Similarly, defendant could not establish first-prong plain error because his argument that the evidence was "closely balanced" was a mere recitation of his claim that the court failed to consider substantial mitigating evidence. But when a sentencing court imposes a term within the sentencing range, as it did here, the appellate court will not find error absent an abuse of discretion – the sentence either varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. As with his second prong argument, defendant's argument with regard to the first prong is too broad. It cannot be true that anytime the defendant presents substantial mitigating evidence, the evidence at sentencing is closely balanced.

Moreover, the court stated that it considered the PSI, evidence from trial, the statutory factors in aggravation and mitigation, and the evidence presented at the sentencing hearing. Although defendant pointed to several aspects of this evidence which may have warranted a lower sentence, including defendant's age and his rehabilitative potential, the fact that a different court may have given differing weight to some of these factors does not mean that the court below "erred." Absent an abuse of discretion, there was no clear error, and the sentencing claim was forfeited.

People v. Lee, 2023 IL App (4th) 220779 Defendant was charged with aggravated DUI resulting in two deaths, reckless homicide and driving while fatigued. The trial court found him guilty of aggravated DUI and not guilty of the remaining offenses. It imposed a sentence of six years in prison under 625 ILCS 5/11-501(d)(2)(G), which sets the range from 6 to 28 years, with the possibility of probation in "extraordinary circumstances."

The sentencing court did not abuse its discretion when it imposed a six-year prison sentence, rather than probation. Because probation was available only in "extraordinary circumstances," the statute contained a presumption in favor of a prison term.

In support of his claim that extraordinary circumstances existed, defendant pointed out that he was not actually impaired by the THC in his system, and that the court found he did not act recklessly or consciously when he fell asleep at the wheel, as it acquitted him of those offenses. He also pointed to the evidence in mitigation, including the fact that he was a law-abiding and gainfully employed married father of two.

However, given the deferential standard of review, the appellate court affirmed. A six-year term is at the bottom of the range, excluding probation, and is not excessive for a crime that resulted in the death of two people. Nothing in the mitigating evidence could be considered "rare" as would be necessary for a finding of extraordinary circumstances. The court also noted that requests for probation for aggravated DUI resulting in death have been universally rejected in numerous other decisions.

People v. Kendrick, 2023 IL App (3d) 200127 Defendant argued that his 60-year prison sentence violates the proportionate penalties clause of the Illinois Constitution because he was 19 years old at the time of his crimes. However, because defendant was sentenced after June 1, 2019, he is eligible for parole review after serving 20 years of his prison term. See 730 ILCS 5/5-4.5-115(b). Thus, he was not given a *de facto* life sentence without meaningful opportunity for release.

Defendant also argued that the sentencing court abused its discretion when it found defendant lacked rehabilitative potential. In mitigation, defendant presented an expert in psychology who testified that defendant's violence stemmed from adversity he faced growing up, but that given his youth he had a good rehabilitative potential. The appellate court found no abuse of discretion given the seriousness of the offense, defendant's criminal history, and his prior failure to complete substance-abuse treatment. The sentencing court, which presided over the case for eight years, was in the best position to weigh defendant's chances for rehabilitation, and was not required to accept the opinion of a psychologist who interviewed defendant for two hours.

People v. Klein, 2022 IL App (4th) 200599 A defendant's drug addiction is not a statutory factor in mitigation, thus the court is not required to view it as mitigating. Addiction is a "double-edged sword" and may be viewed as mitigating or aggravating depending on the circumstances. Here, the court did not err in finding defendant's addiction to be an aggravating factor. Defendant was under the influence of drugs when he committed the theft, and he used the money he stole to buy more drugs. Defendant had a history of committing similar crimes for a similar purpose. While defendant had periods of sobriety, he had not managed to stay sober. Under these facts, his 12-year sentence was not an abuse of discretion. Defendant's inability to stop committing crimes in furtherance of his addiction was an appropriate basis for the court to conclude that a high sentence was necessary.

People v. Mauricio, 2021 IL App (2d) 190619 Defendant, who was 20 years old at the time of his offense, challenged his 55-year sentence for one count of first degree murder, arguing it was unconstitutional under both the Eighth Amendment and the proportionate penalties clause of the Illinois Constitution and that it was excessive. The Appellate Court rejected those challenges.

The court declined to extend the reasoning of **Miller v. Alabama**, 567 U.S. 460 (2012) to individuals over the age of 18, noting that the Second District had consistently refused to do so. Accordingly, defendant's Eighth Amendment challenge failed. Likewise, a recent change to the Code of Corrections [730 ILCS 5/5-4.5-115(b)], providing parole opportunities for persons under 21 years old when they committed first degree murder, did not support defendant's claim that his sentence was unconstitutional as applied under the proportionate penalties clause. The statutory change is prospective only, and it specifically excludes cases where the offense was found to be accompanied by brutal or heinous behavior indicative of wanton cruelty under Section 5-8-1. A brutal and heinous finding was made in defendant's case, accordingly his 55-year sentence did not shock the moral sense of the community and was upheld.

Defendant's sentence was not excessive, either. The 55-year sentence was imposed after a multi-day sentencing hearing during which both the State and the defense presented testimony from several witnesses. The sentencing judge's comments demonstrated that he

considered defendant's youth, and the court made specific findings in aggravation and mitigation.

People v. Kulpin, 2021 IL App (2d) 180696 Defendant received a 60-year sentence for a murder committed at age 20. He also received a three-year consecutive sentence for concealment of a homicidal death. He was eligible for an extended-term up to 100 years.

Because defendant was not under 18, the sentencing court had no obligation to consider the **Miller/Holman** factors prior to sentencing. Defendant's attempt to extend the **Miller** protections based on scientific studies showing its principles applicable to young adults constituted an as-applied challenge which was not raised below and therefore forfeited. A similar argument raised under the proportionate penalties clause of the Illinois constitution was also deemed forfeited.

Defendant further argued that the sentencing court violated the proportionate penalties clause by failing to consider rehabilitation. While this claim had been preserved by a reference to rehabilitation in the motion to reconsider sentence, it lacked merit. The sentencing court did consider rehabilitative potential as evidence by its decision not to impose an extended term. Further reduction was not warranted in light of a psychologist's report, and a history of repeated domestic violence, both of which suggested limited rehabilitative potential.

Finally, the Appellate Court rejected defendant's excessive sentence claim. Although the record showed defendant was raised in an abusive household, he had not shown any remorse or responsibility and continued to pose a danger such that a 60-year term for murder was not excessive.

People v. McGee, 2020 IL App (2d) 180998 The Appellate Court upheld defendant's four-year sentence for retail theft. Defendant argued that his crime – stealing shirts from Macy's - would have been a misdemeanor but for his criminal history, and accordingly his sentence was excessive. The Appellate Court affirmed, citing defendant's extensive criminal history and the fact that he was on MSR at the time of the offense. The court expressed disagreement with the rationale and holding in **People v. Allen**, 2017 IL App (1st) 151540, in particular that court's belief that a lower sentence for petty crimes could be justified by the fact that prior prison sentences did not work to rehabilitate defendant.

People v. Wheeler, 2019 IL App (4th) 160937 The Appellate Court upheld the 18-year-old defendant's aggregate 90-year sentence for home invasion and two counts of aggravated criminal sexual assault despite the fact that the State made a 38-year plea offer before trial. While a trial court may consider a defendant's anxiety and depression as mitigation, such psychological impairments are not "inherently mitigating." Likewise, defendant has no right to rehabilitation; the court could properly conclude that his conduct was so abhorrent that he forfeited his right to freedom. And, after trial, the 38-year plea offer was irrelevant to whether a lengthy prison sentence was necessary for protection of the public.

People v. Lundy, 2018 IL App (1st) 162304 A 10-year prison sentence for taking $33 worth of underwear from a store while displaying a knife was upheld. The Appellate Court refused to substitute its judgment for the trial court's where the sentencing judge was aware of mitigating evidence but opted to impose the sentence largely due to defendant's criminal history, which consisted mostly of drug offenses and a battery from more than 20 years earlier. Justice Hyman dissented on the basis that the 10-year sentence was incompatible

with the seriousness of the offense.

People v. Harris, 2018 IL App (3d) 170365 Even though defendant's motion to reconsider sentence was not heard and denied until 18 years after his original sentencing, the court could not consider "two decades worth of hindsight" in ruling on the motion. Instead, the court is limited to whether the initial sentence was correct based on the facts and circumstances known at the time of sentencing. The court could not consider defendant's current age and declining health because Illinois does not have a compassionate release program similar to what is available in federal cases.

People v. Lawson, 2018 IL App (4th) 170105 The Appellate Court lacks the authority to reduce a sentence of imprisonment to a term of probation under Illinois Supreme Court Rule 615(b). Likewise, the Appellate Court cannot remand with directions for the circuit court to grant probation, and prior decisions to the contrary are not to be followed.

Even if the Appellate Court could order probation, it would decline to do so in this case, because the sentencing court did not abuse its discretion in imposing consecutive sentences of 8 years for aggravated driving under the influence and 4 years for failure to report an accident involving death. While defendant suffered from a dangerous medical condition (immune thrombocytopenic purpura) which required weekly evaluation and monthly treatment, she was able to receive that care in the Department of Corrections. Because defendant was housed in the infirmary at the prison, she actually had greater access to medical care than she would have in the community. Defendant's medical condition did not constitute an "extraordinary circumstance" to justify a sentence of probation under 625 ILCS 5/11-501(d)(2)(G). While the legislature did not define "extraordinary circumstances," such circumstances were meant to be limited. Where the record showed that the court considered evidence and arguments in aggravation and mitigation, as well as the pre-sentence report and defendant's statement in allocution, the court did not abuse its discretion in imposing sentence.

People v. Sandifer, 2017 IL App (1st) 142740 Defendant's life sentence for the first degree murder of his son, and consecutive sentence of 25 years for the attempted first degree murder of his girlfriend, were not excessive despite defendant's non-violent criminal history and his acute depression stemming from the death of his father and two brothers. The court properly considered the extremely disturbing nature of the inexplicable attack, where he nearly decapitated his three-year old son, and sexually assaulted his girlfriend, with a butcher's knife.

People v. Barnes, 2017 IL App (1st) 143902 In sentencing defendant to consecutive 18- and 5-year sentences for home invasion and robbery, the trial court did not abuse its discretion by deeming the complainant's injuries as the "most significant" aggravating factor. Contrary to defendant's claim that the trial court considered only this factor, the court specifically stated that it considered all statutory factors in aggravation and mitigation. The court was not required to specify on the record all of the reasons for the sentence imposed. **Miller** does not mandate a sentence reduction where it applies only to the most severe criminal penalties and regardless, defendant was 19 at the time of the offense.

People v. Clemons, 175 Ill.App.3d 7, 529 N.E.2d 57 (1st Dist. 1988) The trial court did not abuse its discretion by imposing a sentence of probation instead of supervision for

misdemeanor battery. The sentence was within the statutory limits, and the court properly considered as aggravation the severity of the beating inflicted on the victim.

People v. Alexander, 127 Ill.App.3d 1007, 470 N.E.2d 1071 (1st Dist. 1984) Maximum sentence for rape upheld in light of the nature of crime and defendant's prior record. The trial judge's statement that he could not think of anything worse than an assault on a child, except for the taking of a life, did not demonstrate that he refused to exercise discretion in imposing sentence. See also, **People v. Ingram**, 143 Ill.App.3d 1083, 494 N.E.2d 148 (4th Dist. 1986) (12-year-sentence for deviate sexual assault upheld); **People v. Wallace**, 170 Ill.App.3d 329, 524 N.E.2d 677 (2d Dist. 1988) (20-year-sentence for aggravated criminal sexual assault upheld).

People v. Kerans, 103 Ill.App.3d 522, 431 N.E.2d 726 (3d Dist. 1982) Imposition of four concurrent nine-year-sentences for armed violence convictions was affirmed where defendant's conduct inflicted serious bodily harm, he had a "long list of prior offenses," and he threatened potential witnesses.

People v. Wys, 103 Ill.App.3d 273, 431 N.E.2d 38 (3d Dist. 1982) The trial judge did not abuse his discretion by imposing the maximum possible sentence for aggravated battery where defendant had "an extensive criminal history" and repeated attempts at rehabilitation had failed.

People v. Makes, 103 Ill.App.3d 232, 431 N.E.2d 20 (2d Dist. 1981) Sentence of two years for theft was affirmed. The trial judge was not bound to follow the prosecutor's recommendation of probation or work release; further, the judge considered all the relevant sentencing factors, including that defendant had previously committed a similar offense and had no remorse for her actions.

People v. Turk, 101 Ill.App.3d 522, 428 N.E.2d 510 (1st Dist. 1981) Concurrent sentences of 50 to 100 years for murder and attempted murder were affirmed where the trial judge gave full consideration to all factors in aggravation and mitigation and there was no reason to disturb the sentences in light of the heinous nature of the offenses. See also, **People v. Hosty**, 146 Ill.App.3d 876, 497 N.E.2d 334 (1st Dist. 1986) (40-year-sentence for murder upheld); **People v. Staten**, 143 Ill.App.3d 1039, 493 N.E.2d 1157 (2d Dist. 1986) (natural life sentence for murder upheld).

§44-15
Disparity in Sentences

§44-15(a)
Generally

Illinois Supreme Court
People v. Munson, 206 Ill.2d 104, 794 N.E.2d 155 (2002) Although the United States Constitution does not require comparative proportionality review in death penalty cases, the Illinois Supreme Court has a constitutional duty to determine whether a death sentence has been imposed arbitrarily or capriciously, or is unduly severe considering the circumstances of the offense and the character and rehabilitative prospects of defendant. Further, to

guarantee the individualized sentencing required by the Eighth Amendment, the Court has compared death sentences to sentences imposed on co-defendants or accomplices. In doing so, the Court focuses on the nature of the offenses and each individual's relative involvement in the offense, character, background, criminal record, and potential for rehabilitation. Defendant's death sentence was not unreasonably disparate to the 60-year sentence imposed on co-defendant where defendant's prior conviction was more serious than co-defendant's prior arrests, defendant was the one who possessed the weapon and shot the decedent, defendant had the last chance to save the decedent's life, defendant bragged about the crime and was not remorseful, and defendant committed the murder within a few months of his release from prison for a prior offense.

Illinois Appellate Court

People v. Foster, 199 Ill.App.3d 372, 556 N.E.2d 1289 (4th Dist. 1990) A disparity between the sentences of a codefendant who goes to trial and a codefendant who pleads guilty is not "automatically suspect," because a trial judge may properly grant leniency to the one who pleads guilty. See also, **People v. Abrego**, 142 Ill.App.3d 973, 493 N.E.2d 636 (2d Dist. 1986) (a "sentence imposed as the result of a negotiated guilty plea does not provide a valid basis of comparison for a sentence imposed after trial); **People v. Bean**, 137 Ill.2d 65, 560 N.E.2d 258 (1990) (defendant's death sentence not disproportionate to co-defendants' sentences where one co-defendant pled guilty to murder and received a 25-year-sentence and the other pled guilty to conspiracy and received a seven-year-sentence).

People v. Richardson, 139 Ill.App.3d 598, 487 N.E.2d 716 (2d Dist. 1985) Cause remanded for resentencing where sentencing judge found defendant guilty as principal, but documents on appeal established that two co-defendants were also sentenced as principals by a different judge. That all three were sentenced as principals for an offense that involved only two principals and the trial judge indicated that the sentence could be affected by whether defendant was a principal or accessory troubled the appellate court.

People v. Brown, 103 Ill.App.3d 306, 431 N.E.2d 43 (2d Dist. 1982) Defendant may not successfully contend that the sentence imposed upon him is disparate with another sentence imposed upon him in another county for a similar offense.

People v. Conaway, 101 Ill.App.3d 202, 427 N.E.2d 1302 (3d Dist. 1981) A defendant may not successfully contend that his sentence is disparate with sentences imposed upon other defendants in separate cases.

People v. House, 98 Ill.App.3d 304, 424 N.E.2d 412 (5th Dist. 1981) Disparate treatment created by a grant of immunity to one co-defendant does not come within the rule that similarly situated defendants may not receive grossly disparate sentences.

§44-15(b)
Improper Disparity

Illinois Supreme Court

People v. Caballero, 179 Ill.2d 205, 688 N.E.2d 858 (1997) The Court rejected the argument that disparity in sentencing is not a constitutional issue, and held that defendant was entitled to an evidentiary hearing on his post-conviction claim that his death sentence was

unconstitutionally disparate to the natural life sentence imposed on his co-defendant.

Illinois Appellate Court

People v. Gildon, 239 Ill.App.3d 984, 607 N.E.2d 290 (3d Dist. 1993) Discrepancy in prior records did not justify an extended term of eight years for defendant and probation with jail time for two co-defendants; although defendant had a prior conviction for burglary, one co-defendant had a prior conviction for retail theft and the other had a pending robbery charge.

People v. Banks, 241 Ill.App.3d 966, 609 N.E.2d 864 (1st Dist. 1993) Although a defendant who pleads guilty may receive a lesser sentence than would have been imposed had he gone to trial, the discrepancy in this case was fundamentally unfair. Defendant's sentence was unfairly disproportionate to co-defendants' sentences where all defendants were equal participants in the offense, two of the co-defendants had more extensive criminal backgrounds, and defendant's mitigating evidence demonstrated greater rehabilitative potential.

People v. Jackson, 145 Ill.App.3d 626, 495 N.E.2d 1207 (1st Dist. 1986) Defendant's 80-year-sentence was grossly disparate with co-defendant's 30-year-sentence where co-defendant was "the more active participant in a brutal and heinous crime," defendant had two prior juvenile convictions and two adult convictions, while co-defendant had two prior convictions, and co-defendant had served time in the penitentiary while defendant had not. See also, **People v. Conner**, 177 Ill.App.3d 532, 532 N.E.2d 520 (1st Dist. 1988); **People v. Milton**, 182 Ill.App.3d 1082, 538 N.E.2d 1227 (2d Dist. 1989).

People v. Cook, 112 Ill.App.3d 621, 445 N.E.2d 824 (2d Dist. 1983) Defendant's sentence was improperly disparate with co-defendants though defendant had a longer criminal history than co-defendants, where defendant's prior crimes did not exceed the violent nature or severity of the crimes co-defendants committed and where defendant's participation in crime was no greater than that of his co-defendants'.

People v. Bares, 97 Ill.App.3d 728, 423 N.E.2d 538 (2d Dist. 1981) Defendant's more dominant role in the crime and more serious prior criminal record justified a more severe sentence than co-defendant, but not the vast disparity actually imposed.

People v. Steg, 69 Ill. App. 2d 188, 215 N.E.2d 854 (3d Dist. 1966) Disparity in sentences among three defendants unjustified, even though they were not all sentenced by the same judge; sentences for two defendants reversed.

People v. House, 26 Ill.App.3d 330, 325 N.E.2d 69 (4th Dist. 1975) "Disparity can result when two defendants guilty of equal participation in an offense but with a substantially different background, with substantially different prospects for rehabilitation, of varying age, and an indicated variance in continuing criminal propensities, are given the same sentence."

People v. Butchek, 22 Ill.App.3d 391, 317 N.E.2d 148 (4th Dist. 1974) Defendant's sentence reduced to sentence co-defendant received, where the degree of culpability by both defendants was the same, and the trial judge gave defendant the higher sentence because of his prior criminal record, but there was no competent evidence in the record establishing that defendant had a prior criminal record. See also, **People v. Krueger**, 21 Ill.App.3d 1084, 316 N.E.2d 189 (2d Dist. 1974) (defendant's sentence reduced to sentence imposed on co-

defendant where defendant's accountability was commensurate with that of co-defendant, both participants were the same age, defendant was remorseful, and the probation officer did not oppose probation).

People v. Henne, 10 Ill.App.3d 179, 293 N.E.2d 172 (2d Dist. 1973) Fundamental fairness and respect for the law require that similarly situated defendants not receive grossly disparate sentences. Defendant's sentence reduced where his sentence, which was higher than co-defendant's, was not justified by his conduct as a juvenile and while awaiting trial.

§44-15(c)
No Improper Disparity

Illinois Supreme Court
People v. Caballero, 206 Ill.2d 65, 794 N.E.2d 251 (2002) Defendant's death sentence was not unconstitutionally disproportionate to three consecutive natural life sentences imposed on a co-defendant who was tried after defendant was sentenced.

People v. Foster, 199 Ill.App.3d 372, 556 N.E.2d 1289 (4th Dist. 1990) The record did not include co-defendant's sentencing hearing or presentence report, which prevented the court from comparing the reasons underlying co-defendant's sentence with the reasons for defendant's sentence.

People v. Kline, 92 Ill.2d 490, 442 N.E.2d 154 (1982) Defendant failed to carry his burden to produce a sufficient record relative to his co-defendants; therefore, the Court could not determine whether the trial court abused its discretion in imposing a much greater sentence for defendant than co-defendants.

People v. Godinez, 91 Ill.2d 47, 434 N.E.2d 1121 (1982) "A disparity between sentences will not be disturbed, however, where it is warranted by differences in the nature and extent of the concerned defendant's participation in the offense." Difference in sentences was justified by defendant's more serious conduct in the commission of the offense, even though the background, prior criminal records, and rehabilitative potential of both offenders were similar. See also, **People v. Foster**, 199 Ill.App.3d 372, 556 N.E.2d 1289 (4th Dist. 1990).

Illinois Appellate Court
People v. O'Neal, 2021 IL App (4th) 200014 The defendant's sentence was not improperly disparate to his co-defendant's, and defendant was not penalized for choosing to go to trial. Defendant was convicted of felony murder for participating in a robbery that ended in a shooting. One co-defendant, whom the sentencing court deemed more culpable, received 20 years as part of a plea agreement that included an obligation to testify against co-defendant. Defendant received 24 years.

Generally, a sentence imposed on a codefendant who pleaded guilty as part of a plea agreement does not provide a valid basis of comparison to a sentence entered after a trial. The considerations that warrant a lesser sentence for one who pleads guilty – acknowledgment of guilt, avoidance of a public trial, and cooperation in another prosecution – all applied to the co-defendant's plea. These reasons for leniency defeat any claim that defendant received an arbitrarily or unreasonably disparate sentence.

Nor did the record support defendant's claim that the trial court penalized him for exercising his constitutional right to a trial. A court of review will determine whether a trial court imposed a trial tax by evaluating the court's remarks to discern if the punishment was, at least in part, imposed because the defendant availed himself of his constitutional right to trial. Here, the sentencing court did note that co-defendant was more culpable, referenced co-defendant's plea agreement, and remarked, "defendant exercised his constitutional right to have a trial." However, the trial court immediately stated, "I don't believe that's anything I can hold against the defendant." The court then provided ample explanation for its decision to impose a 24-year sentence, balancing several proper factors in aggravation and mitigation. The record therefore established the sentencing court did not impose a trial tax.

People v. Guerrero, 2020 IL App (1st) 172156 Trial court did not abuse its discretion in imposing sentence longer than that imposed on any of the co-defendants in this matter. Defendant was the "leader of the pack," and struck the first blow against the victim. The court specifically considered the level of participation of each of the co-defendants and imposed "carefully graduated" sentences on each. Defendant's lesser criminal background did not warrant a lower sentence, either. Criminal history is only one factor to be considered, and defendant's relatively recent criminal history did not warrant a lesser sentence.

People v. James, 2017 IL App (1st) 143391 The sentencing court did not err in sentencing defendant to 40 years for his accomplice role in an aggravated criminal sexual assault with a firearm, despite sentencing the principal to the minimum of 21 years. Defendant asked the court to reduce his sentence to the minimum, and the Appellate Court considered this request only; it would not consider the unasked-for remedy of a sentence decrease above the minimum. The Appellate Court agreed that the co-defendant was more culpable, but found defendant's argument that he must also receive the minimum "extreme." Though he did not physically assault the complainant, defendant did participate in the preliminary conduct leading up to the sexual assault. Moreover, his criminal history was significantly worse than the co-defendant.

People v. Rodriguez, 402 Ill.App.3d 932, 932 N.E.2d 113 (1st Dist. 2010) An arbitrary and unreasonable disparity between the sentences imposed on co-defendants who are similarly situated is impermissible, but mere disparity does not violate fundamental fairness. The actual reason for the disparity is determinative of whether the disparity is unconstitutional.

Co-defendants Salgado, Rodriguez, Chaidez, and Muniz were convicted of first degree murder. Salgado was convicted as the principal and the others were convicted on a theory of accountability. Salgado was also convicted of attempt murder. The court sentenced Salgado to consecutive terms of 50 and 20 years, Muniz to 48 years, and Rodriguez and Chaidez to 40 years each. Salgado obtained post-conviction relief vacating his attempt murder conviction and his murder sentence and was resentenced to 28 years for murder, after the court's consideration of his exemplary conduct following his conviction. The remaining defendants then filed a post-conviction petition claiming their sentences were unconstitutionally disparate to Salgado's new sentence. The circuit court denied relief after an evidentiary hearing.

The Appellate Court concluded that the sentence disparity resulted from the post-conviction hearing judge's erroneous decision to grant Salgado a new sentencing hearing after his attempt murder conviction was vacated. Salgado should not have been resentenced because his murder sentence was based on his degree of culpability for the murder as the

principal, not based on the fact that he had the additional attempt murder conviction. The 28-year term imposed on Salgado is the arbitrary sentence, not the sentences imposed on the co-defendants, and the Appellate Court could not correct that error.

People v. Surges, 101 Ill.App.3d 962, 428 N.E.2d 1012 (1st Dist. 1981) Defendant's sentence was not improperly disparate to co-defendant's sentence because defendant was serving a sentence on another offense and "procured" alibi testimony that was contrary to the State's evidence.

People v. Dimmick, 90 Ill.App.3d 136, 412 N.E.2d 1150 (3d Dist. 1980) Defendant's age and employment record justified slightly disparate probation sentence, though the participation and rehabilitative potential of both offenders were similar.

§44-16
Sentence Credit

§44-16(a)
Generally

Illinois Supreme Court
People v. Seymore, 2025 IL 131564 An order imposing a 30-day jail sanction for violation of conditions of pretrial release, under 725 ILCS 5/110-6(f)(2), was a final order. While it arose in the context of pretrial release, it was not an order appealable under Rule 604(h)(1) because it did not impose conditions, revoke release, or deny release. It also did not terminate the criminal case against defendant. Instead, it was akin to a contempt order, disposing of a distinct collateral matter – specifically, defendant's violation of a condition of his release – and imposing a sanction for that violation. In that sense, it is a final and appealable order because, while it occurred within the context of the criminal proceeding, it involved separate proceedings on the State's petition for sanctions, independent of the underlying criminal case.

The court was careful to specify that its jurisdictional holding was limited to the sanctions order under Section 110-6(f)(2). It remains an open questions whether other sanctions orders, under Section 110-6(f)(1) or 110-6(f)(4), are final and appealable.

As to the merits, the issue was whether Section 3 of the Behavior Allowance Act [730 ILCS 130/3] applied such that defendant was entitled to good-behavior credit against his 30-day jail sanction for violation of the electronic monitoring condition of his pretrial release. The supreme court held that it does not. The Act allows credit against a "sentence" in the county jail, but a sanction is not a sentence. A sentence is "the disposition imposed by the court on a convicted defendant." 730 ILCS 5/5-1-19. A defendant who is sanctioned for violating pretrial release conditions has not been convicted. Ultimately, though, if defendant is later convicted of the underlying criminal offenses, he will be entitled to credit for the 30-day sanction sentence because the Act also provides that "a prisoner" receive one day of good-conduct credit for each day of incarceration in the county jail before sentencing.

In reaching this conclusion, the court rejected defendant's argument that his 30-day imprisonment sanction was like a sentence for direct criminal contempt, which does receive credit under the Act. The processes bear similarities for jurisdictional purposes but in all other respects are different. Contempt proceedings require proof beyond a reasonable doubt and a guilty finding for a sentence to be imposed, while violation of a condition of pretrial release need only be proved by clear and convincing evidence.

People v. Williams, 239 Ill.2d 503, 942 N.E.2d 1257 (2011) Resolving a conflict in the Appellate Court, the Supreme Court held that a sentence of imprisonment commences when the trial court issues the *mittimus*. Thus, for purposes of computing sentence credit, the day on which a defendant is sentenced is treated as the first day of the prison sentence rather than as a day of presentence custody to be credited by the trial court. The court based its holding on the plain language of 730 ILCS 5/5-4.5-100(a), which states that a sentence of imprisonment commences on the day the offender is received by DOC, and 730 ILCS 5/5-8-5, which requires the trial court to commit the offender to the custody of the sheriff or the Department of Corrections upon the rendition of judgment after pronouncement of a prison sentence.

A different conclusion is not required by 725 ILCS 5/110-14(a), which authorizes a $5 credit against a fine for each day of presentence custody. Case law has interpreted §110-14(a) as requiring the $5 credit whenever any part of a day is spent in presentence custody. Under that precedent, the defendant receives the $5 credit against any fine for the day on which he or she is sentenced.

Section 110-14(a) is part of the Code of Criminal Procedure rather than the Unified Code of Corrections, and that the plain language of the relevant statutes justify different rules for the $5 credit and sentencing credit.

In re J.T., 221 Ill.2d 338, 851 N.E.2d 1 (2006) Juvenile who is committed to the DOC for indeterminate term with maximum sentence of term of years not to exceed period adult would serve for same offense is entitled to predisposition credit.

People ex rel. Birkett v. Jorgensen, 216 Ill.2d 358, 837 N.E.2d 69 (2005) The County Jail Good Behavior Allowance Act provides that when a "mandatory minimum sentence" is provided for an offense, defendant cannot receive any good behavior allowance that would reduce his sentence below the mandatory minimum. A defendant convicted for the fourth time of driving with a revoked or suspended license is required to "serve a minimum term of imprisonment of 180 days." Because 180 days is the "mandatory minimum sentence," no good time credit was permitted where the trial court imposed a sentence of 180 days in the county jail and 24 months' probation.

People ex rel. Ryan v. Roe, 201 Ill.2d 552, 778 N.E.2d 701 (2002) Although plea bargaining plays an important role in the criminal justice system, neither the State nor the trial court may agree to an unauthorized sentence. Thus, the trial court had no authority to order that "truth-in-sentencing" would not be applied to a sentence which the legislature included within the truth-in-sentencing statute.

People v. Lindsey, 199 Ill.2d 460, 711 N.E.2d 399 (2002) An individual sentenced to periodic imprisonment is not entitled to day-for-day credit under either 730 ILCS 5/3-6-3, which applies to inmates in the Department of Corrections, or the County Jail Good Behavior Allowance Act (730 ILCS 130/1 *et seq.*), which governs good behavior allowance for county jail inmates. The legislature has specifically excluded periodic imprisonment sentences from good time credit. See also, **People v. McMurl**, 179 Ill.App.3d 1006, 535 N.E.2d 70 (4th Dist. 1989) (the trial judge erred by denying defendants credit for good behavior where defendants were ordered to serve a continuous period of time in the county jail, and not a term of periodic imprisonment); **People v. Kennedy**, 188 Ill.App.3d 1, 543 N.E.2d 617 (2d Dist. 1989) (a

defendant who is sentenced to periodic imprisonment as a condition of probation is not entitled to good behavior allowance).

Thomas v. Greer, 143 Ill.2d 271, 573 N.E.2d 814 (1991) A defendant is not entitled to credit on state court sentences for time served in a federal penitentiary on federal charges, even where the federal and state charges arose from the same incident. Thus, defendant was not entitled to credit on burglary and escape convictions for time served on federal convictions for kidnaping and transporting a stolen vehicle over state lines because he was not imprisoned in federal prison as a consequence of his burglary and escape sentences.

Lane v. Sklodowski, 97 Ill.2d 311, 454 N.E.2d 322 (1983) The Director of the Department of Corrections can "award up to 90 days additional good conduct credit for meritorious service in specific instances as the Director deems proper." The "Director may make multiple awards of less than 90 days each provided that the total number of days awarded to any one prisoner does not exceed a total of 90 days." (This decision is prospective from the date of its original order (July 13, 1983); thus, credits awarded by the Director before July 13, 1983, "are to be honored.") See also, **Baker v. Department of Corrections**, 106 Ill.2d 100, 477 N.E.2d 686 (1985) (upon resentencing, an inmate is entitled to all "meritorious service credit" awarded to him by the Corrections Director before July 13, 1983).

Johnson v. Franzen, 77 Ill.2d 513, 397 N.E.2d 825 (1979) All inmates are entitled to day-for-day sentence credit for time served on and after February 1, 1978. Such credit must be awarded regardless whether an inmate was sentenced before or after February 1, 1978, and regardless whether an inmate is serving an indeterminate or determinate sentence. For inmates serving indeterminate sentences, the credit is to be applied to both the minimum and maximum term. Inmates are not entitled to day-for-day credit for time served before February 1, 1978. Instead, inmates are entitled to the statutory and compensatory good time credits in effect at that time. (**Note**: PA 89-404, effective August 20, 1995, amended 730 ILCS 5/5-3-3 to eliminate or restrict day-for-day good-time credit for certain offenses.) See also, **Williams v. Irving**, 98 Ill.App.3d 323, 424 N.E.2d 381 (3d Dist. 1981) (upholding the Department of Corrections' policy of awarding inmates with only a *pro rata* share of the statutory good time; that is, inmates are given statutory good time for actual time served before February 1, 1978, and day-for-day credit for time served after that date, and upholding the Department's policy of continuing to award statutory good time to some inmates after February 1, 1978, when to do so results in a sentence which is shorter than the sentence if day-for-day credit was awarded).

Illinois Appellate Court

People v. Perteet, 2025 IL App (1st) 241141 Defendant pled guilty to weapon possession and received a 10-year prison sentence. At sentencing, he requested 319 days of sentencing credit for programs completed in county jail. The judge acknowledged defendant was entitled to this credit, but stated that its practice was to let DOC apply the credit. The court stated that it did not object to the credit, and that it would note the potential credit on its sentencing order, but it would not order DOC to apply it. When DOC failed to apply the credit, defendant filed a Rule 472 motion. The circuit court denied the motion, stating that DOC had discretion to apply the credit, and that the circuit court lacked the power to award it. Defendant appealed.

Rule 472(a)(3) provides that "[i]n criminal cases, the circuit court retains jurisdiction to correct" errors in the "calculation of presentence custody credit" at any time following judgment. Here, the circuit court did not err in denying the 472 motion. While the section 5/3-6-3 or the Code of Corrections requires the court to apply credits earned in pretrial custody at sentencing, the appellate court found this statute "of no moment" because defendant entered into a valid negotiated plea which did not include the credits in the terms of the agreement. As the supreme court recently held in **People v. Wells**, 2024 IL 129402, a defendant waives any right to sentencing credit not included in a fully negotiated plea agreement. Moreover, **People v. Johnson**, 2019 IL 122956, held that all sentencing errors are waived by a fully negotiated plea unless a defendant files a timely motion to withdraw the plea in the circuit court. Thus, while the appellate court awarded the credits in a similar situation in **People v. Montalvo**, 2016 IL App (2d) 140905, **Montalvo** has been effectively overruled by **Wells** and **Johnson**.

The court noted defendants may still have recourse by asking the supreme court to exercise its supervisory authority.

People v. Knight, 2023 IL App (3d) 220198 The appellate court remanded for a new hearing pursuant to Supreme Court Rule 472 because the trial court failed to address defendant's claim that he was entitled to additional credit against his sentence for completing several county jail programs. Under 730 ILCS 5/5-4.5-100(c-5), the trial court "shall give the defendant credit for successfully completing county programming while in custody prior to imposition of sentence."

The appellate court rejected defendant's argument that he was entitled to counsel on remand, however. Defendant's motion was filed long after his guilty plea proceedings and direct appeal had concluded, thus there was no constitutional right to counsel. Further, Rule 472 provides no right to counsel itself, and the court disagreed with defendant's contention that because he had pled guilty his motion was the equivalent of a motion to reconsider sentence which would entitled him to counsel under Rule 604(d).

People v. Montalvo, 2016 IL App (2d) 140905 Under 730 ILCS 5/3-6-3(a)(4), a pretrial detainee may obtain sentence credit for participating in a "full-time" behavior modification program provided by the county jail. Under 20 Ill. Adm. Code 107.520(d)(4), a "full-time" program requires enrollment for a minimum of 15 hours. Credit for successfully completing such a program is calculated at the rate of one-half day of credit for each day of participation.

Here, defendant enrolled in an anger management program which required him to attend 12 weekly two-hour sessions over a three-month period. The court found that the trial judge erred by not granting sentencing credit.

First, the trial court erred by failing to determine at sentencing whether defendant was eligible for sentence credit and by deferring the credit question to DOC. Section 3-6-3 requires that the trial court determine the credit and include that calculation in the sentencing order.

In addition, because the 24 hours of required participation exceeded the 15-hour requirement of 20 Ill. Adm. Code 107.520(d)(4), the anger management program was "full-time." Because defendant attended two-hour sessions on 12 separate days, and the credit rate is one-half day for each day of participation, defendant was entitled to six days of credit.

The court rejected the argument that defendant was entitled to 39 days of credit because the program spanned 78 calendar days from beginning to end, although defendant attended sessions only on 12 of those days. The court concluded that credit is to be given only

for days on which defendant actually participates in the program.

People v. Monson, 2012 IL App (3d) 100868 The County Jail Good Behavior Allowance Act provides for one day of good behavior credit for each day of service of sentence in the county jail, with certain exceptions. 730 ILCS 130/3.

Defendant pled guilty and was ordered to serve probation and a jail term of 180 days without good-conduct credit. The court had no statutory authority to deny that credit to defendant. The Appellate Court directed the clerk to amend the mittimus to reflect that defendant was entitled to good-conduct credit.

People v. Patrick, 406 Ill.App.3d 548, 956 N.E.2d 443 (2d Dist. 2010) A person serving a term of imprisonment for reckless homicide, other than the offense of reckless homicide as defined by 720 ILCS 9-3(e), may receive one day of good-conduct credit for each day of his sentence of imprisonment. Those serving a term of imprisonment for reckless homicide pursuant to subsection (e) may receive no more than 4.5 days of good-conduct credit for each month of his sentence of imprisonment. 730 ILCS 3-6-3(a)(2.1) and (a)(2.3). Subsection (e) of 9-3 has been deleted from the criminal code and has read "blank" since 2003.

Defendant was convicted of reckless homicide pursuant to 720 ILCS 5/9-3(a) but the court ordered that he serve 85% of his sentence. The court lacked the authority to enter that order.

People v. Evans, 391 Ill.App.3d 470, 907 N.E.2d 935 (4th Dist. 2009) A defendant may, as part of a negotiated plea, agree to a specified sentence credit and a public defender fee. Where the plea agreement covers those issues, the defendant may not challenge either the sentence credit or the trial court's failure to hold a hearing on the defendant's ability to pay a public defender fee.

People v. Williams, 384 Ill.App.3d 415, 892 N.E.2d 129 (4th Dist. 2008) A defendant is not entitled to sentence credit if he agreed to forego such credit as part of a plea agreement.

People v. Flores, 378 Ill.App.3d 493, 882 N.E.2d 1051 (2d Dist. 2008) Defendant could raise a sentence credit issue for the first time on appeal from the dismissal of a post-conviction proceeding. The court treated defendant's request for credit as a motion to amend the mittimus, which may be raised at any time. See also, **People v. Andrews**, 365 Ill.App.3d 696, 850 N.E.2d 888 (3d Dist. 2006) (defendant was entitled to an additional day credit for pretrial custody although the issue was raised for the first time on appeal from denial of a post-conviction petition); **People v. Donnelly**, 226 Ill.App.3d 771, 589 N.E.2d 975 (4th Dist. 1992) (the trial court's error in calculating the credit for time spent in custody awaiting trial is not forfeited by defendant's failure to raise the issue in the trial court).

In re Justin L.V., 377 Ill.App.3d 1073, 882 N.E.2d 621 (4th Dist. 2007) The juvenile court had authority to *sua sponte* conduct a review of custody arrangements 60 days after defendant was initially committed to DOC.

The court lacked jurisdiction to consider respondent's argument that he was entitled to 62 additional days' credit for time served in custody while awaiting arraignment and while on home confinement. Although a request for sentence credit may be raised at any time, it must be raised in the context of a proceeding that is properly pending. The only time at which the credit issue could have been granted was during the original commitment order from

which defendant did not appeal; the issue could not be considered in an appeal from the denial of a motion to vacate the commitment. However, the trial court retains jurisdiction over "nonsubstantial matters," such as amendment of the sentencing judgment, even after a notice of appeal has been filed. "Thus, nothing in this ruling precludes respondent from challenging the sentencing judgment in the trial court."

People v. O'Neill, 367 Ill.App.3d 439, 854 N.E.2d 1154 (2d Dist. 2006) The court encouraged attorneys to raise credit issues in the trial court to avoid unnecessary public costs.

People v. Johnson, 327 Ill.App.3d 252, 762 N.E.2d 1180 (4th Dist. 2002) Defendant, who "intermittently appeared and failed to appear to serve his periodic prison term," was entitled to seven days of sentencing credit for each weekend that he actually served in custody. Because defendant served six weekends of periodic imprisonment, the cause was remanded for imposition of a 42-day-credit against the sentence imposed upon revocation of periodic imprisonment.

People v. Dieu, 298 Ill.App.3d 245, 698 N.E.2d 663 (4th Dist. 1998) Where sentence credit is mandatory, defendant does not waive the issue by failing to raise it in the trial court or by expressly agreeing to an incorrect computation.

People v. Davis, 291 Ill.App.3d 552, 683 N.E.2d 1260 (3d Dist. 1997) The trial judge erred by denying defendant good-conduct credit for time spent in the county jail as part of his sentence for disorderly conduct. A defendant sentenced to the county jail is entitled to day-for-day credit unless he: (1) inflicted physical harm upon another in committing the offense, (2) is serving a mandatory minimum sentence, (3) has been sentenced for a felony to probation or conditional discharge with the condition of periodic imprisonment, or (4) is sentenced for civil contempt. None of the exceptions applied here; thus, the trial court exceeded its authority by denying day-for-day credit. See also, **People v. Scott**, 285 Ill.App.3d 95, 673 N.E.2d 1152 (2d Dist. 1996) (record was insufficient to bar credit because defendant "inflicted physical harm on another person"; complainant testified she did not receive any physical injury denying scuffle); **People v. Wenkus**, 171 Ill.App.3d 1064, 526 N.E.2d 534 (2d Dist. 1988) (bodily harm is synonymous with "physical harm").

People v. Bailey, 235 Ill.App.3d 1, 600 N.E.2d 1267 (4th Dist. 1992) Though section 3 of the County Jail Good Time Behavior Allowance Act denies good-time credit to those convicted of civil contempt of court, the trial judge had no authority to deny good-time credit to defendant who was convicted of indirect criminal contempt. Also, this issue was not forfeited by defendant's failure to object in the trial court; the trial judge's attempt to deny credit was void and subject to attack at any time.

People v. Brown, 196 Ill.App.3d 1, 553 N.E.2d 110 (2d Dist. 1990) Defendant was entitled to resentencing because the trial judge misapprehended the statutory provisions regarding good behavior allowances. The judge believed that defendant would receive day-for-day credit for each of the six-month-jail sentences (for DUI and leaving the scene of an accident) and, thus, would be incarcerated for a total of six months (i.e., three months on each sentence). But, defendant was not entitled to good behavior allowance on the DUI sentence because defendant "inflicted physical harm upon another person in committing [that] offense." Thus, defendant would be required to serve nine months of incarceration (i.e., six months on the

DUI and three months (with good behavior credit) on the other sentence) rather than the six months intended by the trial judge.

Thompson v. Lane, 194 Ill.App.3d 855, 551 N.E.2d 731 (4th Dist. 1990) An inmate subjected to prison disciplinary proceedings is entitled to: (1) written notice of the charges at least 24 hours before the hearing, (2) the opportunity to call witnesses and present documentary evidence, when consistent with institutional safety and correctional goals, and (3) a written statement of the evidence relied on and the reasons for the disciplinary action. An inmate is entitled to the names of his accusers and the times, dates, and places of the alleged infractions. The names of confidential sources or information may be withheld if disclosure "would jeopardize the well-being of other individuals or institutional safety." The statement of reasons should be "sufficient to enable a reviewing body to determine whether good-time credit has been revoked for an impermissible reason or for no reason at all." See also, **People ex rel. Yoder v. Hardy**, 116 Ill.App.3d 489, 451 N.E.2d 965 (5th Dist. 1983) (petitioner was denied due process at the hearing in which his statutory good-time credits were revoked).

In re Coppersmith, 108 Ill.App.3d 161, 438 N.E.2d 1267 (1st Dist. 1982) Denial of compensatory good-time credit for time defendant spent in the custody of the Department of Mental Health reversed. Compensatory credit is no longer based upon participation in programs or work assignments, and there is "no logical distinction" why defendant, in the custody of the Department of Mental Health, should be treated differently than a person held in county jail.

People v. Burton, 100 Ill.App.3d 1021, 427 N.E.2d 625 (4th Dist. 1981) The Misdemeanant Good Behavior Allowance Act, under which a person incarcerated for a misdemeanor earns less sentence credit or good time credit than a person who is incarcerated for a felony, does not violate either due process or equal protection. (**Note**: the Misdemeanant Good Behavior Allowance Act was replaced with the County Jail Good Behavior Allowance Act, effective July 1, 1984, providing day-for-day good time credits for misdemeanants. 730 ILCS 130/1.1). But see, **People ex rel. Birkett v. Jorgensen**, 216 Ill. 2d 358 (2005) (holding that defendant was not entitled to day-for-day good time because he was convicted of driving with a suspended license, which requires a minimum sentence of 180 days in jail and awarding good time would result in defendant serving less than the minimum sentence).

Jackson v. Fairman, 94 Ill.App.3d 131, 418 N.E.2d 200 (4th Dist. 1981) If prison review board revokes individual's mandatory supervised release and reconfines him for violation of that release, he shall be given credit against term of reimprisonment or reconfinement for time spent in custody since parole or release which has not been credited against another sentence or period of confinement. The time petitioner spent in jail between February 5, 1980, and April 15, 1980, although it operated to discharge his theft sentence, should have been credited against his sentence upon reimprisonment following revocation of his mandatory supervised release. Reversed and remanded for awarding of credit. Compare, **People v. Kane**, 136 Ill.App.3d 1030, 484 N.E.2d 296 (5th Dist. 1984) (on revocation of probation, defendant was not entitled to credit for time in jail on criminal charge even though that charge was the basis for revocation).

Hampton v. Rowe, 88 Ill.App.3d 352, 410 N.E.2d 511 (3d Dist. 1980) Equal protection is violated where the Department of Corrections denies compensatory good-time credit for the

period defendant served in a county jail.

§44-16(b)
For Time Awaiting Trial

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order or other parts of record resulting in discrepancy between record and actual judgment of the court.

United States Supreme Court

Reno v. Koray, 515 U.S. 50, 115 S.Ct. 2021, 132 L.Ed.2d 46 (1995) Under 18 USC 3585(b), which provides that a defendant is entitled to credit for "any time he has spent in official detention prior to the date the sentence commences," a defendant undergoes "official detention" only if he or she is under a "detention order." Thus, a federal defendant is not entitled to sentence credit for time served while on bail, even if the circumstances of confinement are just as onerous as those encountered under a detention order or sentence.

Illinois Supreme Court

People *ex rel* Smith v. Tobin, *et al.*, 2025 IL 131213 Casey Ross was found guilty of driving while license revoked. Because Ross also had two prior convictions for driving while license revoked, the Illinois Vehicle Code (IVC) required a sentence of "a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court." 625 ILCS 5/6-303(d-1). The County Jail Good Behavior Allowance Act (Behavior Act) provides that defendants imprisoned for offenses with a "mandatory minimum sentence" cannot be given good-behavior credit that would reduce the sentence below the mandatory minimum.

Here, Judge Tobin found that because the IVC permitted community service as a sentence, it did not establish a mandatory minimum and thus authorized him to impose a lesser jail term of 14 days, with good-behavior credit to apply. The State's Attorney, Smith, responded by filing the instant *mandamus* action in the Illinois supreme court, asking the court to direct the circuit court to enter a sentence that complies with the IVC and the Behavior Act.

The court first held that the language of Section 6-303(d-1) of the IVC is unambiguous. The circuit court has discretion to sentence a defendant to either a term of imprisonment or a term of community service. If the judge chooses incarceration, the sentence must be for at least 30 days, and if the judge chooses community service, it must be for at least 300 hours. The statute does not permit the court to impose a term of imprisonment less than 30 days.

Similarly, Section 3 of the Behavior Act is unambiguous in excepting from the general day-for-day credit provision any person "sentenced for an offense for which the law provides a mandatory minimum sentence" to the extent that the credit would reduce the sentence served below the mandatory minimum. Accordingly, Ross can not earn good-behavior credit against his sentence if such credit would result in his being released before serving the mandatory minimum of 30 days of imprisonment.

In reaching this conclusion, the court disavowed language from **People v. Smith**, 2013 IL App (3d) 110477. The issue before the court in **Smith** was whether that defendant was entitled to credit for time served against his jail sentence for resisting or obstructing a

peace officer under 720 ILCS 5/31-1(a-5), which requires a minimum of either 48 consecutive hours of imprisonment or at least 100 hours of community service. The majority held that, in accordance with 730 ILCS 5/5-4.5-100(b), the defendant was entitled to credit for time spent in custody before sentencing. In response to the special concurrence's discussion of the possibility of good-behavior credit, the majority stated that Section 31-1(a-5) did not set a mandatory minimum because the court also had discretion to impose community service. This statement had no bearing on the dispositive holding in **Smith** and thus was *obiter dicta*. The supreme court clarified that both section 6-303(d-1) of the IVC and section 31-1(a-5) of the Criminal Code set mandatory minimum sentences if the court chooses to impose a term of imprisonment.

Because the circuit court sentenced Ross to a term that failed to comply with the statutorily required mandatory minimum, the court vacated the sentencing order and issued a writ of *mandamus* directing the circuit court to resentence Ross in compliance with the IVC and the Behavior Act.

People v. Wells, 2024 IL 129402 Defendant entered a negotiated guilty plea in exchange for a six-year sentence, payment of a street value fine, and the dismissal of additional charges. At the plea hearing, the court stated that defendant would receive 54 days of credit for time spent in presentence custody. Subsequently, defendant filed a motion seeking additional credit for the time he spent on home detention after posting bond, citing 730 ILCS 5/5-4.5-100(b). The circuit court denied that motion, stating that defendant was given the correct credit, and defendant appealed.

The supreme court held that defendant's negotiated plea, which included the specific term that he would receive 54 days of credit, was a "complete and final expression" of the agreement he had reached with the State. The court acknowledged that defendant did not make a specific waiver of the home detention credit, and it was not clear whether the parties were even aware of that potential credit at the time of sentencing. On the face of the negotiated agreement itself, however, there was no ambiguity as to what the parties intended – a six year sentence with 54 days of credit.

Defendant could not now rely on "mutual mistake" to obtain the additional credit on the theory that it was simply an oversight. Where the State objected to the belated request, and nothing in the record suggested any agreement otherwise, there was no basis on which to find a mutual mistake here. And, to the extent there was an "uninduced mistake" on defendant's part, his recourse was to seek withdrawal of his plea on the ground that it was unknowing and involuntary, a remedy he did not request.

People v. Young, 2018 IL 122598 A claim for presentence custody credit under section 5-4.5-100 may be forfeited. In this case, defendant raised the issue for the first time on appeal from the denial of a successive post-conviction petition, and therefore the claim was forfeited. Unlike section 110-14, which contains language authorizing requests for *per diem* monetary credit at any time, section 5-4.5-100 does not contain similar language suggesting that the rules of procedural default do not apply. Also, while a motion to correct the mittimus may be made at any time, here defendant did not seek to correct the mittimus, which accurately reflected the trial court's judgment, but rather attacked the judgment itself. Nor could the issue be reached under Rule 615(b), which refers to the reviewing court's authority to reduce punishment imposed by the trial court. Here, the judgment at issue – the dismissal of the post-conviction petition – did not contain any punishment.

The court agreed to use its supervisory authority to remand the case for a hearing on

whether defendant was entitled to additional days of sentencing credit.

People v. Williams, 239 Ill.2d 503, 942 N.E.2d 1257 (2011) Resolving a conflict in the Appellate Court, the Supreme Court held that a sentence of imprisonment commences when the trial court issues the *mittimus*. Thus, for purposes of computing sentence credit, the day on which a defendant is sentenced is treated as the first day of the prison sentence rather than as a day of presentence custody to be credited by the trial court. The court based its holding on the plain language of 730 ILCS 5/5-4.5-100(a), which states that a sentence of imprisonment commences on the day the offender is received by DOC, and 730 ILCS 5/5-8-5, which requires the trial court to commit the offender to the custody of the sheriff or the Department of Corrections upon the rendition of judgment after pronouncement of a prison sentence.

A different conclusion is not required by 725 ILCS 5/110-14(a), which authorizes a $5 credit against a fine for each day of presentence custody. Case law has interpreted §110-14(a) as requiring the $5 credit whenever any part of a day is spent in presentence custody. Under that precedent, the defendant receives the $5 credit against any fine for the day on which he or she is sentenced.

Section 110-14(a) is part of the Code of Criminal Procedure rather than the Unified Code of Corrections, and that the plain language of the relevant statutes justify different rules for the $5 credit and sentencing credit.

People v. Beachem, 229 Ill.2d 237, 890 N.E.2d 515 (2008) Defendant was in "custody" before trial, for purpose of statute entitling defendant to sentencing credit for time spent in custody as a result of the offense for which the sentence was imposed, on days he reported to the site of the county sheriff's day-reporting program, which was operated pursuant to a consent decree capping the number of inmates in county jail.

People v. Roberson, 212 Ill.2d 430, 819 N.E.2d 761 (2004) Defendant's arrest for failure to appear on burglary charge placed defendant in custody for violating terms of bail bond, though the State indicted him eight months later and dismissed the burglary charge. Thus, defendant was entitled to sentencing credit under statute applicable to time spent in custody as a result of the offense for which the sentence was imposed; defendant was arrested for the bail offense, detained, and ultimately convicted and sentenced on that offense. Also, the appeal was not moot although defendant had been released from custody. See also, **People v. Hernandez**, 345 Ill.App.3d 163, 803 N.E.2d 577 (2d Dist. 2004) (defendant, who was arrested for failure to appear on an aggravated criminal sexual abuse charge, was entitled to credit for time he spent in custody after his arrest and before the State dismissed the sexual abuse charge and substituted a charge for failure to appear).

In re B.L.S., 202 Ill.2d 510, 782 N.E.2d 217 (2002) Habitual juvenile offenders, like other persons serving determinate sentences, are entitled to full credit for time served in pretrial custody.

People v. Latona, 184 Ill.2d 260, 703 N.E.2d 901 (1998) Where a defendant receives consecutive sentences, credit for pretrial custody is to be awarded only against the aggregate sentence. Thus, unlike the case with concurrent sentences, a defendant who is simultaneously in custody for multiple offenses, and who subsequently receives consecutive sentences, does not receive credit against each sentence.

People v. Robinson, 172 Ill.2d 452, 667 N.E.2d 1305 (1996) While on bond awaiting a murder trial, defendant was arrested for armed robbery. The trial court then increased defendant's bond in the murder case, and defendant surrendered in exoneration of his bond. Defendant pled guilty to armed robbery, and the time he spent in pretrial custody from the date of his arrest on the armed robbery until his guilty plea was credited against his sentence. On the day of his guilty plea, the trial court reduced defendant's bond on murder, and defendant was released. Defendant was convicted of murder and accorded credit for only the jail time before he was originally released on bond and for the period between the second bond was revoked and the date of the sentencing hearing. Defendant contended that he was entitled to additional credit for the period between the date he surrendered in exoneration of his first bond for murder and the date he was released on the second murder bond. The trial court refused to grant the requested credit, finding that the time already credited against the armed robbery sentence could not also be credited against the murder sentence.

The Court disagreed, and held that the plain language of 730 ILCS 5/5-8-7(b) requires that defendant be credited with *all* custody time against the sentences for both murder and armed robbery. Defendant's initial bond for murder was "effectively withdrawn or revoked" when it was raised and he surrendered in exoneration. At that point, defendant was "simultaneously in pretrial custody on both the armed robbery charge and the murder charges," and entitled to credit against both sentences. See also, **Feazel v. Washington**, 291 Ill.App.3d 766, 684 N.E.2d 1052 (4th Dist. 1997) (**People v. Robinson** applies only to *concurrent* sentences; where *consecutive* sentences are imposed, 730 ILCS 5/5-8-4(e) provides that defendant is to be treated as if he had been committed "for a single term," with credit for pretrial custody only against that "single term"); **People v. Plair**, 292 Ill.App.3d 396, 686 N.E.2d 28 (5th Dist. 1997) (defendant not entitled to credit against consecutive sentences where same time had previously been credited; distinguishing **Robinson**).

People v. Ramos, 138 Ill.2d 152, 561 N.E.2d 643 (1990) A defendant is not entitled to sentence credit for time spent in home confinement as a condition of pretrial bond. Time spent in home confinement is not "time spent in custody" for the purposes of the sentence credit statute. The term "custody" was not intended to "encompass the period of time during which a defendant is released on bond, regardless of the restrictions that might be imposed on him during that time." See also, **People v. Turner**, 77 Ill.App.3d 985, 397 N.E.2d 25 (5th Dist. 1979) (a defendant who is initially found unfit, but who is later found fit, is entitled to credit for the time spent in the hospital after the finding of unfitness; however, the statute has no application to a person who was not found to be unfit).

(**Note**: PA 88-119, effective July 27, 1993, amended 730 ILCS 5/5-8-7 to permit credit for time spent on home detention or in psychiatric or substance abuse treatment that is custodial.)

Moore v. Strayhorn, 114 Ill.2d 538, 502 N.E.2d 727 (1986) Trial judge erroneously denied defendant credit for time he spent in jail awaiting trial; defendant is statutorily entitled to credit for all time served in jail while awaiting trial.

People ex rel. Morrison v. Sielaff, 58 Ill.2d 91, 316 N.E.2d 769 (1974) "Custody" under Ch. 38, §1005-8-7(b) means confinement, not bail.

People ex rel. Carroll v. Frye, 35 Ill.2d 604, 221 N.E.2d 262 (1966) Statutory amendment,

which allowed credit for defendants in custody while awaiting trial, but only for those convicted after July 1, 1965, is invalid when applied to mandatory minimum sentences.

Illinois Appellate Court

In re S.R., 2025 IL App (1st) 250218 The circuit court erred in denying the minor's motion for custody credit where he was simultaneously in custody on two separate charges. While the circuit court had denied the minor's motion to be detained in this case while he also was being held pending sentencing in his prior AUUW case, there was no discernible basis in the record for the court's refusal. Accordingly, the appellate court directed the circuit court clerk to amend the mittimus to reflect additional presentence custody credit.

People v. Stafford, 2025 IL App (2d) 240250 The trial court properly denied defendant sentencing credit for the time he spent on electronic home monitoring while out on bond before trial. Defendant argued that he was entitled to credit for that period because he was in "home detention" per section 5-4.5-100(b) of the Code of Corrections.

Section 5-4.5-100(b) authorizes credit for time spend on "home detention," but does not define the term. The court therefore turned to section 5-8A-2 of the Home Detention Law, which defines "home detention" as: "the confinement of a person convicted [of] or charged with an offense to his or her place of residence under the terms and conditions established by the supervising authority." In turn, the Home Detention Law defines "supervising authority" as: "the Department of Corrections, the Department of Juvenile Justice, probation department, a Chief Judge's office, pretrial services division or department, sheriff, superintendent of municipal house of corrections or any other officer or agency charged with authorizing or supervising electronic monitoring and home detention." 730 ILCS 5/5-8A-2(C). Because a defendant on bond with EHM serves under the terms and conditions of the trial court, and not under control of a listed supervising authority, the credit does not apply.

People v. Williamson, 2024 IL App (3d) 220501 The trial court did not err in denying sentencing credit for defendant's completion of behavior modification and substance abuse programs and a county jail work assignment. To establish that the substance abuse and behavior modification programs qualified for credit, defendant needed to show that they were "full time." At the time defendant was sentenced, "full time" meant that defendant was enroled in the program for the required number of hours. Despite being given an opportunity to do so, defendant did not present any information to the court to show that the programs satisfied the "full time" requirement, and thus credit was properly denied.

And defendant's work assignment in the jail kitchen did not qualify for additional credit under 730 ILCS 5/3-6-3(a)(4.2). That section only applies to individuals serving time in the Department of Corrections; defendant's work assignment while in the county jail in pre-sentence custody did not qualify. There is no similar statutory provision for pre-trial custody work assignments. Accordingly, the denial of credit was affirmed.

People v. Malone, 2023 IL App (3d) 210612 Defendant entered a fully negotiated plea of guilty to a charge of possession of a weapon by a felon in exchange for a 10-year prison sentence, dismissal of seven other charges, and credit for time served in county jail. Two weeks after entry of the plea, defendant filed a *pro se* motion to amend the mittimus to include additional credit for completing substance abuse and behavior modification treatment in the

county jail. The court denied the motion because defendant's plea was fully negotiated, and the court was not sure whether the programs would qualify for credit, regardless.

The appellate court vacated the denial of defendant's motion. A defendant is entitled to additional credit against a negotiated plea where he has not been awarded mandatory pre-sentence credit.

730 ILCS 5/3-6-3(a)(4)(A) provides that any prisoner who satisfactorily completes full-time substance abuse and behavior modification programs, among other things, shall receive one day of sentence credit for each day engaged in the programming. And, 730 ILCS 5/5-4.5-100(c-5) provides that "[t]he trial court shall give the defendant credit for successfully completing county programming while in custody prior to imposition of sentence at the rate specified in Section 3-6-3." Use of the word "shall" in these sections indicates that the credits are mandatory.

Defendant did not waive his right to these mandatory credits at his plea hearing where the record of the plea contained no discussion of programming credits. Remand was necessary so the trial court could determine whether defendant met the specific requirements for each type of programming and, if so, how much credit was required.

People v. Winters, 2022 IL App (1st) 200859 Under 730 ILCS 5-4.5-100(b), defendants must be given credit on their sentences for the days spent in custody and for time spent in home detention. Section 5-4.5-100(d), however, creates an exception for those convicted of non-probationable offenses. Defendant here spent 968 days on electronic monitoring and home confinement. He did not receive credit for this time against his sentence, and on appeal argued that subsection 100(d) violated due process and equal protection. The appellate court found the statute constitutional. Withholding credit for time spent in pretrial detention from defendants convicted of non-probationable offenses is a reasonable means to deter more serious crime, and therefore consistent with due process and equal protection.

People v. Donahue, 2022 IL App (5th) 200274 Defendant, who was released on bail prior to trial but subject to electronic monitoring, was not entitled to credit against his sentence for the time he spent on electronic monitoring. Defendant's pretrial release was considered "home supervision," and the relevant statutory provision (730 ILCS 5/5-4.5-100(b)) provides credit for "home detention," which the court determined was not the same. While defendant's movements were limited to his home or his workplace under the terms of his pretrial release, those were bail conditions, proper under 725 ILCS 5/110-10(b)(14), and did not transform his home supervision into home detention.

The court rejected defendant's argument that a recent amendment to Section 5-4.5-100(b) required he receive credit against his sentence for the time he spent on home supervision here. That amendment provided that "[t]he trial court shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration.... Home detention for purposes of credit includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or movement." The court declined to find defendant's home supervision equivalent to home detention under the statute based on the definition of "home detention," which requires that the terms of confinement be "established by the supervising authority." 730 ILCS 5/5-8A-2(C). Here, defendant was supervised by the probation department but his home supervision conditions were set by the trial court. Accordingly, defendant's release did not fit within the definition of home detention for purposes of the credit statute.

People v. Ford, 2020 IL App (2d) 200252 A defendant may make a post-plea request for additional sentencing credit in a motion filed pursuant to Rule 472.

Here, defendant was arrested on Charge 1, and after spending time in jail, was indicted on Charge 2. After 172 days, he pled guilty to Charge 2, agreeing to a seven-year term with 172 days' credit for time spent in jail on Charge 2. He filed a post-plea motion under Rule 472, asking for credit for the time spend in jail in Charge 1, prior to his indictment for Charge 2. Defendant would be entitled to this credit pursuant to Section 5-4.5-100(c), because the conduct leading to Charge 2 occurred prior to his arrest. The State argued that he waived this credit when he negotiated a plea for 172 days' credit.

The Appellate Court held that the record was not clear as to whether defendant waived the credit. It is true that he negotiated for the 172 days he was entitled to for Charge 2, but that did not mean he also waived credit due for time spent in custody on Charge 1. In fact, defendant asked for the credit at the time of the plea, but the court told him he was not entitled to it. A hearing was required to determine whether defendant meant to waive that credit as part of the plea. If not, he should receive the credit.

People v. Moore, 2019 IL App (3d) 160639 The appellate court rejected the State's argument that defendant was not entitled to $5 in monetary credit against his fine under 725 ILCS 5/110-14(a) because the record did not show that defendant was "incarcerated" as opposed to merely being "in custody." Instead, the appellate court inferred that defendant was incarcerated for at least some period of time where he was arrested and posted bail on the same day. In construing Section 110-14(a), courts have traditionally considered defendants to be incarcerated once they have been arrested.

People v. Brown, 2017 IL App (3d) 140907 A defendant who is in simultaneous custody on two offenses is entitled to pretrial custody credit on the newer offense beginning on the date he was charged and subject to arrest.

On March 29, 2012, the State filed a complaint against defendant in Will County while defendant was in custody in Cook County. The circuit court issued an arrest warrant the same day. On May 2, 2012, the court issued a *habeas* petition asking the Cook County Sheriff to deliver defendant to Will County on May 9, 2012. Defendant appeared on that day in the custody of the Cook County Sheriff. Defendant pled guilty on May 9, 2013 and the court gave him pretrial credit from May 9, 2012.

The Appellate Court held that defendant was entitled to custody credit from March 29, 2012, the date he was charged and a warrant was issued. The court rejected the State's argument that a defendant is not held on charges relating to an offense until a warrant is actually served.

People v. Jones, 2016 IL App (1st) 142582 The use of *nunc pro tunc* orders or judgments is limited to incorporating into the record action which was previously taken by the court but inadvertently omitted through clerical error. Thus, a *nunc pro tunc* order is proper only to reflect action that occurred previously, and not to "backdate" the effective date of an action. A *nunc pro tunc* order must be based on some note, memorandum, or other memorial in the court record.

Defendant was released on bond on retail theft charges, and was taken into custody on a different charge while he was on bond. Approximately three weeks after he was taken into custody on the second charge, defense counsel asked the trial court to exonerate the bond on the instant charge *nunc pro tunc* to the date of the arrest, so defendant could receive credit

on the sentence in the instant charge from the date of his arrest on the unrelated charge. The prosecution stated that it had no objection to the request.

Because there had been no court action concerning bond in this case on the date defendant was taken into custody on the second charge, it was improper to use a *nunc pro tunc* order. Defendant was entitled to pretrial custody credit in this case only for the time between the exoneration of his bond and his conviction.

Under Supreme Court precedent, a defendant who is arrested and placed in custody for one charge while on bond on an unrelated charge is returned to custody on the latter charge only when his bond on that charge is revoked. Once bond has been revoked, the defendant is in custody on both charges and is entitled to credit for time in custody against the sentences for both charges.

People v. Nesbit, 2016 IL App (3d) 140591 A defendant is entitled to credit against his sentence for each day he spends in pretrial custody. But a defendant who is out on bond on one charge and is subsequently arrested and returned to custody on another charge is not entitled to credit on the first charge until his bond is withdrawn or revoked. Once a defendant withdraws or surrenders his bond, he is considered in custody on both charges and earns credit against each charge.

A month after he was charged in the present case, defendant posted bond and was released from custody. The Department of Corrections immediately took defendant into custody for an earlier conviction. When defendant appeared in court on the present charge, his attorney informed the court that defendant was on bond in this case and in DOC custody on another case.

Following his conviction, defendant filed a post-conviction petition alleging that his counsel had provided ineffective assistance of counsel for failing to surrender his bond. In an affidavit attached to the petition, defendant stated that his counsel never informed him that he could surrender his bond and receive sentencing credit. He further stated that if his counsel had so informed him, he would have surrendered his bond.

Defendant's post-conviction claim made a substantial showing of ineffective assistance warranting a third-stage evidentiary hearing. The failure of counsel to notify defendant of his option to surrender bond and receive credit was objectively unreasonable and created prejudice by depriving defendant of sentencing credit.

People v. Clark, 2014 IL App (4th) 130331 730 ILCS 5/5-4.5-100(c) provides that an offender who is "arrested on one charge and prosecuted on another charge for conduct that occurred prior to his or her arrest" is entitled to sentence credit "for time spent in custody under the former charge but not credited against another sentence." The court concluded that §5-4.5-100(c) was intended to provide credit where defendant is incarcerated on one charge, tried only on a subsequently brought charge for conduct which occurred before the first arrest, and the time in custody on the first charge is not credited to any other sentence.

Thus, defendant was not entitled to credit against the sentence for the former charge for time spent in custody on a subsequent charge that was later dismissed. The court adopted the reasoning of Justice Pope's dissenting opinion in **People v. Cook**, 392 Ill. App. 3d 147, 910 N.E.2d 208 (4th Dist. 2009).

People v. Purcell, 2013 IL App (2d) 110810 730 ILCS 5/5-8-7(b) provides that a defendant is to be credited on a determinate sentence for time spent in custody as a result of the offense for which the sentence was imposed. The court concluded that under the current sentencing

scheme, a sentence of natural life imprisonment is a determinate sentence because it is "not an indeterminate term subject to termination after service of a set minimum period." Because credit for time served while awaiting trial is mandatory and a sentence that does not award mandatory credit is void, the court concluded that defendant was entitled to 815 days credit. The court noted, however, that "the credit does appear to be meaningless, since it would never benefit the defendant."

People v. Riley, 2013 IL App (1st) 112472 Under 725 ILCS 5/110-14, a person who is "incarcerated on a bailable offense" and who "does not supply bail" is entitled to a $5 per day credit against a fine ordered as part of his sentence.

Section 110-14 provides the monetary credit only for days on which defendant is actually "incarcerated." By comparison, 730 ILCS 5/5-4.5-100, which authorizes credit against a prison sentence for incarceration awaiting trial or sentencing, provides credit for time spent "in custody." The court concluded that "custody" includes both "actual imprisonment" and "lesser restraints," while "incarceration" is limited to confinement in a jail or penitentiary. Thus, credit for time served may be based on "custody" other than imprisonment, while the monetary credit against a fine applies only for days on which the defendant was physically incarcerated.

A defendant who is on electronic monitoring in his home is not physically incarcerated, and therefore is not entitled to the $5 per day credit against his fine.

People v. Smith, 2013 IL App (3d) 110477 730 ILCS 5/5-4.5-100(b) provides that a defendant is entitled to credit on a determinate sentence or maximum and minimum term of imprisonment for time spent in custody as a result of the offense for which the sentence was imposed. Where the defendant was sentenced to 48 consecutive hours of imprisonment under 720 ILCS 5/31-1(a-5), which mandates a minimum jail sentence of 48 consecutive hours or 100 hours of community service for the offense of obstructing a peace officer, he was entitled to a credit of two days for time served. The fact that the defendant did not serve two consecutive days of pretrial custody is irrelevant to whether he is entitled to the credit, because a defendant who serves any part of a day in custody is entitled to credit for that day.

People v. Trujillo, 2012 IL App (1st) 103212 A defendant may receive credit against his state sentence for time spent in federal custody if he was in federal custody as a consequence of the offense upon which he seeks credit.

After defendant posted bail and was released from state custody, he was taken into custody by the Immigration and Naturalization Service (INS). Whether he is entitled to credit against his state sentence for time he spent in INS custody depends on the reason for his detention by INS. The court remanded for a determination of whether his time in INS custody was a consequence of the offense upon which he sought credit.

People v. Anthony, 408 Ill.App.3d 799, 951 N.E.2d 507 (1st Dist. 2011) The $5 court system fee authorized by 55 ILCS 5/5-1101(a) may be entered only if the defendant is convicted of violating the Illinois Vehicle Code or a similar county or municipal ordinance. The fee was vacated where the defendant was convicted of unlawful use of a weapon by a felon.

The $25 court services fee to defray the cost of court security, which is authorized by 55 ILCS 5/5-1103, may be imposed even where the defendant is not convicted of an offense specified under the statute.

The $10 County Jail Medical Fund fee, which is authorized by 730 ILCS 125/17, is to

be imposed without regard to whether the defendant incurred an injury or required treatment while in custody. The court concluded that the fee is intended to reimburse the county for the cost of providing medical services to arrestees, and is not a "fine" to which the presentence incarceration credit may be applied.

People v. Maldonado, 402 Ill.App.3d 411, 930 N.E.2d 1104 (1st Dist. 2010) 725 ILCS 5/110-14 authorizes a $5 per day credit against a "fine" for each day of pretrial incarceration on a "bailable" offense. The court concluded that the offenses here - first degree murder and attempt first degree murder - were "bailable."

In addition, a $10 mental health court fee (55 ILCS 5/5-1101(d-5)) and a $5 youth diversion/peer court fee (55 ILCS 5/5-1101(e)) were "fines," despite being labeled as "fees" by the General Assembly, because there is no relevant connection between defendant's convictions (first degree murder and attempt murder) and either mental health or juvenile justice.

Therefore, defendant was entitled to credit against the $15 in fines.

People v. Johnson, 401 Ill.App.3d 678, 937 N.E.2d 190 (2d Dist. 2010) Under **People v. Robinson**, 172 Ill.2d 452, 667 N.E.2d 1305 (1996), a defendant who is simultaneously in custody on unrelated offenses is entitled to sentence credit on all the offenses. Under Appellate Court authority interpreting **Robinson**, a defendant is entitled to credit for presentencing custody even if he is serving a prison sentence in an unrelated case.

Here, defendant was entitled to sentence credit from the date on which a complaint charging criminal damage to property was filed, although he was simultaneously incarcerated in a Department of Corrections facility. The court rejected the State's argument that sentence credit should be calculated only from the date on which an indictment replaced the complaint; the complaint marked the start of custody, the indictment charged the same "offense" as the complaint, and defendant was continuously in custody.

730 ILCS 5/5-8-7(c) requires sentence credit for all confinement resulting from an offense. Thus, even if the indictment had constituted a new "charge," §5-8-7(c) would require credit for all time served from the date of the complaint.

Defendant was not limited to 29 days of credit under the negotiated plea agreement. Although defense counsel said when describing the plea agreement that defendant was entitled to 29 days of credit, his statements concerning the nature of the plea agreement were ambiguous. Thus, it appeared as likely that the parties miscalculated the credit as that they expressly agreed to a sentence credit that was less than that to which the defendant was entitled.

People v. Centeno, 394 Ill.App.3d 710, 916 N.E.2d 70 (3d Dist. 2009) Under **People v. Robinson**, 172 Ill.2d 452, 667 N.E.2d 1305 (1996), a defendant is in simultaneous custody for multiple offenses where he surrenders his bond on one offense after being arrested and placed in custody on a second offense. A person who is in simultaneous custody is entitled to credit against both sentences for pretrial detention.

The court concluded that defense counsel was ineffective for failing to surrender defendant's bond on a Will County petition to revoke probation once defendant was placed in custody in Cook County on an unrelated charge.

People v. Williams, 394 Ill.App.3d 480, 917 N.E.2d 547 (1st Dist. 2009) Recognizing a split in appellate authority, the Appellate Court concluded that when the mittimus is issued

effective the day of sentencing, that day should not be counted as a day of pretrial custody for purposes of providing credit against a sentence for time spent in pretrial custody. Conversely, if the mittimus is not effective on the day of sentencing, the defendant is entitled to credit for that day.

People v. Gonzales, 314 Ill.App.3d 993, 734 N.E.2d 77 (2d Dist. 2000) Although criminal drug conspiracy is itself an unclassified offense, it carries the same sentence as the offense that was the object of the conspiracy. Where the object of the conspiracy was a Class X felony, defendant was guilty of a Class X offense for purposes of determining credit for pretrial detention.

People v. Rhoden, 299 Ill.App.3d 951, 702 N.E.2d 209 (1st Dist. 1998) Where defendant is arrested in another state, he is entitled to credit against his sentence for time spent in custody after the date on which he waived extradition to Illinois. See also, **People v. Thomas**, 313 Ill.App.3d 998, 730 N.E.2d 618 (4th Dist. 2000) (defendant, who was arrested in Georgia for an Illinois offense, was entitled to credit against his Illinois sentence for time served in Georgia while awaiting extradition).

People v. Williams, 144 Ill.App.3d 994, 495 N.E.2d 685 (3d Dist. 1986) After defendant was adjudicated delinquent of armed robbery and placed on juvenile probation, he was arrested and charged with perjury and obstruction of justice when authorities learned that defendant had lied about his age. Defendant was also charged as an adult with armed robbery, and the perjury and obstruction charges were nolle prossed. Defendant was entitled to credit on his armed robbery conviction for his confinement on the perjury and obstruction charges because those charges arose out of the same conduct for which defendant was later charged and prosecuted (i.e., armed robbery).

A defendant held in custody for any part of a day should be granted credit against his sentence for that day.

People v. Tillery, 141 Ill.App.3d 610, 490 N.E.2d 967 (4th Dist. 1986) Defendant is not entitled to sentence credit for time spent in an alcohol rehabilitation facility.

People ex rel. Bradley v. Davies, 17 Ill.App.3d 920, 309 N.E.2d 82 (4th Dist. 1974) Statute, which provides for credit for time any person is confined to answer to a charge, is not limited to the time spent confined in the State of Illinois, but also applies to time spent in custody in other jurisdictions. Thus, defendant was entitled to credit for time spent in custody in Indiana, where she was apprehended by reason of Illinois process.

§44-16(c)
On Resentencing

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order or other parts of record resulting in discrepancy between record and actual judgment of the court.

United States Supreme Court

North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) Upon resentencing, a defendant is entitled to credit for time served on the first sentence. See also, **People v. Baze**, 43 Ill.2d 298, 253 N.E.2d 392 (1969); **Simpson v. Rice**, 395 U.S. 711, 89 S.Ct. 2073, 23 L.Ed.2d 656 (1969) Credit for time served on a sentence given after first trial must be applied to sentence given after second trial.

Illinois Supreme Court

People v. Whitfield, 228 Ill.2d 502, 888 N.E.2d 1166 (2008) A defendant who spent eight months on a probation sentence for which he was ineligible was not entitled to have the trial court consider whether to grant him credit against his subsequent prison term.

People v. Goodman, 102 Ill.2d 18, 464 N.E.2d 250 (1984) The Court rejected the State's argument that defendant could not be given credit for "time served on probation" after an arrest warrant was issued because the issuance of an arrest warrant tolled the period of probation. The purpose of the statutory tolling provision:

> "is simply to ensure that jurisdiction over the probationer is retained and that the period of probation does not expire prior to a hearing upon the petition to revoke. . . . It was not intended, in our judgment, to preclude credit for the interval between service upon defendant of a copy of the revocation petition, summons or warrant and the revocation order, unless the trial court directs otherwise."

People v. Scheib, 76 Ill.2d 244, 390 N.E.2d 872 (1979) Upon resentencing after revocation of probation or conditional discharge, a defendant must be given credit for all time he spent in custody, including time in jail before trial and time in jail served as a condition of probation or conditional discharge. Also, upon resentencing after revocation of probation, a defendant is entitled to credit for the portion of a periodic imprisonment term served as a condition of the probation. This credit is determined on the basis of the portion of the term served and not on the basis of the actual number of days in custody. But see, **People v. Kauffman**, 172 Ill.App.3d 1040, 527 N.E.2d 645 (4th Dist. 1988) (under Ch. 38, §1005-6-4(h), as amended effective January 1, 1988, a defendant sentenced after revocation of probation is *not* entitled to credit for the time spent on probation unless the trial judge expressly orders that such credit be given; the amended statute is applicable to defendants who are sentenced, upon revocation, on or after the effective date, regardless of the date of the crime, the date of conviction, or the date probation was imposed). See also, **People v. Schwartz**, 182 Ill.App.3d 515, 538 N.E.2d 203 (4th Dist. 1989).

People v. Miles, 53 Ill.App.3d 137, 368 N.E.2d 187 (3d Dist. 1977) A defendant is not entitled to credit against probation for preconviction jail time. But, a defendant is entitled to credit for preconviction jail time upon sentencing following probation revocation.

Illinois Appellate Court

People v. Holliday, 2019 IL App (3d) 160315 Where defendant's sentence was vacated on appeal and the matter remanded for resentencing, under Section 4 of the Statute on Statutes he was entitled to elect to be sentenced under a more lenient law that had taken effect since

the date of his original sentencing. Here, defendant made such an election on appeal, and the Appellate Court resentenced him to the minimum penalty available, a $100 fine.

People v. Durk, 195 Ill.App.3d 335, 552 N.E.2d 278 (4th Dist. 1990) Defendant was entitled to credit for all time he had served in jail on forgery offense, upon revocation of probation imposed in connection with that offense. Because of the uncertainties regarding sentence credit, the cause was remanded with directions for the trial court "to conduct a hearing to determine the specific number of days to which the defendant is entitled and to enter an amended order accordingly."

To avoid determining how much credit to which defendant is entitled, sentencing orders should specify the number of days' credit. Also, presentence reports, if prepared, should routinely contain dates on which defendant was in jail on offense and a figure representing the total number of such days. And, defense counsel should be asked whether he or she agrees or disagrees with the proposed figure.

§44-16(d)
Against Fine

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order or other parts of record resulting in discrepancy between record and actual judgment of the court.

Illinois Supreme Court

People v. Jones, 223 Ill.2d 569, 861 N.E.2d 967 (2006) The $5 per day credit applies only to fines, and not to fees. Generally, a "fine" is a pecuniary punishment imposed as part of the sentence on a conviction, while a "fee" is a collateral consequence of the conviction and is intended to compensate the State for some expenditure it incurred in prosecuting the defendant. The $4 criminal/traffic conviction surcharge, the $500 assessment for controlled substance violation, and the $100 trauma fund charge are all "fines" and therefore subject to the $5 per day credit. The $5 charge against drug offenders to fund spinal cord injury and paralysis does not violate due process. Although this charge was labeled a fee, it has the attributes of a fine and should be treated as a fine. "A defendant has no basis for protesting usage to which his criminal fines are put." See also, **People v. Fort**, 373 Ill.App.3d 882, 869 N.E.2d 950 (1st Dist. 2007) (the "drug assessment" mandated by 720 ILCS 570/411.2(a)(3) constitutes a "fine" to which the $5.00 credit for each day of presentence incarceration applies).

People v. Woodard, 175 Ill.2d 435, 677 N.E.2d 935 (1997) A defendant does not forfeit the $5 per day credit against his fine by failing to request it in the trial court. Instead, a defendant is entitled to the credit even where he first requests it on appeal. See also, **People v. Guerrero**, 311 Ill.App.3d 968, 725 N.E.2d 783 (4th Dist. 2000) (a defendant who pleads guilty under a plea agreement imposing a sentencing cap is entitled to a $5 credit against a fine for each day of pretrial custody, even where he failed to request the credit in the trial court or file a motion to vacate the plea). **Note:** See Illinois Supreme Court Rule 472, eff. 3/1/19, providing trial court retains jurisdiction to correct errors in per diem credit at any

time.

People v. Hare, 119 Ill.2d 441, 519 N.E.2d 879 (1988) A defendant who is in custody on a bailable offense, and who receives both a sentence of imprisonment and a fine, is entitled to credit against the imprisonment sentence, *and also* to a $5 per day credit against the fine, for each day spent in custody.

Illinois Appellate Court

People v. Ely, 2018 IL App (4th) 150906 The $30 assessment for the Court Appointed Special Advocates Fund is a fine against which defendant is entitled to a *per diem* credit.

People v. Smith, 2014 IL App (4th) 121118 Because defendant was incarcerated awaiting trial on a charge of sexual assault, he was not entitled to the $5 per day credit against fines for time in which he was in custody. (725 ILCS 5/110-14(b)).

People v. Riley, 2013 IL App (1st) 112472 Under 725 ILCS 5/110-14, a person who is "incarcerated on a bailable offense" and who "does not supply bail" is entitled to a $5 per day credit against a fine ordered as part of his sentence. The Appellate Court found that defendant was not entitled to the $5 per day credit for time he spent on home confinement while on an electronic monitoring program.

The court stressed that §110-14 provides the monetary credit only for days on which defendant is actually "incarcerated." By comparison, 730 ILCS 5/5-4.5-100, which authorizes credit against a prison sentence for incarceration awaiting trial or sentencing, provides credit for time spent "in custody." The court concluded that "custody" includes both "actual imprisonment" and "lesser restraints," while "incarceration" is limited to confinement in a jail or penitentiary. Thus, credit for time served may be based on "custody" other than imprisonment, while the monetary credit against a fine applies only for days on which the defendant was physically incarcerated.

The court concluded that a defendant who is on electronic monitoring in his home is not physically incarcerated, and therefore is not entitled to the $5 per day credit against his fine.

People v. Butler, 2013 IL App (5th) 110282 The mittimus was modified to reflect a $30 credit against a Children's Advocacy Center fee, which the parties agreed was actually a "fine."

People v. Guadarrama, 2011 IL App (2d) 100072 Noting a conflict in appellate authority, the court concluded that the DNA analysis fee (730 ILCS 5/5-4-3(j)) is a "fee" which" cannot be offset by the $5 a day credit for each day of pretrial custody. The court found that the DNA analysis fee is imposed not as a punishment, but to cover costs incurred in collecting and testing DNA samples from defendants who are convicted of offenses which require the submission of a DNA sample.

People v. Gutierrez, 405 Ill.App.3d 1000, 938 N.E.2d 619 (2d Dist. 2010) The mental health court assessment is labeled a fee, 55 ILCS 5/5-1101(d-5), but it is a fine and therefore may be offset by a $5 per day credit for the time defendant served in custody prior to sentencing. 725 ILCS 5/110-14(a).

Imposition of fines is a judicial function and the court clerk has no power to levy even

mandatory fines that are not authorized by the court. Where the clerk assesses mandatory fines, the Appellate Court may vacate the fines and impose them itself.

People v. Mingo, 403 Ill.App.3d 968, 936 N.E.2d 1156 (2d Dist. 2010) 730 ILCS 5/5-9-2 authorizes the trial court, upon good cause, to revoke all or part of any fine in a criminal case or to modify the method of payment. Because the plain language of §5-9-2 does not impose a time limit for filing a petition to revoke fines, such petitions were intended to be free standing, collateral actions which need not be filed within 30 days of judgment. Thus, the trial court had authority to consider a petition to revoke fines filed more than 30 days after judgment and while appeals from the same conviction were pending.

People v. Green, 375 Ill.App.3d 1049, 874 N.E.2d 935 (2d Dist. 2007) Because the appellate court had jurisdiction after defendant filed a postplea motion requesting relief that was unavailable as a matter of law, it could reach any issue that had not been waived. Therefore, the court could grant defendant a $5.00 per day credit for pre-conviction incarceration.

People v. McNair, 325 Ill.App.3d 725, 759 N.E.2d 584 (3d Dist. 2001) A defendant whose bond was revoked upon the jury's verdict was not ineligible for the $5 credit because he was convicted of a non-probationable offense.

People v. Smith, 258 Ill.App.3d 261, 630 N.E.2d 147 (2d Dist. 1994) The $5 credit applies to each day of incarceration while the case is in the trial court, whether defendant is awaiting trial or sentencing.

People v. Bennett, 246 Ill.App.3d 550, 616 N.E.2d 651 (3d Dist. 1993) Defendant was entitled to monetary credit toward his fine for the time he was incarcerated without bail after he was found guilty but before he was incarcerated.

§44-17
Truth-In-Sentencing

Illinois Supreme Court

People ex rel. Ryan v. Roe, 201 Ill.2d 552, 778 N.E.2d 701 (2002) Although plea bargaining plays an important role in the criminal justice system, neither the State nor the trial court may agree to an unauthorized sentence. Thus, the trial court had no authority to order that "truth-in-sentencing" would not be applied to a sentence which the legislature included within the truth-in-sentencing statute.

People v. Reedy, 186 Ill.2d 1, 708 N.E.2d 1114 (1999) Public Act 89-404, which enacted the "truth-in-sentencing" law effective August 1995, violated the "single-subject" rule of the Illinois Constitution. See also, **People v. Majors**, 308 Ill.App.3d 1021, 721 N.E.2d 753 (4th Dist. 1999) (where defendant was sentenced under the truth-in-sentencing provisions declared unconstitutional in **Reedy**, the cause should be remanded for an amended sentencing order; although the sentencing order made no reference to good time and DOC will calculate day-for-day good time, the "more prudent course is to eliminate any confusion about the nature of defendant's sentence").

Illinois Appellate Court

People v. Carter, 2024 IL App (2d) 230234 The trial court erred in ordering defendant to serve 85% of his sentence for home invasion. A defendant serving a sentence for home invasion may be required to serve 85% if the trial court makes and enters a finding that the conduct leading to conviction resulted in great bodily harm to a victim, pursuant to 730 ILCS 5/3-6-3(a)(2)(iii). Here, the court made no such finding, and thus the portion of the order requiring defendant to serve 85% was vacated. The issue was reached as a matter of plain error where defendant failed to raise it in a post-sentencing motion below.

People v. Martin, 2023 IL App (1st) 220252 Defendant was charged with Class 2 aggravated battery. He was found unfit for trial, and at a civil commitment hearing, he was found not not guilty. The court ordered involuntary civil commitment, pursuant to section 720 ILCS 104-25(g)(2), for the maximum Class 2 term of seven years. The appellate court affirmed this sentence over defendant's argument that the 85% good conduct credit under 730 ILCS 5/3-6-3 applied to his term.

The credit does not apply to civil commitments. Section 104-25(g)(2) states that the maximum sentence shall be determined by 730 ILCS 5/5-8-1 or Article 4.5 of Chapter V of the Unified Code of Corrections. Defendant argued that by referencing Article 4.5, the legislature meant to include the 85% credit and other truth-in-sentencing provisions contained in that article.

Although the appellate court found the statute ambiguous, it held that provisions within Article 4.5 treated civil commitments differently than imprisonment when discussing credit. Also, the article's provision on insanity explicitly allowed for good conduct credit, whereas the civil commitment language did not. It therefore followed that the reference to truth-in-sentencing in the sentencing provisions of section 3-6-3 did not apply to civil commitments.

People v. Fontanez-Marrero, 2023 IL App (2d) 220128 The trial court erred in applying truth-in-sentencing to defendant's five-year prison term for aggravated battery by strangulation under 720 ILCS 5/12-3.05(a)(5) where it was not specifically listed as an 85% offense in 730 ILCS 5/3-6-3. And, trial counsel was ineffective for failing to raise this issue in the trial court. Additionally, the trial court erred in imposing a four-year MSR term where the proper term for a Class 1 offense is two years pursuant to 730 ILCS 5/5-4.5-30(l). Accordingly, the appellate court modified the judgment to indicate day-for-day sentencing and a two-year MSR term on that conviction.

The trial court did not err in imposing an extended-term sentence for defendant's Class 4 conviction of resisting a peace officer. While it was not the most serious offense of which he was convicted, the trial court properly found that defendant's conduct in attempting to elude the arresting officer was unrelated to his earlier battery and unlawful restraint of the complainant. Thus, because the less serious offense arose from an unrelated course of conduct, the extended-term sentence for that offense was affirmed.

People v. Burns, 2020 IL App (3d) 170103 Where there was no great bodily harm, the trial court erroneously ordered that defendant serve 85% of his sentence for armed violence. This is second-prong plain error because it affects defendant's fundamental right to liberty.

People v. Washington, 2019 IL App (1st) 172372 Defendant, who was sentenced to consecutive terms of imprisonment for second degree murder (Class 1) and aggravated battery with a firearm (Class X) was entitled to receive enhanced credit against the Class 1

sentence. Specifically, under section 3-6-3 of the Code of Corrections, defendant could receive 1.5 days of credit for time in pretrial custody spent participating in qualifying educational or vocational programs.

While section 3-6-3 specifically precludes such credit for an individual "convicted of...a Class X felony," the Court concluded that this language was ambiguous. Nothing in the legislative history suggested an intent to deprive program credits to an individual in this situation. And, under the rule of lenity, the statute had to be construed in favor of awarding the enhanced credit to defendant against his Class 1 sentence.

In reaching this conclusion, the Court rejected the application of **People v. Duke**, 305 Ill. App. 3d 169 (4th Dist. 1999) (holding that individuals serving consecutive sentences for both Class X and non-Class X felonies are ineligible for IDOC programming credit during the entire sentence). **Duke**'s holding was based on language in 730 ILCS 5/5-8-4 stating that consecutive sentences of imprisonment are treated as a single term. Here, the Appellate Court held that such language does not preclude awarding credit at different rates against the consecutive sentences that make up that single term.

People v. Loggins, 2019 IL App (1st) 160482 The defendant's conviction for armed violence was upheld where the police, executing a search warrant, entered defendant's home and found him in constructive possession of cocaine and sitting next to a gun. While defendant fled and was arrested unarmed, the fact that he was within arm's reach of the gun at the time the police entered the home was sufficient to satisfy the "otherwise armed" element of the armed violence statute. The "otherwise armed" element is met when the evidence establishes defendant had "immediate access" to the weapon, and here defendant sat in arm's reach of the gun when the police entered. Because this access coincided with his constructive possession of cocaine, the remaining elements of armed violence were met.

The court ordered a corrected mittimus, however, because it required defendant to serve 85% of his armed violence sentence. Under 730 ILCS 5/3-6-3(a)(2.1), armed violence sentences are served at 85% only if there has been a finding of great bodily harm. No such finding was made here, and the defendant was therefore entitled to day-for-day credit. The State had conceded the error, and that it rose to the level of second-prong plain error.

People v. James, 2017 IL App (1st) 143391 The sentencing court erred in ordering defendant's home invasion conviction to be served at 85%, where the State did not establish great bodily harm to the victim under sections 3-6-3(a)(2)(iii) and 3-6-3(a)(2.1) of the Code of Corrections.

People v. Sumler, 2015 IL App (1st) 123381 It was plain error under the second prong for the trial court to mistakenly believe that defendant was entitled to day-for-day good conduct credit when actually defendant was required to serve 85% of his sentence. Remanded for a new sentencing hearing.

People v. Harris, 2012 IL App (1st) 092251 The court rejected the argument that the proportionate penalties clause was violated because the defendant is required to serve 85% of the sentence for aggravated kidnaping, but would be eligible for release after serving 50% of an armed violence conviction predicated on kidnaping (so long as the trial court found that the conduct did not result in great bodily harm). Proportionate penalties analysis focuses only on whether offenses which consist of identical elements have different sentencing ranges, and not on the manner in which sentences are carried out.

Similarly, the court rejected the argument that disparities in truth in sentencing provisions violate equal protection. The court concluded that there is no equal protection right to have good-time credit calculated identically for offenses consisting of the same elements.

People v. Lopez-Bonilla, 2011 IL App (2d) 100688 Under current truth-in-sentencing provisions, a person convicted of home invasion receives no more than 4.5 days of credit for each month of his sentence if the court finds that the conduct leading to the conviction resulted in great bodily harm to the victim. 730 ILCS 5/3-6-3(a)(2)(iii).

While the meaning of the term "great bodily harm" has not been specifically addressed in Illinois case law in connection with the truth-in-sentencing provisions, it has been in connection with the aggravated battery statute. Though not susceptible of a precise definition, "great bodily harm," requires an injury of a greater and more serious character than an ordinary battery. "Bodily harm" as it relates to an ordinary battery requires some sort of physical pain or damage to the body such as lacerations, bruises or abrasions. Great bodily harm does not require hospitalization of the victim or any particular treatment of the injury.

Whether a victim's injuries rise to the level of great bodily harm is a question of fact. The trial court's determination will be upheld on appeal as long as the evidence was sufficient to support such a finding. The State is not subject to the same burden of proof at sentencing as at the guilt phase of trial.

The evidence supported the court's finding of great bodily harm. The victim was struck multiple times, including being hit on the head with a gun and having his head repeatedly slammed into a desk drawer with enough force to splinter the drawer. He bled enough to feel the blood coming out and to lie face down in his own blood. He felt like he was losing consciousness. It was reasonable for the court to conclude that the evidence showed great bodily harm occurred based on the description of the attack, the description of the injuries, and the amount of blood caused by those injuries.

People v. Cunningham, 365 Ill.App.3d 991, 851 N.E.2d 653 (5th Dist. 2006) For purposes of 730 ILCS 5/3-6-3(a)(2)(iii), which provides that an inmate serving a sentence for several offenses, including home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, and armed violence with certain weapons may receive no more than 4½ days per month of good conduct credit if the trial court finds that the conduct leading to the conviction resulted in "great bodily harm to a victim," the term "victim" is: (1) a person physically injured as a result of a violent crime committed against him, (2) a person who suffers injury to or loss of property as a result of a violent crime against him, (3) the representative of a person killed as a result of a violent crime perpetrated against that person or against a physically or mentally handicapped relative, (4) the person against whom a violent crime had been committed, or (5) a person who suffers personal injury as a result of certain traffic offenses.

Here, the trial court erred by finding that defendant was limited to 4½ days per month good time credit on convictions for home invasion and armed violence. Although a co-defendant was shot and killed by the intended victim of the offenses, the only possible definition of "victim" that could apply to a co-defendant was (4). Because the occupant of a house has a constitutional right to defend himself with deadly force when confronted by an armed invader, however, the killing of the co-defendant did not constitute a crime.

People v. Ruiz, 342 Ill.App.3d 750, 795 N.E.2d 912 (1st Dist. 2003) The Truth-In-Sentencing

Act, which requires defendant to serve 100% of his sentence for first degree murder, does not violate the proportionate penalties clause of the Illinois Constitution or the Illinois constitutional objective of restoring offenders to useful citizenship. See also, **People v. Gorgis**, 337 Ill.App.3d 960, 787 N.E.2d 329 (1st Dist. 2003).

People v. Gorgis, 337 Ill.App.3d 960, 787 N.E.2d 329 (1st Dist. 2003) The truth-in-sentencing law, which prohibits first degree murder defendants from receiving good time credit, is not unconstitutional under the Illinois constitutional requirement that all penalties be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Also, because the truth-in-sentencing law treats all first degree murder defendants equally, it does not result in unequal treatment of similarly situated defendants. Nor does the law violate due process.

§44-18
Resentencing

United States Supreme Court
Texas v. McCullough, 475 U.S. 134, 106 S.Ct. 976, 89 L.Ed.2d 104 (1986) Increased sentence, which the trial judge imposed after granting defendant's motion for new trial and after defendant was again convicted on retrial, did not violate due process. There was no basis to presume vindictiveness under **Pearce**. The judge had "no motivation to engage in self-vindication since the judge had not been reversed, but instead had herself granted the new trial." Even if the **Pearce** presumption applied, it was overcome by the judge's findings including some based on new evidence, in imposing the higher sentence.

Wasman v. U.S., 468 U.S. 559, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984) A defendant may properly be given a greater sentence on retrial, following a successful appeal, where the sentencing judge considered an intervening conviction for acts that occurred before the original sentencing.

Chaffin v. Stynchcombe, 412 U.S. 17, 93 S.Ct. 1977, 36 L.Ed.2d 714 (1973) Jury imposition of a higher sentence on retrial does not violate **Pearce** where the jury was not informed of defendant's prior sentence.

North Carolina v. Rice, 404 U.S. 244, 92 S.Ct. 402, 30 L.Ed.2d 413 (1971) A defendant who is given a more severe and illegal sentence on retrial is entitled to resentencing, but not to have the conviction erased.

North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) After a defendant successfully attacks his first conviction, vindictiveness may play no part in the sentence he receives after a new trial. Thus, the judge may not impose a more severe sentence unless: (1) the reasons for doing so are based upon objective information concerning identifiable conduct by defendant after the time of the original sentencing proceeding, and (2) the factual data upon which the increased sentence is based is made a part of the record. See also, **Bordenkircher v. Hayes**, 434 U.S. 357, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978) (in **Pearce**, the due process violation was the danger that the State might be retaliating against the accused for lawfully attacking his conviction); **People v. Baze**, 43 Ill.2d 298, 253 N.E.2d 392 (1969); **People v. Scott**, 69 Ill.2d 85, 370 N.E.2d 540 (1977); 730 ILCS 5/5-5-4.

Illinois Supreme Court

People v. Garcia, 179 Ill.2d 55, 688 N.E.2d 57 (1997) Where resentencing is ordered because the trial court imposed concurrent sentences on convictions where consecutive sentencing is mandatory, constitutional and statutory considerations prohibiting any increase in the length of the sentences are inapplicable.

People v. Kirkpatrick, 167 Ill.2d 439, 657 N.E.2d 1005 (1995) The trial court improperly increased the sentences where, in ruling on defendant's motion to reconsider the sentences, it imposed sentences of equal aggregate length but involving longer individual sentences. See also, **People v. Moore**, 177 Ill.2d 421, 686 N.E.2d 587 (1997) (**Kirkpatrick** applies to cases on collateral review).

People ex rel. Daley v. Strayhorn, 121 Ill.2d 470, 521 N.E.2d 864 (1988) Remand for capital sentencing hearing, after defendant had originally been sentenced to a term of imprisonment because the judge did not think that defendant was death eligible, would not violate double jeopardy principles where first phase of death penalty sentencing hearing was never conducted. In so holding, the Court distinguished **Bullington v. Missouri**, 451 U.S. 430 (1981) and **Arizona v. Rumsey**, 467 U.S. 203 (1984), where double jeopardy prohibited new death penalty hearings after the sentencer had rejected the death penalty in full hearings.

Illinois Appellate Court

People v. Hill, 2023 IL App (1st) 221062 Defendant was found guilty of two attempted murders and received an aggregate sentence of 75 years. He filed a post-conviction petition alleging his trial attorney misadvised him of the sentencing range, causing him to reject a 20-year plea offer. The circuit court granted the petition, though it rejected the requested remedy of a new trial and instead held a resentencing hearing. The court imposed a new sentence of 37 years.

Defendant first argued on appeal that the circuit court erred when it denied his requested remedy of a new trial. The appellate court rejected the claim, finding that the circuit court has wide discretion in fashioning a remedy for a constitutional violation raised in a post-conviction petition. The trial court must "neutralize the taint" of the violation "while at the same time not grant a windfall to defendant." **Lafler v. Cooper**, 566 U.S. 156, 170 (2012). Typically the remedy in a case such as this is either specific performance or resentencing, and the circuit court has discretion to choose which remedy is appropriate. Notably, defendant did not ask for specific performance. Also, the specific performance remedy – a 20-year sentence – was not necessarily precluded by the chosen remedy of a new sentencing hearing.

The appellate court agreed with defendant that his new sentence violated due process. In his post-conviction petition, defendant alleged, and the circuit court found, that he would have accepted the 20-year offer had he been correctly advised of the proper sentencing range. Instead, he was informed that he faced a maximum sentence of 30 years. Under these circumstances, the right to due process prohibits the court from resentencing a defendant to a term that exceeds what he believed to be the maximum sentence he faced when he rejected the court's 20-year offer and elected to proceed to trial. Resentencing him to a term greater than 30 years would be "inconsistent with constitutional concerns of fundamental fairness."

People v. Whitfield, 217 Ill. 2d 177 (2005). The case was remanded for resentencing to a term not to exceed 30 years.

People v. Morris, 2023 IL App (1st) 220035 Defendant was sentenced to an aggregate 100-year sentence for a murder and an attempt murder committed at age 16. In its prior opinion, the court remanded for a new sentencing hearing, finding that, while the sentencing court commented on defendant's youth and upbringing, those observations were not the same as a full consideration of the special characteristics of youth identified by **Miller**.

On remand, the sentencing court imposed the same 100-year sentence, and the appellate court again found error. The hearing took place after the legislature's 2019 amendments to juvenile sentencing law, including the codification of the **Miller** factors. 730 ILCS 5/5-4.5-105(a). The appellate court held that the sentencing court failed to adequately comply with section 5-4.5-105(a).

Before the sentencing hearing began, and throughout the hearing, the judge seemed preoccupied with determining whether or not it could re-impose the 100-year sentence without running afoul of the law. To that end, the judge considered the factors of 5-4.5-105(a) not as tools to help him fashion an appropriate sentence, but rather as, in his words, "certain issues you have to deal with in order to make a life sentence work." Thus, although the judge went through each factor at the hearing, he clearly did so without serious thought, as his comments about each factor were either perfunctory, dismissive, or both. For example, when considering defendant's maturity, the only fact the court mentioned was defendant's attempt to silence witnesses from jail, which he found to be a mature act. When considering age, the sentencing court merely said, "Age, yeah, 16." He similarly brushed aside serious childhood trauma such as sexual abuse and substance abuse in a single sentence, noting that they were self-reported allegations.

A new judge was required to sentence defendant for a third time, as the judge here employed a results-driven approach and showed an inability to "adhere to the legislature's directives regarding the sentencing of youthful offenders, while remaining open to all possible sentences."

People v. Bruce, 2022 IL App (1st) 210811 The sentencing court abused its discretion when, on a remand for resentencing pursuant to **Miller v. Alabama**, it rejected the parties' agreement to a reduction from natural life to 23 years' imprisonment, and instead imposed a 28-year term.

Defendant was convicted for a double-murder committed at age 16. He was found guilty on a theory of accountability, having pushed the gunman to the scene in a wheelchair at the behest of a 25-year-old. Defendant left the scene prior to any shooting. He had significant cognitive impairments, including a 76 IQ. At the resentencing hearing, the defense presented substantial evidence of mitigation and rehabilitation, including the fact that defendant had become a model inmate.

Although a dissent would have affirmed because defendant took part in a murder that had been planned days in advance, the majority did not view the offense as fully thought out. The 25-year-old made a single comment about killing one of the victims, and defendant's role wasn't conceived until the moment he was ordered to push the wheelchair. Defendant never touched the weapon and wasn't there for the shooting, two facts the resentencing judge failed to consider. The trial court also abused its discretion when it refused to consider defendant's explicit apology as evidence of remorse.

When reviewing a trial court's rejection of a plea agreement, the question is not what the trial court would have done were it the prosecuting attorney, but whether the decision of the prosecuting attorney is such a departure from sound prosecutorial principle as to make it an abuse of prosecutorial discretion. The 23-year sentence in this case was not an abuse of prosecutorial discretion where it was supported by defendant's limited role in the offense and the substantial mitigating evidence presented at resentencing.

People v. Mischke, 2018 IL App (2d) 160472 Defendant's case had been remanded for resentencing because the trial court originally erred in imposing concurrent terms of 26 years and 7 years where consecutive terms were mandatory. On remand, the court imposed consecutive terms of the same length – 26 years and 7 years – for a total of 33 years. 730 ILCS 5/5-5-4(a), which prohibits imposition of a more severe sentence on remand for resentencing, was not violated. A mere increase in the aggregate term is not improper under Section 5-5-4(a). The court did not increase either of the individual sentences and did not otherwise abuse its discretion at resentencing.

People v. Amans, 2018 IL App (2d) 170405 Defendant pled guilty to possession of cannabis and was sentenced to four years of imprisonment. The court subsequently granted defendant's motion to reconsider and reduced his sentence to 48 months of probation. Then, on the State's motion, the court vacated the probation sentence and reimposed the original four-year prison term, concluding it had erred in considering defendant's intervening good conduct when it reduced the sentence. While the State can move to reconsider a sentence that does not conform to the law, the probation sentence was not illegal. The court violated 730 ILCS 5/5-4.5-50(d) by granting the State's motion to reconsider because it increased defendant's sentence.

People v. Inman, 2014 IL App (5th) 120097 It is a violation of due process to impose a harsher sentence after remand from a successful appeal unless it is based on defendant's conduct subsequent to the original sentence. The imposition of consecutive sentences on remand, which resulted in defendant losing sentence credit against one of his sentences, did not violate due process since the length of the individual sentences was not increased and since one of the original sentences was natural life imprisonment, which could not have been reduced by any type of sentence credit.

Defendant was originally sentenced to concurrent prison terms of natural life for first-degree murder and 30 years for attempted first-degree murder. After his natural life sentence was vacated on appeal, he was resentenced to consecutive terms of 35 years for murder and 30 years for attempt. Defendant argued that by making the sentences consecutive he lost his good time credit against the 30-year attempt sentence, thereby increasing his sentence on remand and violating his right to due process.

The Appellate Court rejected this argument since neither individual sentence was more severe than the original sentences. Consecutive sentencing merely alters the manner in which the sentences are to be served, not the actual sentence. Moreover, defendant's previous natural life sentence could not be reduced by sentence credit and defendant would have remained in prison for the rest of his natural life regardless of whether he received credit against his 30-year sentence. Under the new sentence, the amount of time defendant will spend in prison on the attempt charge remains unchanged, while the time spent of the murder sentence has been reduced.

The court disagreed with the First District's decision in **People v. Pugh**, 325 Ill. App.

3d 336 (1st Dist. 2001), which held that by ordering the sentences on remand to run consecutively, the trial court effectively and improperly increased the amount of time defendant would be incarcerated on two of his convictions. The court noted that it was not bound by decisions from other districts and did not find **Pugh** persuasive, especially since it was at odds with the many Illinois cases holding that consecutive sentences do not constitute an increase in any individual sentence.

People v. Strawbridge, 404 Ill.App.3d 460, 935 N.E.2d 1104 (2d Dist. 2010) After the Appellate Court vacated defendant's guilty plea, defendant was convicted in a jury trial. At sentencing, the trial judge imposed a 12-year sentence for predatory criminal sexual assault of a child, in lieu of the nine-year-sentence imposed on the guilty plea. The court based the increased sentence on defendant's lack of remorse and the opinion of a social worker that defendant was likely to recidivate.

Where a conviction or sentence has been set aside on direct review or collateral attack, a more severe sentence cannot be imposed on remand unless that sentence is based upon the defendant's "conduct" since the original sentencing hearing. (730 ILCS 5/5-5-4). As a matter of first impression, the court concluded that the term "conduct" covers only "behavior," and does not include either of the factors on which the judge relied.

Because defendant engaged in no "conduct" that justified increasing his sentence for predatory criminal sexual assault of a child, the Appellate Court reduced the sentence to nine years. The court reached the issue as plain error, finding that imposition of an unauthorized sentence constitutes fundamental error.

People v. McBride, 395 Ill.App.3d 204, 916 N.E.2d 1282 (5th Dist. 2009) The trial court violated 730 ILCS 5/5-1-19, which provides that the court may not increase a sentence once it is imposed, where it resolved defendant's motion to reconsider the sentence by agreeing that an extended term was improper but vacated an order awarding defendant credit for time served on probation. The court also noted that because defendant could have waited until appeal to challenge the extended term sentence, and would have had the extended term vacated without losing the previously-awarded credit for probation time, the trial court in effect penalized the defendant for correcting the erroneous sentence immediately.

The trial court ordered the mittimus corrected to reflect credit for time served on probation.

People v. Pugh, 325 Ill.App.3d 336, 758 N.E.2d 319 (1st Dist. 2001) Defendant was convicted of murder (for which he received death), as well as armed robbery and forcible detention (for which he received concurrent terms of 30 years and 7 years). On direct appeal, the death sentence was vacated and the cause remanded for resentencing. On remand, the trial judge "effectively increased the amount of time defendant would spend while incarcerated for the armed robbery and forcible detention offenses," though the Supreme Court had not ordered resentencing for armed robbery and forcible detention.

People v. Pittman, 316 Ill.App.3d 245, 736 N.E.2d 662 (5th Dist. 2000) Statutory provision prohibiting increasing sentences after a conviction is set aside (unless the more severe sentence is based on conduct occurring after the original sentencing), does not prohibit a higher sentence than was imposed on a guilty plea that defendant withdrew.

People v. Jackson, 299 Ill.App.3d 104, 700 N.E.2d 736 (1st Dist. 1998) Unless reasons for

increased sentence appear on the record, it is presumed that any increase was motivated by vindictiveness. But the presumption does not apply where the second sentence was imposed after a trial and the first sentence was imposed after a guilty plea. Where there is no presumption of vindictiveness, defendant has the burden to show that the second sentence was motivated by actual vindictiveness. Where nothing in the record tended to show that the sentence was increased due to vindictiveness, defendant failed to carry this burden.

People v. Blanck, 286 Ill.App.3d 583, 676 N.E.2d 731 (2d Dist. 1997) Where the conviction and extended term on the most serious offense were vacated on appeal, on remand the trial court could not impose an extended term on the next most serious offense of which defendant was convicted where no evidence was presented regarding defendant's conduct since the original sentencing.

People v. Smith, 258 Ill.App.3d 633, 629 N.E.2d 598 (1st Dist. 1994) Remanded for the trial court to decide whether defendant's sentence should be modified in light of his current state of health (defendant discovered on appeal that he had cancer and was granted an appeal bond).

People v. Colter, 237 Ill.App.3d 486, 604 N.E.2d 980 (3d Dist. 1992) Although the balance of aggravating and mitigating factors is left to the trial judge, a reviewing court's determination of an issue is binding on the trial court on remand and on the reviewing court in a subsequent appeal. Thus, a trial judge who is ordered to consider certain mitigating factors on remand is not free to "disagree" and ignore the order.

People v. Gurga, 176 Ill.App.3d 82, 530 N.E.2d 1059 (1st Dist. 1988) Remand for resentencing before a different judge was required where the trial court, as evidenced by its on-the-record remarks, refused to give serious consideration to statutory sentencing factors relating to a guilty but mentally ill verdict.

People v. Pierce, 80 Ill.App.3d 514, 400 N.E.2d 62 (1st Dist. 1980) Statutory provision prohibiting increasing sentences after a conviction is set aside "on direct review or on collateral attack," applies to resentencing after a defendant has gained post-trial relief in the trial court by way of a motion for new trial. But see, **People v. Adams**, 169 Ill.App.3d 312, 523 N.E.2d 223 (4th Dist. 1988) (declining to follow **Pierce** and holding the statutory provision discussed in **Pierce** does not apply where defendant's guilty plea was set aside in a motion to withdraw the plea, rather than on either direct appeal or in a collateral attack).

People v. MacRae, 78 Ill.App.3d 266, 397 N.E.2d 509 (1st Dist. 1979) Upon remand, the trial judge failed to give "serious consideration to the pertinent statute and [make] a rational determination regarding a sentence of probation." Reversed and remanded for another sentencing hearing before a different judge.

People v. Cunitz, 59 Ill.App.3d 701, 375 N.E.2d 1020 (5th Dist. 1978) On remand for resentencing for misdemeanor theft and felony escape (after appellate court reduced felony theft conviction to misdemeanor theft), the trial judge imposed concurrent sentences of 364 days for theft and 5 to 20 years for escape (escape conviction greater than original). The court reduced the escape conviction, finding that the judge could not increase the sentence on remand unless the increase was based on defendant's conduct since the original sentence was

imposed, and rejected the State's argument that the sentence on remand was not an increase because the original sentence, when aggregated, was six years, eight months to twenty years.

People v. Yarber, 43 Ill.App.3d 668, 357 N.E.2d 166 (1st Dist. 1976) Resentence was an improper increase in sentence because there was nothing in defendant's conduct after the original sentence to warrant an increase. The court rejected the contention that the new sentence was not an increase from the original sentence because defendant would go before the parole board sooner under the new sentence. Sentenced reduced.

People v. Mikesell, 12 Ill.App.3d 382, 297 N.E.2d 590 (4th Dist. 1973) When the reviewing court finds that the trial court abused its discretion or acted arbitrarily by denying probation, the cause should be remanded to a different judge for a new sentencing hearing.

§44-19
Appellate Concerns Generally

§44-19(a)
Preserving Sentencing Issues for Review/Rule 605(a) Admonishments

Illinois Supreme Court
People v. Heider, 231 Ill.2d 1, 896 N.E.2d 239 (2008) 730 ILCS 5/5-8-1(c) provides that a challenge to the correctness of the sentence or to any aspect of the sentencing hearing must be made by a written motion filed within 30 days after the sentence is imposed. Sentencing issues not raised in a post-sentencing motion are forfeited. Defendant did not forfeit the trial court's consideration of defendant's dangerousness based upon his mental retardation. The issue raised on appeal - that the trial court erroneously considered mental retardation as an aggravating factor - was not a "completely different" objection than the one raised in the trial court - that defendant suffered from "diminished mental functioning." Also, the trial court had an opportunity to review the "same essential claim" as was raised on appeal.

People v. Henderson, 217 Ill.2d 449, 841 N.E.2d 872 (2005) Where defendant receives incomplete 605(a) admonishments regarding the steps necessary to preserve sentencing issues for appeal, remand is required only where defendant has suffered prejudice or has been denied real justice as a result of the inadequate admonishments. Because defendant raised no potential sentencing issues (besides hypothetical ones), a remand was not required. See also, **People v. Medina**, 221 Ill.2d 394, 851 N.E.2d 1220 (2006) (inadequate 605(a) admonishments did not require a remand where defendant failed to raise any sentencing issues on appeal; remand was not necessary to allow defendant to present "additional information" to the trial court).

People v. Breedlove, 213 Ill.2d 509, 821 N.E.2d 1176 (2004) Defendant who was properly admonished at sentencing under former version of Supreme Court Rule did not have a due process right to a remand for admonishment of the amended version of the rule, which went into effect while defendant's appeal was pending and which added the requirement that defendants be admonished of the need to file a post-sentencing motion in the trial court to preserve appellate review of sentencing issues.

People v. Reed, 177 Ill.2d 389, 686 N.E.2d 584 (1997) PA 88-311, which took effect August

11, 1993, modified 730 ILCS 5/5-8-1(c) by requiring a written post-sentencing motion in order to preserve sentencing issues for appeal. See also, **People v. Shields**, 298 Ill.App.3d 943, 700 N.E.2d 168 (1st Dist. 1998) (where the State fails to object to an oral post-sentencing motion, the reviewing court may address issues raised in the oral motion despite defendant's failure to file the required written post-sentencing motion).

Illinois Appellate Court

People v. Landerman, 2018 IL App (3d) 150684 The trial court failed to comply with Supreme Court Rule 605(a) when, after sentencing defendant to a mandatory term of natural life imprisonment for first degree murder, the court told defendant, "You can file a motion to reconsider even though I can't reconsider this sentence." Despite the error, defendant did not show prejudice. Although defendant failed to file a motion to reconsider before taking an appeal, he did not seek a remand to file such a motion.

And, although the appellate court refused to consider defendant's argument raised for the first time on appeal that his mandatory life sentence was unconstitutional as applied, defendant could have raised that issue at the original sentencing hearing, not just in a motion to reconsider sentence. Because defendant did not raise it below, the record was insufficient to assess the as-applied challenge.

People v. Hanson, 2014 IL App (4th) 130330 Under 730 ILCS 5/5-4.5-50(d) a defendant must file a written motion challenging "the correctness of a sentence or any aspect of the sentencing hearing" within 30 days of the imposition of sentence. The written post-sentencing motion allows the trial court to review defendant's contentions of sentencing error and save the delay and expense of waiting until appeal to correct any errors. It also gives the Appellate Court the benefit of the trial court's reasoned judgment on potential issues.

Defendant argued that although he was eligible for an extended-term sentence for domestic battery based upon prior felony convictions for retail theft and aggravated robbery (as listed in the pre-sentence investigation report), the trial court improperly imposed an extended-term sentence based upon a mistaken belief that defendant had a prior Class 4 felony conviction for domestic battery (as argued by the State).

The Appellate Court declined to address the merits of defendant's claim. His claim was based entirely on the trial court misunderstanding his criminal history, but defendant made no effort to point this error out at trial and create a clear record of the trial court's actual basis for imposing the sentence. By raising the issue for the first time on appeal, defendant was essentially asking the Appellate Court to "use the transcript of the sentencing hearing as a crystal ball" to understand the trial court's thinking. The Appellate Court refused to engage in "mind-reading" and thus would not review the issue.

The court also held that the plain-error rule did not apply. The court rejected other Appellate Court decisions holding that sentencing errors involving a misapplication of law are reviewable as plain error since the right to be sentenced lawfully affects a defendant's fundamental right to liberty. If all matters involving misapplication of law at sentencing were reviewable as plain error, it would render the forfeiture rule meaningless.

People v. Tapia, 2014 IL App (2d) 111314 Defendant entered a negotiated guilty plea in exchange for the State's recommendation of a sentencing cap. At the sentencing hearing, the trial court relied upon incorrect information in the pre-sentence investigation report (PSI) which listed a prior conviction from Georgia as a felony rather than a misdemeanor. Defendant did not object to the court's actions, and filed no post-judgment motions or direct

appeal.

Defendant filed a post-conviction petition alleging that trial counsel was ineffective for failing to correct the misinformation about the Georgia conviction. At a third-stage evidentiary hearing, the State introduced trial counsel's affidavit which stated that he reviewed the PSI with defendant and defendant never indicated that the description of the Georgia conviction as a felony was inaccurate. Defendant filed an affidavit stating that he did not receive a copy of the PSI until the day of sentencing when trial counsel asked him to quickly look it over. Defendant looked it over but did not notice any errors because he did not understand all the legalese. The circuit court denied the petition and defendant appealed.

The Appellate Court held that defendant forfeited his claim of ineffective assistance by failing to file any post-judgment motions or raise the claim on direct appeal.

People v. Abdelhadi, 2012 IL App (2d) 111053 A double-enhancement error may be considered as plain error under the second prong of the plain-error rule, i.e., that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. When a trial court considers erroneous aggravating factors in determining the appropriate sentence of imprisonment, the defendant's fundamental right to liberty is unjustly affected.

§44-19(b)
Standards of Review

Illinois Supreme Court

People v. Deleon, 227 Ill.2d 322, 882 N.E.2d 999 (2008) A trial court's finding of "severe bodily injury" may be reversed only if it is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding itself is unreasonable, arbitrary, or not based on the evidence.

People v. Perruquet, 68 Ill.2d 149, 368 N.E.2d 882 (1977) The imposition of a sentence is a matter of judicial discretion, and in the absence of an abuse of discretion the sentence may not be altered on appeal. It is not the function of a reviewing court to serve as a sentencing court or to substitute its judgment for that of the trial court merely because the reviewing court feels that it would have imposed a different sentence had that function been delegated to it. See also, **People v. LaPointe**, 88 Ill.2d 482, 431 N.E.2d 344 (1981); **People v. Younger**, 112 Ill.2d 422, 494 N.E.2d 145 (1986); **People v. Crete**, 113 Ill.2d 156, 497 N.E.2d 751 (1986). But see, **People v. Taylor**, 33 Ill.2d 417, 211 N.E.2d 673 (1965) (where it is contended that the punishment imposed in a particular case is excessive, but within the limits prescribed by the legislature, the reviewing court should not disturb the sentence unless it clearly appears that the penalty constitutes a great departure from the fundamental law and its spirit and purpose or is manifestly in excess of the proscription of the Illinois constitution); **People v. Barrios**, 114 Ill.2d 265, 500 N.E.2d 415 (1986); **People v. Christy**, 271 Ill.App.3d 966, 650 N.E.2d 12 (4th Dist. 1995) (a sentence falling within statutory guidelines will not be disturbed on appeal unless it is "manifestly disproportionate" to the nature of the case).

People v. Bolyard, 61 Ill.2d 583, 338 N.E.2d 168 (1975) An abuse of discretion would exist where the sentence fails to reflect the seriousness of the offense and give adequate consideration to the rehabilitative potential of defendant (**People v. Murphy**, 72 Ill.2d 421,

381 N.E.2d 677 (1978); **People v. Heflin**, 71 Ill.2d 525, 376 N.E.2d 1367 (1978); **People v. Harris**, 187 Ill.App.3d 832, 543 N.E.2d 859 (1st Dist. 1989)), the sentence imposed is not authorized by statute (**People ex rel. Carey v. Bentivenga**, 83 Ill.2d 537, 416 N.E.2d 259 (1981); **In re T.E.**, 85 Ill.2d 326, 423 N.E.2d 910 (1981)), there is an unreasonable disparity between sentences imposed upon similarly situated co-defendants (**People v. Godinez**, 91 Ill.2d 47, 434 N.E.2d 1121 (1982)), the trial judge relied upon improper factors (**People v. Bolyard**, 61 Ill.2d 583, 338 N.E.2d 168 (1975); **People v. Rege**, 64 Ill.2d 473, 356 N.E.2d 537 (1976); **People v. Conover**, 84 Ill.2d 400, 419 N.E.2d 906 (1981); **People v. Saldivar**, 113 Ill.2d 256, 497 N.E.2d 1138 (1986)), the trial judge relied upon inaccurate or unreliable information (**People v. Crews**, 38 Ill.2d 331, 231 N.E.2d 451 (1967); **People v. Meeks**, 81 Ill.2d 524, 411 N.E.2d 9 (1980)), or the trial judge failed to sufficiently consider defendant's nature and character, including defendant's demeanor, credibility, mentality, general moral character, social environment, family background, education, habits, and age (**People v. Murphy**, 72 Ill.2d 421, 381 N.E.2d 677 (1978)).

Illinois Appellate Court

People v. Lopez-Bonilla, 2011 IL App (2d) 100688 Under current truth-in-sentencing provisions, a person convicted of home invasion receives no more than 4.5 days of credit for each month of his sentence if the court finds that the conduct leading to the conviction resulted in great bodily harm to the victim. 730 ILCS 5/3-6-3(a)(2)(iii). Whether a victim's injuries rise to the level of great bodily harm is a question of fact.

People v. Burnett, 385 Ill.App.3d 610, 897 N.E.2d 827 (1st Dist. 2008) The failure to order physical and mental examinations before sentencing if the judge desires more information than is available in the presentence report is reviewed for abuse of discretion.

§44-19(c)
Powers of the Reviewing Court – Generally

Illinois Supreme Court

People v. Webster, 2023 IL 128428 Defendant was convicted of a murder he committed at age 17, and was sentenced to 40 years in prison. At the sentencing hearing, the court stated that it considered all factors in mitigation and aggravation, discussed defendant's age and release date, and declined to impose the firearm enhancement due to defendant's status as a juvenile. An appellate court majority vacated defendant's sentence and remanded the matter for a new sentencing hearing. The majority did not find any specific fault in the sentencing court's process, but reasoned that, at the time of sentencing, the supreme court had yet to issue its decision in **People v. Buffer**, 2019 IL 122327, which held that a sentence of greater than 40 years should be considered a *de facto* life sentence for purposes of **Miller v. Alabama**, 567 U.S. 460 (2012). The appellate court majority felt that the sentencing court may not have intended to give defendant what, for purposes of juveniles with some rehabilitative potential, is a maximum sentence. The majority relied upon Illinois Supreme Court Rule 366(a)(1), (5) for its authority to order a new sentencing hearing under these circumstances.

The supreme court reversed, holding that, absent a finding of error or abuse of discretion, the appellate court is without authority to vacate a defendant's sentence and remand the matter for resentencing. **People v. Perruquet**, 68 Ill. 2d 149, 153-54 (1977). Defendant did not dispute that the appellate court lacked authority to act under Rule 366,

which applies to civil cases, but argued that the appellate court had in fact found error, and therefore it had the authority to order a new sentencing hearing under Rule 615(b). The supreme court disagreed. No error occurred, because **Miller** prohibits only mandatory life sentences. **Jones v. Mississippi**, 141 S. Ct. 1307 (2021). Even if the 40-year sentence represented a near *de facto* life sentence, that sentence was proper because it was discretionary. In light of the applicable sentencing scheme, and the sentencing court's consideration of youth, it could have sentenced defendant to a maximum sentence of 85 years. Thus, the 40-year discretionary sentence was not error or an abuse of discretion, and the appellate court had no authority to disturb the sentence under Rule 615(b).

People v. Whitfield, 228 Ill.2d 502, 888 N.E.2d 1166 (2008) The appellate court does not have authority to fashion a sentence that does not conform to statutory guidelines.

People v. Jones, 168 Ill.2d 367, 659 N.E.2d 1306 (1995) Supreme Court Rule 615(b)(1) and (b)(4) "clearly and unambiguously" grant reviewing courts the power to reduce a sentence that is an abuse of discretion. Whether an excessive sentence should be reduced or the cause remanded for resentencing depends on the circumstances of each case, including whether there is additional evidence that was not presented at the original sentencing, whether the evidence was "relatively straightforward and uncomplicated," and whether judicial resources would be conserved by reducing the sentence rather than requiring a new sentencing hearing.

Illinois Appellate Court

People v. Hardy, 2020 IL App (1st) 172485 The trial court abused its discretion when it imposed consecutive 25-year terms of imprisonment for defendant's two attempt criminal sexual assault convictions. While the offenses were serious, the goal of rehabilitation is on equal stature with the seriousness of the offense under the Illinois constitution. The sentence here failed to account for the trial court's finding that defendant possessed potential for rehabilitation. The appellate court reduced defendant's sentence to consecutive 15-year terms, concluding there was no need to remand for resentencing where the record was complete and straightforward, and neither party suggested any need to present additional information.

One judge dissented on this issue and would have upheld the sentence imposed by the trial court. The dissent also noted that the proper remedy for an excessive sentence is to remand for resentencing rather than imposing a new sentence on appeal. The dissenting justice also expressed the belief that a fellow panelist, who had dissented from the decision to affirm the defendant's convictions and would have found ineffective assistance of trial counsel, did not retain the option of concurring in the sentence reduction, stating, "[h]e has decided the conviction should not stand, and his view on the appropriate sentence matters not."

People v. Lawson, 2018 IL App (4th) 170105 The Appellate Court lacks the authority to reduce a sentence of imprisonment to a term of probation under Illinois Supreme Court Rule 615(b). Likewise, the Appellate Court cannot remand with directions for the circuit court to grant probation, and prior decisions to the contrary are not to be followed.

People v. Betance-Lopez, 2015 IL App (2d) 130521 Defendant was convicted of two counts of predatory criminal sexual assault of a child and one count of aggravated criminal sexual abuse. At sentencing, the trial court declined to impose a sentence for aggravated

criminal sexual abuse, finding that the conviction merged with predatory criminal sexual assault of a child. On appeal, the State argued for the first time that the trial court incorrectly concluded that aggravated criminal sexual abuse was a less-included offense of predatory criminal sexual assault of a child and asked the court to remand the cause for sentencing on the former count.

The court acknowledged that where a criminal defendant appeals a conviction, the reviewing court has authority to grant the State's request to remand for imposition of a sentence on a conviction that was improperly vacated under one-act, one-crime principles. However, the court concluded that defendant was prejudiced by the State's failure to raise the issue in the trial court because he would be subject to mandatory consecutive sentencing if the State's request was granted. Noting that defendant might have decided to not appeal had the State raised the issue below, the court declined to overlook the State's waiver.

People v. Johnson, 2013 IL App (1st) 120413 730 ILCS 5/5-5-3.2(b)(1) authorizes an extended term for a defendant who is convicted of any felony after having been previously convicted of the "same or similar class felony or greater class felony" within the past 10 years, excluding time in custody. 730 ILCS 5/5-5-3.2(b)(7) authorizes an extended term for a person who is at least 17, commits "a felony," and within the past 10 years (excluding time in custody) was "adjudicated a delinquent minor . . . for an act which would be a Class X or Class 1 felony if committed by an adult." Thus, under the plain language of the statute, an adult who commits any felony within 10 years of having been adjudicated delinquent for a Class X or Class 1 felony is subject to an extended term, while an adult repeat offender is subject to an extended term only if the second conviction is for "the same or greater class offense" as the original conviction.

Although the State conceded that the statute was unconstitutional on its face when applied to the defendant, the court elected to reject the concession and find that the legislature's failure to include the phrase "same or greater class felony" in section (b)(7) was inadvertent. The legislature could not have intended to authorize an extended term for a repeat offender who is convicted of any felony after having been adjudicated delinquent, but exclude extended term sentences for adult repeat offenders unless the prior conviction was for the same or greater class felony. Thus, the court concluded that the phrase "same or greater class felony" should be read into section (b)(7).

Because defendant's delinquency adjudication for residential burglary was not for the same or greater class felony as armed robbery while armed with a firearm, defendant was not eligible for an extended term under section (b)(7).

The court remanded the cause for resentencing, rejecting the State's request to merely impose a reduced sentence. While a reviewing court has the power to reduce a sentence imposed by the trial court, this power should be exercised sparingly and with caution. Because the trial court rejected the State's request for the maximum extended term sentence for which it believed defendant was eligible, the court found that the trial judge might have imposed less than the 30-year maximum non-extended term which actually applied to the offense.

People v. Quevedo, 403 Ill.App.3d 282, 932 N.E.2d 642 (2d Dist. 2010) Because the statute creating a mandatory natural life sentence was declared unconstitutional in **People v. Wooters**, 188 Ill.2d 520, 722 N.E.2d 1102 (1999), the Appellate Court remanded the cause for a new sentencing hearing. The court rejected defendant's argument that it should merely impose the statutory minimum authorized under the controlling statute, although the trial

court stated at the original sentencing hearing that it would have imposed the minimum sentence had natural life not been mandatory.

A reviewing court is authorized to either reduce a sentence on appeal or remand the cause for resentencing. Where the parties have no new evidence to offer on remand and the evidence presented at the original sentencing was uncomplicated, it may be appropriate for the reviewing court to impose a sentence rather than expend judicial resources on a new sentencing hearing.

Here, however, the original sentencing hearing was perfunctory because both parties recognized that a natural life sentence was mandatory. Thus, no mitigation or aggravation was presented. Under these circumstances, a new sentencing hearing was justified.

People v. Slywka, 365 Ill.App.3d 34, 847 N.E.2d 780 (1st Dist. 2006) Where collateral estoppel barred a conviction for first degree murder based on intent, the court remanded the cause for the trial court to determine "whether a lesser sentence should be imposed" for first degree murder based on the less culpable mental state of knowledge.

§44-19(d)
Mittimus and Sentencing Order Corrections

Note: See Illinois Supreme Court Rule 472, eff. 3/1/19, providing that the circuit court retains jurisdiction to correct at any time: (1) errors in imposition and calculation of fines, fees, assessments, or costs; (2) errors in application of *per diem* credit against fines; (3) errors in calculation of presentence custody credit; and (4) clerical errors in written sentencing order or other parts of record resulting in discrepancy between record and actual judgment of the court.

Illinois Supreme Court

People v. Young, 2018 IL 122598 A claim for presentence custody credit under section 5-4.5-100 may be forfeited. In this case, defendant raised the issue for the first time on appeal from the denial of a successive post-conviction petition, and therefore the claim was forfeited. Unlike section 110-14, which contains language authorizing requests for *per diem* monetary credit at any time, section 5-4.5-100 does not contain similar language suggesting that the rules of procedural default do not apply. Also, while a motion to correct the mittimus may be made at any time, here defendant did not seek to correct the mittimus, which accurately reflected the trial court's judgment, but rather attacked the judgment itself. Nor could the issue be reached under Rule 615(b), which refers to the reviewing court's authority to reduce punishment imposed by the trial court. Here, the judgment at issue – the dismissal of the post-conviction petition – did not contain any punishment.

The court agreed to use its supervisory authority to remand the case for a hearing on whether defendant was entitled to additional days of sentencing credit.

Illinois Appellate Court

People v. Joyner, 2022 IL App (2d) 210045 Defendant's mittimus awarded 3002 days of credit instead of 1502, the number actually served. The circuit granted the State's motion to correct the mittimus pursuant to Rule 472. This ruling did not violate the prohibition on increasing a previously imposed sentence. While the time defendant spent in prison was affected by the removal of credit, the 60-year prison sentence remained unaffected.

Nor did the State forfeit its right to a correction by not raising the issue until 2015, nearly 17 years after sentencing, because that is when IDOC first alerted the State to the error. Moreover, defendant was originally sentenced to natural life, and thus credit was not awarded on the original mittimus; it was calculated only after the Appellate Court reduced defendant's sentence to 60 years on direct appeal. Finally, the State was not prohibited from seeking a correction by the doctrine of laches, as defendant did not suffer detriment from any delay by the State. Rather, defendant benefitted from any delay, during which he remained eligible for an earlier release than that to which he was entitled.

People v. Jones, 2016 IL App (1st) 142582 The use of *nunc pro tunc* orders or judgments is limited to incorporating into the record action which was previously taken by the court but inadvertently omitted through clerical error. Thus, a *nunc pro tunc* order is proper only to reflect action that occurred previously, and not to "backdate" the effective date of an action. A *nunc pro tunc* order must be based on some note, memorandum, or other memorial in the court record.

Defendant was released on bond on retail theft charges, and was taken into custody on a different charge while he was on bond. Approximately three weeks after he was taken into custody on the second charge, defense counsel asked the trial court to exonerate the bond on the instant charge *nunc pro tunc* to the date of the arrest, so defendant could receive credit on the sentence in the instant charge from the date of his arrest on the unrelated charge. The prosecution stated that it had no objection to the request.

Because there had been no court action concerning bond in this case on the date defendant was taken into custody on the second charge, it was improper to use a *nunc pro tunc* order. Defendant was entitled to pretrial custody credit in this case only for the time between the exoneration of his bond and his conviction.

Under Supreme Court precedent, a defendant who is arrested and placed in custody for one charge while on bond on an unrelated charge is returned to custody on the latter charge only when his bond on that charge is revoked. Once bond has been revoked, the defendant is in custody on both charges and is entitled to credit for time in custody against the sentences for both charges.

People v. Monson, 2012 IL App (3d) 100868 The County Jail Good Behavior Allowance Act provides for one day of good behavior credit for each day of service of sentence in the county jail, with certain exceptions. 730 ILCS 130/3.

Defendant pled guilty and was ordered to serve probation and a jail term of 180 days without good-conduct credit. The court had no statutory authority to deny that credit to defendant. The Appellate Court directed the clerk to amend the mittimus to reflect that defendant was entitled to good-conduct credit.

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