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Tort Immunity Act

Plaintiffs' attorneys are always looking for deep pockets, and public entities often are viewed as flush with money from assessments, taxes, tickets, and tolls. To discourage those attorneys from targeting local government entities and their employees, and to protect taxpayers' contributions to the public coffers, the legislature has enacted a number of immunities and defenses that shield local government entities and their employees from tort liability for acts and omissions arising out of the execution of public duties.

I. Overview

These immunities and defenses are set forth in the Local Governmental and Governmental Employees Tort Immunity Act (the “Act”).¹ The Act was enacted at least in part as a result of the Illinois Supreme Court’s rejection of the principles underlying the sovereign immunity doctrine² in *Molitor v. Kaneland Community Unit District No. 302*.³ It is, therefore, in derogation of the common law action against governmental entities and specifies certain limitations on the liability of such bodies.⁴ The Act does not impose duties but, instead, only confers immunities and defenses.⁵ The Act explicitly states that its purpose “is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses.”⁶ The purpose of the Tort Immunity Act is to prevent the diversion of public funds from their intended purpose to the payment of damage claims.⁷

The Act accomplishes its purpose by largely immunizing local public entities and employees from negligence in executing their public duties. In some circumstances, however, the Act expressly eliminates immunity for acts amounting to “willful and wanton conduct,” thus exposing a public entity to liability for egregious conduct. The Act defines “willful and wanton conduct” as “a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.”⁸

There is no bright-line test for willful and wanton conduct. Rather, whether a public entity’s acts constitute willful and wanton conduct depends on the facts of each particular case.⁹ Courts have consistently held, however, that it is not to be confused with simple negligence and requires more than mere inadvertence or inattentiveness.¹⁰ It is the plaintiff’s burden to prove willful and wanton conduct, and it is a substantial one.

The Act is broad-ranging and applies “to every kind of local governmental body.”¹¹ Section 1-206 of the Act defines a local public entity entitled to the Act’s immunities and defenses as follows:

“Local public entity” includes a county, township, municipality, municipal corporation, school district, school board, educational service region, regional board of school trustees, trustees of schools of townships, treasurers of schools of townships, community college district, community college board, forest preserve district, park district, fire protection district, sanitary district, museum district, emergency telephone system board, *and all other local governmental bodies*. “Local public entity” also includes library systems and any intergovernmental agency or similar entity formed pursuant to the Constitution of the State of Illinois or the Intergovernmental Cooperation Act *as well as any not-for-profit corporation organized for the purpose of conducting public business*. It does not include the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State.¹²

Even though the Section 1-206 definition of “local public entity” might seem rather specific, Illinois courts have “widely recognized various public entities as coming within the definition of local public entity, although those entities were not expressly identified in section 1-206.”¹³ Therefore, defense counsel should consider carefully whether or not the Act applies to their clients, particularly in contexts that might not seem applicable at first blush.¹⁴ For purposes of interpreting this section, “public business” should be understood to possess its plain, ordinary, and commonly understood meaning—the paramount inquiry must be whether the entity is involved in the operation of government.¹⁵ Where an entity is created for the express purpose of performing public or governmental functions, the entity conducts “public business” and is tightly enmeshed with government such that the entity constitutes a form of a “local government body.”¹⁶

Once it is determined that a body fits the definition of “local public entity,” the Act’s one-year statute of limitations often creates the first barrier against liability. Specifically, Section 8-101 of the Act provides the following:

Limitation.

(a) No civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued.

(b) No action for damages for injury or death against any local public entity or public employee, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of those dates occurs first, but in no event shall such an action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death.¹⁷

Further, the Act expressly prohibits the imposition of punitive damages against a local public entity despite the existence of another statute or common-law theory that might otherwise allow them. Section 2-102 of the Act provides the following:

Notwithstanding any other provision of law, a local public entity is not liable to pay punitive or exemplary damages in any action brought directly or indirectly against it by the injured party or a third party. In addition, no public official is liable to pay punitive or exemplary damages in any action arising out of an act or omission made by the public official while serving in an official executive, legislative, quasi-legislative or quasi-judicial capacity, brought directly or indirectly against him by the injured party or a third party.¹⁸

Similarly, immunity against punitive damages is provided to “public employees” who determine policy or exercise discretion on legislative matters under Section 2-213 of the Act, which states:

Notwithstanding any other provision of law, a public employee is not liable to pay punitive or exemplary damages in actions brought against the employee based on an injury allegedly arising out of an act or omission occurring within the scope of employment of such an employee serving in a position involving the determination of policy or the exercise of discretion when the injury is the result of an act or omission occurring in the performance of any legislative, quasi-legislative or quasi-judicial function, even though abused.¹⁹

Therefore, while these municipal employees generally are immune from punitive damages when sued in their official capacity, they may be held liable for punitive damages when sued in their personal capacity.

Another important aspect of the Act is the indemnification provided to employees of public entities. Section 2-302 of the Act provides as follows:

If any claim or action is instituted against an employee of a local public entity based on an injury allegedly arising out of an act or omission occurring within the scope of his employment as such employee, the entity may elect to do any one or more of the following:

(a) appear and defend against the claim or action;

(b) indemnify the employee or former employee for his court costs or reasonable attorney’s fees, or both, incurred in the defense of such claim or action;

(c) pay, or indemnify the employee or former employee for a judgment based on such claim or action;
or

(d) pay, or indemnify the employee or former employee for, a compromise or settlement of such a claim or action.²⁰

Section 2-302, however, also provides, as a matter of public policy, “no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages.”²¹

II. Supervision Immunity

Section 3-108 of the Act bestows immunity upon local public entities and their employees for their supervision or failure to supervise activities on or for the use of public property.²² Commonly referred to as “supervision immunity,” Section 3-108 provides:

(a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

(b) Except as otherwise provided in this Act, neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury.²³

Thus, supervision immunity applies to three basic scenarios:

- (1) Where supervision is actually undertaken, there is immunity from negligence but not from willful and wanton conduct;
- (2) Where the law requires supervision (a statute or code says supervision “shall” be provided), there is immunity from negligence but not from willful and wanton conduct for any failure to provide supervision; and
- (3) Where no supervision is provided and no law requires supervision, there is absolute and unconditional immunity for any failure to provide supervision.

For the purpose of the immunity, “public property” is not limited to property owned by the particular public entity defendant, but rather extends to any public property where supervision is provided. For instance, supervision of a school athletic team at a separate park-owned facility does not waive the immunity.²⁴ Public property, however, is specifically defined in the Act to include only property “owned or leased by a local public entity” and does not include “easements, encroachments and other property that are located on its property but that it does not own, possess or lease.”²⁵ In a unique wrinkle, and as the definition of “local public entity” does not include the State or “any office, officer, department, division, bureau, board, commission,

university or similar agency of the State,”²⁶ courts have refrained from extending supervision immunity to public locations such as state parks.²⁷

The term “supervision,” however, has been construed broadly so that the immunity does not require any particular degree of quality²⁸ and includes direction, teaching, and to some degree active participation in an activity.²⁹ For instance, the mere presence of a swim coach at a pool satisfies the definition of “supervision” under the act,³⁰ as does a teacher who fails to identify a student participating in a chemistry experiment without state mandated eye protection.³¹ Finally, the activity being supervised does not need to be within a park or scholastic setting, as supervision immunity has been applied to a variety of activities, including regulatory supervision of a sky-diving company,³² oversight of a private corporation providing security,³³ or supervision of construction activities.³⁴

Section 3-108(b) provides blanket immunity from either negligence or willful and wanton claims for any failure to provide supervision, or when only “passive oversight” is provided, unless supervision is specifically required by law. Of particular interest, this immunity has been invoked frequently to immunize public entities from construction work-zone injuries in which the “supervision” provided by the public entity consisted only of loose oversight of the work or enforcement of contractual obligations.³⁵

III. Discretionary Immunity

Sections 2-109 and 2-201 of the Tort Immunity Act confer immunity from liability to units of local government and their employees for the performance of discretionary functions.³⁶ This discretionary immunity is one of the most significant protections afforded to local public entities and their employees under the Act.³⁷ As such, an understanding of which parties discretionary immunity protects and to what acts and omissions it applies is essential to a robust defense of local public entities and their employees.

The burden is on the local public entities and their employees to prove they are entitled to immunity under Sections 2-109 and 2-201.³⁸ The immunities set forth in these sections are applied by the courts on a case-by-case basis³⁹ and construed strictly against government defendants asserting them.⁴⁰

Section 2-109 provides that “[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.”⁴¹ Thus, the Act does not confer discretionary immunity to a unit of local government directly.⁴² Rather, it allows municipalities and other local public entities to shelter under the immunity granted to their employees by Section 2-201.⁴³

Section 2-201 immunizes local government employees from liability for both negligence and willful and wanton conduct.⁴⁴ The section states:

Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.⁴⁵

Immunity under Section 2-201 is thus dependent upon both the type of position held by the subject employee and the acts carried out or omitted by the employee. Accordingly, courts use a two-part test to determine whether the employee may be granted discretionary immunity.⁴⁶ The first prong focuses on the employee’s position and the second prong on the employee’s alleged acts and omissions. In order to assert discretionary immunity successfully under Section 2-201, and by extension, Section 2-109, a government defendant must satisfy both prongs of the test.

A. First Prong: The Employee’s Position

First, an employee may qualify for discretionary immunity “if he holds *either* a position involving the determination of policy *or* a position involving the exercise of discretion.”⁴⁷ Generally, the higher an employee’s position in the relevant chain of command, the more likely it is that the position involves the

determination of policy or exercise of discretion.⁴⁸ But courts interpret this language liberally and will consider whether any government employee's position involves the determination of policy or the exercise of discretion on a case-by-case basis. Thus, even general laborers charged to carry out seemingly mundane tasks, such as filling in potholes, can satisfy the first prong of Section 2-201 under the particular circumstances of a case, so long as some "personal judgment" is needed to execute the duties assigned to the position.⁴⁹

B. Second Prong: The Employee's Act or Omission

The crucial question under Section 2-201 is whether the claim concerns a "discretionary policy determination."⁵⁰ For discretionary immunity to apply, the subject employee must have engaged in *both* the determination of policy *and* the exercise of discretion when performing the act or omission from which the plaintiff's injury is alleged to have resulted.⁵¹ In no case will a local public body or employee receive discretionary immunity from liability for the performance of a "ministerial" task.⁵²

1. Part (a): Whether the Act Involved a Policy Determination

There are relatively few cases that trace the contours of "determining policy" as used in Section 2-201. In essence, policy determinations involve decisions that require the subject employee to utilize his or her particular expertise to balance competing interests and to make a judgment call as to what procedure, solution, or course of action will best serve each of those interests.⁵³

While policy choices are commonly thought to be the province of executive-level employees, such as school district administrators,⁵⁴ courts have found that lower-level employees, such as teachers and coaches, also make many everyday decisions "determining policy" for the purposes of Section 2-201.⁵⁵ Indeed, a public employee of any level who considers available resources, time, efficiency, safety, or fiscal and manpower constraints in the execution of his or her public duties can make a "policy determination" under Section 2-201.⁵⁶

2. Part (b): Whether the Act Involved the Exercise of Discretion

The decisive final step in the test requires the court to classify the act or omission giving rise to the complaint as either discretionary or ministerial in nature. Discretionary acts are those unique to a public office.⁵⁷ They are characterized by the exercise of personal deliberation and judgment in deciding how and in what manner the act should be performed or whether to perform the particular act in the first place.⁵⁸ On the other hand, acts that an employee performs in a prescribed manner on a given set of facts, or in obedience to the mandate of legal authority, are ministerial in nature.⁵⁹

The designation of acts as either discretionary or ministerial escapes precise formulation, however, and must be made by the court in light of the particular facts and circumstances presented in each case.⁶⁰ For example, although repairs generally are ministerial acts for which local governments may be liable if negligently performed,⁶¹ courts have held that an eighth-grade shop teacher's decision to remove the safety shield from a saw was a discretionary act⁶² and that city workers' decisions concerning how to fill potholes involved the exercise of discretion.⁶³ In sum, appellate courts are willing to uphold trial court findings of discretion (and immunity) based on the "*minutiae*" of how local government employees complete even menial, everyday tasks for their employers,⁶⁴ and even when the results are admittedly harsh.⁶⁵

Illinois courts have generously interpreted the language in Section 2-201 in favor of finding discretionary immunity for local public entities and their employees. The burden to establish this immunity remains with government defendants, however.⁶⁶ Consequently, counsel should take care to flesh out and introduce into evidence the intricacies and incidental choices inherent in the everyday duties executed by both executive-level policy makers and lower-level personnel, including teachers, coaches, and general laborers, when asserting discretionary immunity under Sections 2-109 and 2-201.⁶⁷

IV. Immunity for Adopting, Failing to Adopt, or Failing to Enforce a Law

Both a unit of local government⁶⁸ and its employees⁶⁹ enjoy immunity for their respective adoption of, failure to adopt, or failure to enforce any enactment or law. This immunity extends to failure to inspect property,⁷⁰ enforce a housing code,⁷¹ or enforce a property maintenance code.⁷² For example, in *Ware v. City of Chicago*,⁷³ the Illinois Appellate Court First District held that Sections 2-103 and 2-205 provided absolute immunity to Chicago building inspectors who conducted inspections of a porch but failed to report building code violations in the porch's construction.⁷⁴ The porch at issue later collapsed and resulted in 13 deaths.⁷⁵

Notably, there is no exception for willful and wanton conduct in Sections 2-103 and 2-205.⁷⁶ A significant line of earlier cases had interpreted these provisions to include exceptions for corrupt or malicious motives. In *Village of Bloomingdale v. CDG Enterprises*,⁷⁷ a developer filed a counterclaim against the municipality for tortious interference with its development of several parcels of property. The developer alleged, *inter alia*, that certain municipal officials worked secretly to deny the developer's petition for rezoning and annexation in an effort to force the developer out of the planned development so that the municipal officials could steer the project to their "cronies."⁷⁸ The municipality asserted several immunities, including immunity under Sections 2-103 and 2-205 in defense. Citing previous instances in which it declined to add common law exceptions to tort immunities, the Illinois Supreme Court held that there were no exceptions for corrupt or malicious motives to the immunity afforded by Sections 2-103 and 2-105.⁷⁹

With regard to enforcement, it is important to note that this immunity applies in instances where the employee fails to enforce an enactment or law, and not in instances where an employee attempts to enforce an enactment or law and does so poorly.⁸⁰ In these instances, another provision of the Act applies, and the willful and wanton conduct of the employee becomes a factor.

V. Immunity for Instituting or Prosecuting Judicial or Administrative Proceedings

A public employee enjoys immunity from claims arising from the institution or prosecution of a judicial or administrative proceeding within the scope of the employee's employment, provided the employee did not act maliciously and without probable cause.⁸¹ This immunity is tied closely to, but does not immunize public employees from, the common law claim of malicious prosecution.⁸² This provision will not immunize a public employee who acts maliciously, but maliciousness alone does not infer an absence of probable cause.

*Knox County v. Midland Coal Co.*⁸³ provides an example of this immunity. The county obtained a preliminary injunction to stop the strip mining of prime farmland to protect the county's property tax base.⁸⁴ The mining company successfully appealed the preliminary injunction, with the appellate court ruling that the county did not have jurisdiction to obtain the injunctive relief until after it had exhausted all of its administrative remedies. The mining company then filed suit to recover the damages it suffered as a result of the county's actions. The court held that the county had probable cause to seek the injunction based on its inherent police powers, and found in favor of the county.⁸⁵ Interestingly, the court noted that the parties agreed that malice was not an issue in the case—a stipulation that, under the plain language of Section 2-208, should have caused the court to inquire no further because both malice and the absence of probable cause are required to find a public body liable for tort damages.

VI. Immunity for the Issuance, Denial, Suspension, or Revocation of a Permit

Governmental entities⁸⁶ and public employees⁸⁷ have a broad grant of immunity from tort claims arising from the issuance, denial, suspension, or revocation of a permit, or the failure or refusal to do the same when the entity or employee is authorized to make such determinations. This immunity prevails even in cases where the governmental body or its employees have corrupt, malicious or bad faith motives in making such a

decision.⁸⁸ Furthermore, this immunity does not distinguish between a ministerial act and an exercise of discretion, thus granting immunity to both types of acts.

*Doyle v. City of Marengo*⁸⁹ provides an example of this immunity. In *Doyle*, the plaintiffs purchased homes in a subdivision that had been previously designated a flood plain. The city issued occupancy permits for the homes, but failed to issue letters of map revision that would have removed the flood plain designation. As such, the plaintiffs were forced to purchase flood insurance. The plaintiffs sued the city, alleging that they suffered damages arising from the city's negligent issuance of the occupancy permits before issuing letters of map revision. The city successfully moved for dismissal based on Section 2-104 immunity, which was upheld on appeal, with the appellate court finding no corrupt motives exception in the language of Section 2-104.⁹⁰

VII. Condition of Property

Although it is part of the Local Governmental and Governmental Employees Tort Immunity Act, Section 3-102⁹¹ is primarily a codification of the common law duty of a local public entity to maintain its property.⁹² As such, Section 3-102 does not provide a blanket immunity to a local public entity for negligently maintaining its property,⁹³ but rather defines the scope of a local public entity's duty while simultaneously identifying the narrow circumstances under which the duty is inapplicable.⁹⁴

A. Duty of Local Public Entity

Generally speaking, a local public entity owes the same duty that any landowner owes to persons using its land: the duty to exercise ordinary care to maintain its property in a reasonably safe condition.⁹⁵ A local public entity, however, owes this duty only to "intended and permitted" users of the property who are using it in a manner that is reasonably foreseeable.⁹⁶ Importantly, a local public entity owes the duty of care only when the foreseeable use is *both* permitted *and* intended.⁹⁷ Thus, the Act will apply to immunize a local public entity for injury arising from the condition of its property when the injured party was not an intended and permitted user of the property.⁹⁸ In order to determine whether a particular use of government property was permitted and intended, the local public entity's intent is controlling and the courts will look to the property itself to determine the intended use.⁹⁹ In making such a determination, the historical and customary use of the property is a relevant factor.¹⁰⁰ Whether a local public entity owed a duty of care is a matter of law to be determined by the court.¹⁰¹

B. Notice of Condition Required

Even where a duty is owed to an intended and permitted user of the government property, Section 3-102 provides:

[A] local public entity . . . shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.¹⁰²

In order to establish actual notice, it is only necessary to establish that there was notice or knowledge of the dangerous condition itself, not the unsafe nature of the condition.¹⁰³ Actual notice is imputed to a local public entity when one of its employees has actual knowledge of the condition.¹⁰⁴ Section 3-102(b) of the Act provides two affirmative methods of proving that a local public entity did not have constructive notice.¹⁰⁵ These methods to prove a lack of constructive notice are in the nature of affirmative defenses that will bar a plaintiff's right to recover if properly raised and proved by the local public entity.¹⁰⁶ In that regard, a local public entity does not have constructive notice if it establishes either:

(1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or

(2) The public entity maintained and operated such an inspection system with due care and did not discover the condition.¹⁰⁷

It has been held that a local public entity has constructive notice of a defective condition of its property where the defective condition has existed for such a length of time or is so conspicuous or plainly visible that the local public entity and its agents should have known of the existence of the condition by exercising reasonable care and diligence.¹⁰⁸ The question of whether a local public entity had constructive notice of a defective condition is usually a question for the trier of fact.¹⁰⁹ Factors to be considered in determining whether a public entity had constructive notice of a defective condition of its property are the length of time the condition existed and the conspicuity of the condition.¹¹⁰

The burden of proof is an important issue to consider in regard to the determination of constructive notice. As one court observed, “It is unclear whether notice of the unsafe condition is an element of the plaintiff’s *prima facie* case or only becomes an issue if lack of notice is raised as an affirmative defense.”¹¹¹ The initial burden of demonstrating that the local public entity has constructive notice of the condition of its property is on the plaintiff, but a public entity seeking to base its immunity on one of the defined bases of lack of constructive notice will bear the burden of proving those facts.¹¹² In general, the local public entity bears the burden to prove whether it is immune from a claim under the Act.¹¹³

VIII. Immunity for Negligent Inspection

Because the scope of a local public entity’s duty to inspect its own property falls under Section 3-102, it is important to distinguish such an inspection from those discussed under Section 2-207 of the Act. Section 2-207 provides as follows:

A public employee is not liable for an injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than that of the local public entity employing him, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.¹¹⁴

Unlike Section 3-102, a local public entity, by virtue of its employee’s inspection, enjoys blanket immunity under Section 2-207 for the inadequate or negligent inspection of property other than the property of the local public entity.¹¹⁵ This is true even where there are allegations of willful and wanton conduct, because Section 2-207 provides absolute immunity for such inspections.¹¹⁶

Practitioners should recognize that the concept of what constitutes an “inspection” is rather broad for the purposes of Section 2-207. In *Hess v. Flores*,¹¹⁷ a plaintiff sustained a catastrophic spinal injury after falling from the rear staircase of an apartment building in Chicago where a portion of the rear staircase handrail had been removed. The plaintiff sued the City of Chicago, among others, for willful and wanton conduct, and sought to obviate the applicability of Section 2-207 by defining the activities undertaken by the city inspectors as activities that were outside the inspection process. The plaintiff reasoned that, because the city had (1)

affirmatively directed the building owner to do specific work regarding the handrail, (2) ordered the building owner to stop work under threat of arrest during a time when the staircase lacked handrails (without lawful authority to make that order), and (3) ordered the building owner to place yellow caution tape on the stairway in place of the handrail, the activities of the city inspectors had created an even more dangerous situation beyond the scope of an inspection as contemplated by Section 2-207.

The court disagreed, holding that Section 2-207 applies not only to inadequate or negligent inspections, but also extends to willful and wanton conduct associated with such inspections. Thus, there is ample room for arguing the applicability of Section 2-207, even when a local public entity's inspectors have taken allegedly willful and wanton actions that might fall outside the concept of what one would normally consider an "inspection."¹¹⁸

Therefore, when negligent or willful and wanton conduct is alleged against a local public entity's inspector, one should take care to determine whether or not the property involved is that of the local public entity or whether Section 2-207 is applicable to the conduct alleged, because there are significant differences between the situations under which Section 3-102 and Section 2-207 of the Act apply.

IX. Defamation and Misrepresentation Immunity

With the decline of civility in public discourse, the rise of hair-trigger litigation mind sets, and the advent of anonymous hit men on internet blog pages, the issue of defamation has become a more regular companion to political intrigue at the local level. In certain situations, however, the law provides public officials with defamation immunity.

Before an analysis of the statutory protections, it should be pointed out that the common law furnishes some protection from defamation claims. The common law provides members of the legislative branch immunity for statements made during official meetings.¹¹⁹ Furthermore, an executive branch public official or employee may speak about governmental matters within his official duties without defamation liability.¹²⁰ An interesting example can be found in *Dolatowski v. Life Printing & Publishing Co.*,¹²¹ where Cicero Deputy Police Superintendent Emil Schullo gave an interview to a newspaper identifying the plaintiff as a woman who was arrested for hitchhiking with an inference that the arrest was part of a crackdown on prostitution in the area. Pointing to *Blair v. Walker*,¹²² the *Dolatowski* court affirmed a dismissal of the defamation claim against Schullo. The court reiterated that the privilege was absolute and the only consideration was whether the statements were reasonably related to one's duties. The court found that Schullo's statements did reasonably relate to his duties.¹²³

Under common law, however, when an official makes improper statements that have nothing to do with his official duties, the official is exposed to personal liability in a defamation suit.¹²⁴ For example, in *Catalano v. Pechous*,¹²⁵ a municipal clerk made a statement implying that another official had taken a bribe. The court held that the statement was not related to the clerk's official duties and refused to grant immunity to the clerk.¹²⁶ Likewise, in *Stratman v. Brent*,¹²⁷ a police chief was not immune when he made false statements to a federal agency to which a former police officer had applied for a job.¹²⁸

Where there are gaps in the common law protection, the Tort Immunity Act helps to supplement some of the protections. The Act specifically delineates protection from accusations of defamation at 745 ILCS 10/2-107, which states: "A local public entity is not liable for injury caused by any action of its employees that is libelous or slanderous or for the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material."¹²⁹

Unlike some of the other provisions of the Act, there is immunity provided by this section even when willful and wanton misconduct is alleged.¹³⁰ For instance, in *Gavery v. County of Lake*,¹³¹ the court granted immunity in a doctor's libel suit against the county based on a letter circulated indicating that county employees could no longer obtain services from the doctor due to numerous complaints.¹³² This provision grants municipalities absolute immunity from suit for defamation, even in cases involving intentional

misconduct.¹³³ Unlike the common law, there is no requirement that the statements be made within the scope of official duties of the city personnel involved.¹³⁴

Courts have provided broad protection to government entities and their employees under this provision in the Act. For example, the Board of Education of the City of Chicago was held to be immune from liability for statements made by its Director of Civil Service Personnel against an employee. The statements were: “You are a con man. Oh, yes, you are. You are a con man and a professional con man.”¹³⁵ The Court affirmed dismissal based upon Section 2-107.¹³⁶ Further, a Kendall County Sheriff officer’s defamation case against the Village of Oswego based upon statements by Oswego police officers that he “beat his son” was dismissed based on Section 2-107 immunity.¹³⁷ Likewise, a towing company sued the Village of Midlothian for statements made by village employees that the plaintiff company “was involved in the illegal drug trade,” was a “criminal enterprise,” and that its “employees have been arrested for possession of illegal narcotics.”¹³⁸ The court affirmed dismissal of the defamation count against the village because of Section 2-107.¹³⁹

A related provision, 745 ILCS 10/2-210, offers immunity from negligent misrepresentation or provision of information. That section of the Tort Immunity Act states: “A public employee acting in the scope of his employment is not liable for an injury caused by his negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material.”¹⁴⁰ So, Section 2-107 protects negligent and willful defamatory acts, and Section 2-210 protects all provision of information.¹⁴¹

Additionally, Section 2-210 provides immunity for negligent misrepresentation.¹⁴² Section 2-210, however, does not immunize against *willful* misrepresentation. Where the misrepresentation goes beyond the negligence standard, immunity may not be found. For instance, where a high school coach was terminated after negative statements that an official made about the coach, the school official was not entitled to immunity under [745 ILCS 10/2-210](#) because there was no basis in the record to conclude that the statements made by the official were merely negligent.¹⁴³ Likewise, in an officer’s suit alleging defamation involving an unflattering memorandum by the plaintiff’s superior, summary judgment based on [745 ILCS 10/2-210](#) could not be granted because genuine issues of material fact remained as to the motivation for writing the memorandum and, thus, it was not possible to determine whether his misrepresentations were negligent or intentional or reckless.¹⁴⁴

In 2013, this issue—a willful and wanton exception to the misrepresentation immunity—arose in a sordid tale of a sex predator being passed from one school to another. In *Doe-3 v. McLean County Unit District No. 5 Board of Directors*,¹⁴⁵ a teacher sexually abused female students while he worked in employment provided by the county board and supervised by administrators.¹⁴⁶ The county board and administrators, however, allegedly provided false information on an employment verification form to cover-up the fact that the teacher had been disciplined. A new school district relied on the form in hiring the teacher. Soon thereafter, he again engaged in sexual abuse of students. The students at the new school district sued the county board and administrators asserting that they engaged in misconduct in hiding the prior history of the teacher.¹⁴⁷ The court held that dismissal based on 745 ILCS 10/2-210 was not appropriate because the allegations were not merely negligent misrepresentation but rather were willful conduct.¹⁴⁸

Although Sections 2-107 and 2-210 are separate, they have a single purpose: to insulate governmental officers from liability in the course of their official duties, thereby allowing them to carry out their daily responsibilities free from concern that their actions will result in lawsuits. The two sections can be interwoven to protect employees from exposure to defamation claims. For instance, in *Goldberg v. Brooks*,¹⁴⁹ a school bus driver sued regarding reports by school district personnel that she had threatened to run over some children intentionally if they did not hurry up while crossing the road.¹⁵⁰ The school district was found to be “unambiguously” immune under Section 2-107 of the Tort Immunity Act for the alleged defamation and the school administrators were immune under Section 2-210 for passing along the reported comments whilst acting within the scope of their employment.¹⁵¹

In sum, tempered speech is to be encouraged but the words and representations of government officials and employees are generally protected. Protections have been built into two sections of the Tort Immunity Act and supplement the common law immunities.

X. Recreational Property Immunity

Under Section 3-106 of the Illinois Tort Immunity Act, local government entities receive immunity from maintaining recreational property, unless there is willful and wanton conduct. The section states, in pertinent part:

Neither a local public entity nor a public employee is liable for an injury where the liability is based upon the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.¹⁵²

Courts have cited two financial bases for the recreational property immunity. Indeed, without the immunity, governmental entities “would be loath, for financial reasons, to provide recreational facilities and programs for the members of their respective communities” in the first place.¹⁵³ Further, the immunity prevents the diversion of public funds from their intended purpose to the payment of damage claims.¹⁵⁴

A. What Is Recreational Property?

Under Section 3-106, recreational property is public property intended or permitted to be used for recreational purposes.¹⁵⁵ Thus, whether public property qualifies as “recreational property” under Section 3-106 is determined by its nature, intended use, and past use. The primary purpose of the public property, however, does not have to be recreational in order for it to qualify as “recreational property” under Section 3-106. The public property may be used for a variety of purposes, not just recreational activities, and still benefit from the immunity provided under Section 3-106.¹⁵⁶

B. Willful and Wanton Conduct in Light of Section 3-106

Local public entities are immune from claims regarding the maintenance of recreational property unless there is willful and wanton conduct. Whether a public entity’s acts constitute willful and wanton conduct depends on the facts of the particular case.¹⁵⁷ Willful and wanton conduct, however, is not to be confused with simple negligence and requires more than mere inadvertence or inattentiveness.¹⁵⁸ Moreover, the failure to warn of a potentially injury-causing condition on recreational property is insufficient to support allegations of willful and wanton misconduct.¹⁵⁹ Instead, to prove a public entity’s conduct is willful and wanton requires a demonstration that the entity’s actions show an “utter indifference to” or “conscious disregard for” the safety of those using the recreational property in question.¹⁶⁰ Case law confirms willful and wanton conduct under Section 3-106 is a high standard to meet under Illinois law.

XI. Hazardous Recreational Immunity

Section 3-109 of the Act provides that local public entities and public employees are immune from liability for personal injury or property damage claims filed by any person who participates in a hazardous recreational activity and by any injured spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury.¹⁶¹ A prerequisite for the immunity is that the injured party is

voluntarily in the place of risk, or had the ability to leave and failed to do so.¹⁶² “Hazardous recreational activity” is defined broadly as a recreational activity that is conducted on property of a local public entity, which creates a substantial risk of injury to a participant or spectator.¹⁶³

The provision also expressly enumerates specific activities that also comprise “hazardous recreational activities.” Specifically, the following are included: (1) water contact activities, except diving, in places or at a time when lifeguards are not provided and reasonable warning thereof has been given, or the injured party should have known that there was no lifeguard provided at the time; (2) diving at any place or from any structure where diving is prohibited and reasonable warning as to the specific dangers present has been given; and (3) a catch-all category that includes animal racing, archery, bicycle racing or jumping, off-trail bicycling, boat racing, cross-country and downhill skiing, sledding, tobogganing, participating in certain equine activity, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, certain body contact sports, surfing, trampolining, tree climbing, tree rope swinging where the person or persons furnished their own rope, water skiing, white water rafting, and wind surfing.¹⁶⁴

Under Section 3-109, there is no immunity for liability that might exist otherwise due to a local public entity or public employee’s failure to guard or warn of a dangerous condition of which there was actual or constructive notice, and where the participant does not have notice and could not reasonably have been expected to have had notice.¹⁶⁵ The provision also expressly eliminates immunity for any act of willful and wanton conduct by a public entity or a public employee.¹⁶⁶

The immunity granted by Section 3-109 does not apply to an independent concessionaire, or any other person or organization besides the local public entity or public employee, when injuries or damages are suffered as a result of their operation of a hazardous recreational activity on public property.¹⁶⁷ The non-public entity or employee is not entitled to immunity even if a contractual relationship exists with the public entity to use the public property.¹⁶⁸

Recreational immunity often is litigated in the context of public school activities. For example, Illinois appellate courts interpreting Section 3-109 have held that the recreational immunity insulated a school district from liability for negligence in providing athletic equipment to students¹⁶⁹ and for injuries a student incurred in an after-school tumbling program as the result of the use of a mini-trampoline.¹⁷⁰ In contrast, one court has found that a compulsory high school physical education class is not a “recreational” activity within the meaning of the statute, and that the immunity, therefore, did not apply.¹⁷¹

Many cases involving Section 3-109 recreational immunity are straightforward. One question that might arise when evaluating the applicability of the statute, however, is whether the injury or damage occurred “on property of a local public entity.” This question was encountered in *Steinbach v. CSX Transportation, Inc.*¹⁷²

In *Steinbach*, the plaintiff filed a wrongful death case against multiple defendants, including the City of Peru, Illinois (the “City”).¹⁷³ The complaint alleged that defendant CSX Transportation, Inc. operated railroad tracks in an area known as the upper Canal Parking Lot Bridge. Adjacent to those tracks was a gravel service road owned by the City. The complaint alleged that the City placed a steel cable across the entrance to the service road at a height that the City knew posed a hazard to those riding dirt bikes and other all-terrain vehicles.¹⁷⁴ The complaint claimed that the plaintiff’s decedent was killed while operating a dirt bike along the service road and that the death was due to the City’s failure to warn of the steel cable’s presence at the height of a rider’s neck.¹⁷⁵ Importantly, the service road in question was located on an easement acquired by the City.¹⁷⁶ The easement granted the City reasonable right of entry for the purpose of constructing, replacing, repairing, maintaining, and operating an electrical wireline.¹⁷⁷ After the City’s property was vandalized during construction, the City erected the “fence in question to protect its equipment and materials by excluding trespassing along its easement.”¹⁷⁸

The trial court in *Steinbach* granted summary judgment in favor of the City, finding that the “fence” constituted the City’s property.¹⁷⁹ That court observed that the cable belonged to the City and that the City had placed the cable. In the words of the court:

“[The City] let other people use it. They let other people take it up and down who were authorized to be in the area. But it was the City’s property under any definition.

....

But even if you were to question the easement, they were doing it—and I don’t think they had a signed right to do it—and it was their fence. So it is, I find, the City’s property.”¹⁸⁰

Having concluded that the fence was the City’s property and constituted a condition on the property, the trial court turned to the issue of immunity. The trial court noted that, under Section 3-102 of the Act,¹⁸¹ the City was under a duty to exercise ordinary care to maintain its property in a reasonably safe condition for the persons who the City intended and permitted to use the property.¹⁸² The court reasoned that

[t]here cannot be any dispute in this particular case that [the decedent] was not an intended or permitted user. He was a trespasser. He was driving a dirt bike down a railroad right-of-way where the City had an easement, where the City had put up this fence. He was not an intended or permitted user. This was not a dirt bike path. This was not some permitted use.¹⁸³

On appeal, the reviewing court concluded that the trial court had conflated notions of personal and real property.¹⁸⁴ The appellate court concluded that the term “property” under the Act is restrictive and does not apply to all possessory interests. In fact, the Act specifically defines public property as “real or personal property owned or leased by a local public entity.”¹⁸⁵ Applying that statutory definition, the appellate court also found significant that the easement granted to the City allowed the City access to the land to construct, replace, repair, maintain, and operate the wireline. The legal description of the easement describes the easement as “non-exclusive” and provided that the rights conferred could be modified to include other parties as the grantor.¹⁸⁶ Relying upon these facts, the appellate court concluded:

The City did not own the land and did not lease the gravel road from the railroad. The limited easement granted to the City did not create an exclusive, possessory ownership right to the land allowing the City the unilateral ability to exclude decedent as a permitted user of the gravel road or to prevent the railroad or another grantor from permitting decedent to use the gravel path.¹⁸⁷

The *Steinbach* opinion demonstrates that a local government, or other entity seeking to claim the immunity afforded by Section 3-109, should review carefully and document issues of ownership and control prior to filing pleadings and/or dispositive motions in pending litigation.

XII. Police Services

Under the Act, a public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct. Whether a public employee or entity’s acts constitute willful and wanton conduct depends on the facts of the particular case. To prove that a public entity’s or its employee’s conduct is willful and wanton, requires a demonstration that the local public entity or its employee’s actions show an “utter indifference to” or “conscious disregard for” the safety of the person that they are engaged with at the time of the conduct or prior thereto.¹⁸⁸ There are, however, certain public employees who, as a general rule, enjoy immunity from liability regardless of their state of mind when acting in certain circumstances.¹⁸⁹ These immunities are focused on various activities relating to police protection and detention and corrections functions. Section 2-202 does not provide an exception to the immunities provided in other sections of the Tort Immunity Act and will not prevail where other, more specific, immunities apply.¹⁹⁰

A. Enhanced Immunity: Police Protection Services

Under Section 4-102 of the Tort Immunity Act,¹⁹¹ local public entities and public employees enjoy absolute immunity from liability for any failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for any failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals.¹⁹² This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee.¹⁹³

The Act is clear: there can be no liability for a public employee or entity if they make a knowing decision to forego establishing a police department or otherwise provide police protection service. In those circumstances where a police department has been established and police protection services have been provided, then neither a public employee nor a public entity can be liable for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals.¹⁹⁴

This immunity, however, does not allow police officers to engage in any conduct while performing police services. Indeed, this provision does not bar claims premised on a public entity's or a public employee's willful and wanton misconduct in the actual execution and enforcement of the law.¹⁹⁵ The primary issue in most of these cases then distills into whether the defendant provided police services.¹⁹⁶ Thereafter, issues involving the degree of control exerted by the police,¹⁹⁷ the context in which the police are acting,¹⁹⁸ or whether public security personnel may provide "police services," or any combination of those scenarios, will arise complicating whether the immunity in this section will insulate the public employee, the public entity, or both, from claims for liability.

In certain circumstances where a public employee or entity is charged with a failure to provide police protection services, the absolute immunity found in Section 4-102 might not operate completely. From time to time, the express terms of one statute might conflict with the language of another. Under Illinois law, "when the plain language of one statute apparently conflicts with the plain language of another statute, we must resort to other means in determining the legislature's intent. Where two statutes conflict, [the court] will attempt to construe them together, *in pari materia*, where such an interpretation is reasonable."¹⁹⁹

Such a conflict exists between Section 4-102 of the Act and Section 305 of the Illinois Domestic Violence Act of 1986.²⁰⁰ Under Illinois law, the Domestic Violence Act limits the immunity a law enforcement officer enjoys in the context of a domestic violence case. The Domestic Violence Act provides immunity similar to that set forth in Section 2-202 of the Illinois Tort Immunity Act as opposed to the absolute immunity for the same public employees under Section 4-102 of the Tort Immunity Act.²⁰¹ The rationale expressed by the courts is that: (1) the express language of Section 305 of the Domestic Violence Act is more specific than the broad immunities of the Illinois Tort Immunity Act; and (2) because the legislature enacted the Domestic Violence Act after the Illinois Tort Immunity Act, the legislature intended the more recent Act to control.²⁰² Thus, one must be careful when analyzing whether there is any other legislation governing the specific police protection services involved in the case that could limit the absolute immunity normally afforded by Section 4-102.

B. Enhanced Immunity: Jail, Detention or Correctional Facility

Under Section 4-103 of the Act, local government entities and their employees are also immune from liability for failure to provide a jail, detention, or correctional facility, or if such facility is provided, for failure to provide sufficient equipment, personnel, supervision, or facilities therein. Nothing in Section 4-103 requires the periodic inspection of prisoners.²⁰³

The Act is clear that there can be no liability for a public employee or entity who makes a knowing decision to forego establishing a jail, detention, or correctional facility. In those circumstances where a jail, detention, or correctional facility exists, then neither a public employee nor a public entity can be liable for

failure to provide sufficient equipment, personnel, supervision, or facilities therein. There is no exception from the operation of the absolute immunity of this section even if a fact-finder determines that a public employee acted with willful and wanton intent.²⁰⁴

XIII. Fire and Emergency Services

Under the Tort Immunity Act, local government entities are immune from the failure to establish a fire department, fire protection, rescue and other emergency services.²⁰⁵ Additionally, if established, local public entities and their employees are immune from the failure to suppress or contain a fire, and are immune from failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities.²⁰⁶ Local government entities and their employees are also immune from liability for an injury caused by the negligent operation (but not the willful and wanton operation) of a motor vehicle, including fire trucks and rescue vehicles, when responding to an emergency call.²⁰⁷

The general policy behind the fire and emergency services sections of the Act is to “shield emergency responders from personal liability for decisions made and actions taken while responding to an emergency.”²⁰⁸ The theory is that “if the operator is haunted by the possibility of facing devastating personal liability for actions taken in the course of responding to an emergency, employees’ performance will be hampered.”²⁰⁹

A. Responding to an Emergency

Although a covered employee is immune from claims of negligence in responding to an emergency,²¹⁰ the term “emergency” is not defined by the Act. Illinois courts, however, use the common definition of emergency, which is an “urgent need for assistance or relief” or as “a situation in which there is a high probability of death or serious injury to an individual or significant property loss and action by an Emergency Vehicle operator may reduce the seriousness of the situation.”²¹¹ A public employee is protected by this immunity even if the employee is *en route* to the fire station or if the alarm turned out to be false when the injury occurs.²¹²

B. Willful and Wanton Conduct in Light of Fire and Emergency Services

As stated above, whether a public entity’s acts or omissions constitute willful and wanton conduct depends on the facts of the particular case.²¹³ To prove that conduct is willful and wanton, a plaintiff must demonstrate that the acts and omissions at issue show an “utter indifference” or “conscious disregard” for safety.²¹⁴

Unfortunately, however, there are no definitive actions an emergency vehicle operator can take to conclusively prevent a finding of willful and wanton disregard for safety.²¹⁵ Rather, Illinois law remains unsettled as to what actions taken by an emergency vehicle driver (for example, flashing the vehicle’s lights, sounding its sirens, and slowing the vehicle at an intersection) tend to show a driver did not act with a willful and wanton disregard for safety, and is thus entitled to immunity. There are no actions an emergency vehicle driver can take that will rule out willful and wanton conduct as a matter of law.²¹⁶

XIV. Medical Care for Prisoners

Pursuant to public policy, jailers owe a general duty of care to prisoners in Illinois.²¹⁷ Jailers are required to “exercise ordinary and reasonable care for the preservation of their prisoner’s health and life under the circumstances of the particular case.”²¹⁸ The courts’ interpretation of the Tort Immunity Act is consistent with this general duty.²¹⁹ Section 4-105 of the Tort Immunity Act provides the following:

Neither a local public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but this Section shall not apply where the employee, acting within the scope of his employment, knows from his observation of conditions that the prisoner is in need of immediate medical care and, through willful and wanton conduct, fails to take reasonable action to summon medical care. Nothing in this section requires the periodic inspection of prisoners.²²⁰

Section 4-105 immunizes local public entities and employees from negligence actions. For example, in *Cooper v. Sheriff of Will County*,²²¹ Will County Sheriff's deputies arrested decedent Patrick Cooper and transferred him to the general inmate population of the Will County Jail to await trial.²²² The deputies were aware that Cooper suffered from asthma that required medication and that Cooper had suffered an asthma attack in the past that required inhaler medication. On July 7, 2003, the decedent suffered a serious asthma attack that required immediate medical attention. Other inmates informed the deputy defendants that Cooper needed medical attention, but defendants failed to provide timely care, and Cooper died.²²³ The Estate of Cooper then sued the deputies.

In ruling on the defendants' motion to dismiss, the district court found that Section 4-105 immunized defendants from claims, alleging that defendants negligently failed to provide the decedent with timely medical treatment. The district court dismissed those claims that were based on negligence.²²⁴ The district court found that Section 4-105 did not immunize the defendants from claims that were based on willful and wanton conduct.²²⁵

To avoid the immunity in Section 4-105, plaintiffs must prove that jailers were willful and wanton when they failed to take reasonable action to summon medical care after observing that the prisoner is in need of immediate medical care. The willful and wanton standard is "remarkably similar" to the deliberate indifference standard used to analyze alleged violations of the Fourteenth and Eighth Amendment under 42 U.S.C. § 1983.²²⁶ Under those circumstances, detainees have the right to receive reasonable medical treatment for a serious injury or medical need.²²⁷ "Deliberate indifference is a high standard requiring [the detainee] to prove that the defendant [was] aware of the facts from which a substantial risk of serious harm could be inferred and that [the defendant] actually drew the inference."²²⁸ This requires "evidence that the official was aware of the risk and consciously disregarded it nonetheless."²²⁹ A correctional official cannot be found liable "unless the official knows of and disregards an excessive risk to inmate health or safety."²³⁰

Detainees "are not entitled to a specific type of treatment, or even the best care, only reasonable measures to prevent a substantial risk of serious harm."²³¹ "Mere dissatisfaction or disagreement with a course of treatment is generally insufficient; [the courts] will defer to a medical professional's treatment decision unless no minimally competent professional would have so responded under those circumstances."²³² "Courts defer to a physician's treatment decisions because there is not one proper way to practice medicine in a prison."²³³ Consequently, changing the type of treatment that an inmate receives does not amount to deliberate indifference simply because the inmate disagrees with it.²³⁴

In the case of supervisory officials, deliberate indifference requires a showing of direct responsibility for improper conduct; the official must have caused or participated in the alleged constitutional deprivation.²³⁵ Such responsibility means that the unconstitutional conduct occurred either at the direction of the supervisory official or with his knowledge and approval.²³⁶ Thus, a plaintiff must present facts demonstrating the supervisor's personal involvement in the allegedly unconstitutional activities.²³⁷

Federal courts also consider the "professional judgment rule."²³⁸ A decision made by a medical professional is "presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment."²³⁹ The corollary to the professional judgment standard is that non-medical correctional officials are entitled to defer to the judgment of medical professionals on questions of prisoner medical care.²⁴⁰ It is not deliberate indifference for a correctional official to defer to the medical judgment of the doctor or nurse providing medical treatment to a

prisoner.²⁴¹ When a prisoner is receiving care from a medical professional, jail personnel are justified in believing that the prisoner is receiving adequate treatment from a capable professional.²⁴² No Illinois appellate courts have addressed the professional judgment rule in the context of Section 4-105. Presumably, public employees accused of being willful and wanton to a detainee's medical needs could also defend against such claims by establishing that they relied on the professional judgments of medical personnel.

Ultimately, detainees suing for insufficient medical care have an uphill battle. Section 4-105 immunizes the local public entity and the public employee against negligence claims. To have any chance at establishing a state law claim in Illinois, the detainee must prove that the public employee was aware of a medical need and willful and wanton in ignoring that medical need. Similarly, in federal court, the detainee must prove that the public employee was aware of a serious medical need and consciously disregarded that need. Medical needs that are addressed by a jail nurse or doctor further insulate the jailer through the professional judgment rule.

XV. Conclusion

Local public entities lie at an intersection of two conflicting policy desires: the need for public services and the want to reduce the local tax burden. Unlike private persons or corporations, local public entities are often unable to reduce risk by refusing to engage in certain acts. The need for public goods and services, such as roads, sidewalks, police and fire protection, schools, and parks, do not diminish in poor economic times nor can they be continually maintained even in the best of times. The purpose of the Tort Immunity Act is to shield local public entities from the fallout of this conflict as they provide necessary services within the constraints placed upon them by the taxpayer. As such, the importance of the Tort Immunity Act to the executive and legislative branches of government should not be diminished. Any erosion in the effectiveness of the provisions of the Tort Immunity Act through the judicial process is necessarily an erosion of the ability of the executive and legislative branches to govern. It is primarily through the Tort Immunity Act that the taxpayer is protected from the policy choices required by self-governance.

(Endnotes)

¹ Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*; *Zameer v. City of Chicago*, 2013 IL App (1st) 120198, ¶ 14.

² *Vesey v. Chi. Hous. Auth.*, 145 Ill. 2d 404, 412 (1991).

³ *Molitor v. Kaneland Cmty. Unit Dist. No. 302*, 18 Ill. 2d 11 (1959).

⁴ *Vesey*, 145 Ill. 2d at 412.

⁵ *Kirschbaum v. Vill. of Homer Glen*, 365 Ill. App. 3d 486, 492 (3d Dist. 2006).

⁶ 745 ILCS 10/1-101.1.

⁷ *Callaghan v. Vill. of Clarendon Hills*, 401 Ill. App. 3d 287 (2d Dist. 2010).

⁸ 745 ILCS 10/1-210.

⁹ *Bielema v. River Bend Cmty. Sch. Dist. No. 2*, 2013 IL App (3d) 102808, ¶ 12; *Winfrey v. Chi. Park Dist.*, 274 Ill. App. 3d 939, 944 (1st Dist. 1995).

¹⁰ *Geimer v. Chi. Park Dist.*, 272 Ill. App. 3d 629, 637 (1st Dist. 2011).

¹¹ *Hubble v. Bi-State Dev. Agency of the Ill.-Mo. Metro. Dist.*, 238 Ill. 2d 262, 270 (2010) (finding that a management company for a low-income public housing development met the definition of a local public entity).

¹² 745 ILCS 10/1-206 (emphasis added).

¹³ *Hubble*, 238 Ill. 2d at 270.

¹⁴ See, e.g., *Johnson v. Decatur Park Dist.*, 301 Ill. App. 3d 798 (4th Dist. 1998).

¹⁵ *Barnes v. Chi. Housing Auth.*, 326 Ill. App. 3d 710, 726 (1st Dist. 2002).

¹⁶ *Hubble*, 238 Ill. 2d at 269–73.

¹⁷ 745 ILCS 10/8-101.

¹⁸ *Id.* § 2-102.

¹⁹ *Id.* § 2-213.

²⁰ *Id.* § 2-302.

²¹ *Id.* § 2-302.

²² 745 ILCS 10/3-108.

²³ *Id.*

²⁴ See *Castenada v. Cmty. Sch. Dist. Unit No. 200*, 226 Ill. App. 3d 514, 517 (2d Dist. 1992).

²⁵ 745 ILCS 10/3-101.

²⁶ *Id.* § 1-206.

²⁷ See *Stiff v. E. Ill. Area of Special Educ.*, 251 Ill. App. 3d 859, 861–62 (4th Dist. 1993).

²⁸ *Barnett v. Zion Park Dist.*, 171 Ill. 2d 378, 392 (1996).

²⁹ *Longfellow ex rel. Longfellow v. Corey*, 286 Ill. App. 3d 366, 370 (4th Dist. 1997).

³⁰ *Dixon v. Chi. Bd. of Educ.*, 304 Ill. App. 3d 744, 749 (1st Dist. 1999).

³¹ *Hill v. Galesburg Cmty. Unit Sch. Dist. 205*, 346 Ill. App. 3d 515, 521 (3d Dist. 2004).

³² *Spangenberg v. Verner*, 321 Ill. App. 3d 429, 432 (5th Dist. 2001).

³³ *Barnes v. Chi. Hous. Auth.*, 326 Ill. App. 3d 710, 724 (1st Dist. 2001).

³⁴ *Epstein v. Chi. Bd. of Educ.*, 178 Ill. 2d 370, 382 (1997).

³⁵ *Moorehead v. Metro. Water Reclamation Dist. of Greater Chi.*, 322 Ill. App. 3d 635, 640 (1st Dist. 2001).

³⁶ 745 ILCS 10/2-109; *Id.* § 2-201.

³⁷ *Arteman v. Clinton Cmty. Unit Sch. Dist. No. 15*, 198 Ill. 2d 475, 484 (2002).

³⁸ *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 370 (2003).

³⁹ *Snyder v. Curran Twp.*, 167 Ill. 2d 466, 474 (1995).

⁴⁰ *Gutstein v. City of Evanston*, 402 Ill. App. 3d 610, 627 (1st Dist. 2010).

⁴¹ 745 ILCS 10/2-109.

⁴² *Id.* § 2-109.

⁴³ See *Collins v. Bartlett Park Dist.*, 2013 IL App (2d) 130006, ¶ 65.

⁴⁴ *Hascall v. Williams*, 2013 IL App (4th) 121131, ¶¶ 35–38.

⁴⁵ 745 ILCS 10/2-201.

⁴⁶ *Harinek v. 161 N. Clark St. Ltd. P’ship*, 181 Ill. 2d 335, 341 (1998).

⁴⁷ *Harinek*, 181 Ill. 2d at 341 (emphasis in original).

⁴⁸ See *id.* at 342–43.

⁴⁹ *Wrobel v. City of Chicago*, 318 Ill. App. 3d 390, 395 (1st Dist. 2000) (“The degree to which a pothole should be prepared, and specifically how much loose asphalt and moisture will be removed, is a matter of a worker’s personal judgment, and encompassed within that judgment are policy considerations of time and resource allocation during a given workday.”).

⁵⁰ *Courson v. Danville Sch. Dist. No. 118*, 333 Ill. App. 3d 86, 88 (4th Dist. 2002) (citing *Arteman v. Clinton Cmty. Unit Sch. Dist. No. 15*, 198 Ill. 2d 475, 487 (2002)).

⁵¹ *Harinek*, 181 Ill. 2d at 341.

⁵² *Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 257 (1st Dist. 2002); *In re Chi. Flood Litig.*, 176 Ill. 2d 179, 194 (1997).

⁵³ *Harinek*, 181 Ill. 2d at 342 (quoting *West v. Kirkham*, 147 Ill. 2d 1, 11 (1992)); *Wrobel*, 318 Ill. App. 3d at 394 (quoting *Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 313 Ill. App. 3d 702, 706 (5th Dist. 2000)).

⁵⁴ *Arteman*, 198 Ill. 2d at 487 (holding school district’s decision not to provide protective equipment for physical education class was a policy decision).

⁵⁵ *Johnson*, 301 Ill. App. 3d at 809 (holding gymnastics coach's decision not to place safety mats or properly warn of dangers of trampoline use involved policy determinations and the exercise of discretion).

⁵⁶ See *Courson v. Danville Sch. Dist. No. 118*, 333 Ill. App. 3d 86, 90 (4th Dist. 2002) (finding that a shop teacher's operation of a table saw without a safety guard constituted a "discretionary policy determination").

⁵⁷ *Courson*, 333 Ill. App. 3d at 90.

⁵⁸ *Trtanj ex rel. State Farm Fire & Cas. Co. v. City of Granite City*, 379 Ill. App. 3d 795, 803 (5th Dist. 2008).

⁵⁹ *Snyder v. Curran Twp.*, 167 Ill. 2d 466, 474 (1995) (holding that a township's placement of a warning sign was a ministerial act because regulations and statutes controlled the sign's placement).

⁶⁰ *Trtanj ex rel. State Farm Fire & Cas. Co.*, 379 Ill. App. 3d at 804.

⁶¹ *Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 257 (1st Dist. 2002).

⁶² *Courson*, 333 Ill. App. 3d at 91.

⁶³ *Wrobel v. City of Chicago*, 318 Ill. App. 3d 390, 395 (1st Dist. 2000).

⁶⁴ *Gutstein v. City of Evanston*, 402 Ill. App. 3d 610, 626 (1st Dist. 2010) (discussing *Wrobel*, 318 Ill. App. 3d at 395).

⁶⁵ See *Hascall v. Williams*, 2013 IL App (4th) 121131, ¶ 38 (finding that Section 2-201 immunized a school district, superintendent, and principal from liability for injuries resulting from alleged willful and wanton failures to respond to student bullying in school despite the "seeming harshness of the result").

⁶⁶ *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 370 (2003).

⁶⁷ See *Gutstein*, 402 Ill. App. 3d at 629 (holding that the city failed to carry its burden to prove discretionary immunity where the city did not present evidence at trial that could allow the court to consider whether a city employee exercised discretion by choosing which materials to use when regrading depressions in an alley).

⁶⁸ See 745 ILCS 10/2-103 ("A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.").

⁶⁹ *Id.* § 2-205 ("A public employee is not liable for an injury caused by his adoption of, or failure to adopt, an enactment, or by his failure to enforce any law.").

⁷⁰ *Ware v. City of Chicago*, 375 Ill. App. 3d 574 (1st Dist. 2007).

⁷¹ *Stigler v. City of Chicago*, 48 Ill. 2d 20 (1971).

⁷² *Pouk v. Vill. of Romeoville*, 405 Ill. App. 3d 194 (3d Dist. 2010).

⁷³ *Ware v. City of Chicago*, 375 Ill. App. 3d 574 (1st Dist. 2007).

⁷⁴ *Ware*, 375 Ill. App. 3d at 582.

⁷⁵ *Id.* at 575.

⁷⁶ 745 ILCS 10/2-103; *id.* § 2-205.

⁷⁷ *Vill. of Bloomingdale v. CDG Enters.*, 196 Ill. 2d 484 (2001).

⁷⁸ *Vill. of Bloomingdale*, 196 Ill. 2d at 488.

⁷⁹ *Id.* at 494.

⁸⁰ Compare this immunity to that set forth in 745 ILCS 10/2-202 ("A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.").

⁸¹ 745 ILCS 10/2-208.

⁸² Compare 745 ILCS 10/2-208 ("A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause.") to the elements of common law malicious prosecution as set forth in *Ross v. Mauro Chevrolet*, 369 Ill. App. 3d 794, 801 (1st Dist. 2006).

⁸³ *Knox Cnty. v. Midland Coal Co.*, 265 Ill. App. 3d 782 (3d Dist. 1994).

⁸⁴ *Knox Cnty.*, 265 Ill. App. 3d at 783.

⁸⁵ *Id.*

⁸⁶ 745 ILCS 10/2-104 ("A local public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar

authorization where the entity or its employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.”).

⁸⁷ *Id.* § 2-206 (“A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.”).

⁸⁸ *Vill. of Bloomingdale v. CDG Enters.*, 196 Ill. 2d 484, 496 (2001).

⁸⁹ *Doyle v. City of Marengo*, 303 Ill. App. 3d 831 (2d Dist. 1999).

⁹⁰ *Doyle*, 303 Ill. App. 3d at 831.

⁹¹ 745 ILCS 10/3-102.

⁹² *Washington v. City of Chicago*, 188 Ill. 2d 235 (1999); *Anderson v. Alberto-Culver USA, Inc.*, 317 Ill. App. 3d 1104 (1st Dist. 2000); *Mostafa v. City of Hickory Hills*, 287 Ill. App. 3d 160 (1st Dist. 1997); *Knight v. City of Chicago*, 298 Ill. App. 3d 797 (1st Dist. 1998).

⁹³ *Catberro v. Naperville Sch. Dist. No. 203*, 317 Ill. App. 3d 150 (2d Dist. 2000).

⁹⁴ *Boub v. Twp. of Wayne*, 183 Ill. 2d 520 (1998).

⁹⁵ *Callaghan v. Vill. of Clarendon Hills*, 401 Ill. App. 3d 287 (2d Dist. 2010).

⁹⁶ *Washington v. City of Chicago*, 188 Ill. 2d 235 (1999); *Gutstein v. City of Evanston*, 402 Ill. App. 3d 610 (1st Dist. 2010).

⁹⁷ *Diefendorf v. City of Peoria*, 308 Ill. App. 3d 465 (3d Dist. 1999).

⁹⁸ *Berz v. City of Evanston*, 2013 IL App (1st) 123763, ¶ 10.

⁹⁹ *DeMambro v. City of Springfield*, 2013 IL App (4th) 120957, ¶¶ 15–20 (discussing “intended and permitted” use of streets); *Dunet v. Simmons*, 2013 IL App (1st) 120603, ¶ 28 (same).

¹⁰⁰ *Brooks v. City of Peoria*, 305 Ill. App. 3d 806 (3d Dist. 1999).

¹⁰¹ *Marshall ex rel. Marshall v. City of Centralia*, 143 Ill. 2d 1 (1991).

¹⁰² 745 ILCS 10/3-102.

¹⁰³ *Glass v. City of Chicago*, 323 Ill. App. 3d 158 (1st Dist. 2001).

¹⁰⁴ *Glass*, 323 Ill. App. 3d at 163.

¹⁰⁵ 745 ILCS 10/3-102(b).

¹⁰⁶ *Bubb v. Springfield School Dist.*, 167 Ill. 2d 372 (1995).

¹⁰⁷ 745 ILCS 10/3-102(b)(1)–(2).

¹⁰⁸ *Perfetti v. Marion Cnty.*, 2013 IL App (5th) 110489, ¶19.

¹⁰⁹ *Palermo v. City of Chicago Heights*, 2 Ill. App. 3d 1004 (1st Dist. 1971); see also *Coultas v. City of Winchester*, 208 Ill. App. 3d 238 (4th Dist. 1991).

¹¹⁰ *Mtengule v. City of Chicago*, 257 Ill. App. 3d 323 (1st Dist. 1993).

¹¹¹ *Tracy v. Vill. of Lombard*, 116 Ill. App. 3d 563, 572 (2d Dist. 1983).

¹¹² *Vesey v. Chi. Hous. Auth.*, 145 Ill. 2d 404 (1991).

¹¹³ *Moore v. Chi. Park Dist.*, 2012 IL 112788.

¹¹⁴ 745 ILCS 10/2-207.

¹¹⁵ *Hess v. Flores*, 408 Ill. App. 3d 631 (1st Dist. 2011).

¹¹⁶ *Ware v. City of Chicago*, 375 Ill. App. 3d 574 (1st Dist. 2007).

¹¹⁷ *Hess v. Flores*, 408 Ill. App. 3d 631 (1st Dist. 2011).

¹¹⁸ *Hess*, 408 Ill. App. 3d at 647–49.

¹¹⁹ See *Bogan v. Scott-Harris*, 523 U.S. 44 (1998) (absolute legislative immunity extends to municipal legislators acting in a legislative capacity).

¹²⁰ *Springer v. Harwig*, 94 Ill. App. 3d 281 (1st Dist. 1981) (holding the village’s chief administrator immune for suggesting other lawsuits to be filed against contractor); *Loniello v. Fitzgerald*, 42 Ill. App. 3d 900 (1st Dist. 1976) (holding that the Burbank

mayor had absolute privilege against a defamation suit when he said at a council meeting that a zoning variation applicant had lied and cheated the city).

¹²¹ *Dolatowski v. Life Printing & Publ'g Co.*, 197 Ill. App. 3d 23, 26 (1st Dist. 1990).

¹²² *Blair v. Walker*, 64 Ill. 2d 1 (1976) (holding the governor's press releases immune (citing *Barr v. Matteo*, 360 U.S. 564 (1959))).

¹²³ *Dolatowski*, 197 Ill. App. 3d at 27, 29.

¹²⁴ See *Catalano v. Pechous*, 83 Ill. 2d 146 (1980) (holding that, where a municipal clerk made a statement implying another official had taken a bribe, the statement was not related to the clerk's official duties and refusing to grant immunity to the clerk); *Stratman v. Brent*, 291 Ill. App. 3d 123 (2d Dist. 1997) (holding that a police chief was not immune when he made false statements to a federal agency to which a former police officer had applied for a job).

¹²⁵ *Catalano v. Pechous*, 83 Ill. 2d 146 (Ill. 1980).

¹²⁶ *Catalano*, 83 Ill. 2d at 156.

¹²⁷ *Stratman v. Brent*, 291 Ill. App. 3d 123 (2d Dist. 1997)

¹²⁸ *Stratman*, 291 Ill. App. 3d at 126–27, 132.

¹²⁹ 745 ILCS 10/2-107.

¹³⁰ *Gavery v. County of Lake*, 160 Ill. App. 3d 761 (2d Dist. 1987) (finding immunity for a doctor's libel suit against the county, based on a letter circulated stating that county employees could no longer obtain services from the doctor due to numerous complaints).

¹³¹ *Gavery v. County of Lake*, 160 Ill. App. 3d 761 (2d Dist. 1987).

¹³² *Gavery*, 160 Ill. App. 3d at 763.

¹³³ *Horwitz v. Bd. of Educ. of Avoca Sch. Dist. No. 37*, 260 F.3d 602 (7th Cir. 2001).

¹³⁴ *Chi. United Indus. v. City of Chicago*, 445 F.3d 940 (7th Cir. 2006) (dismissing defamation claims based on various press releases by the city's law department and by city officials regarding debarring traffic control contractor).

¹³⁵ *Meyers v. Bd. of Educ. of City of Chi.*, 121 Ill. App. 2d 186, 187 (1st Dist. 1970).

¹³⁶ *Meyers*, 121 Ill. App. 2d at 190.

¹³⁷ *Villagrana v. Vill. of Oswego*, No. 04 C 4603, 2005 U.S. Dist. LEXIS 21355, at *13 (N.D. Ill. Sept. 22, 2005).

¹³⁸ *SMJ Towing, Inc. v. Vill. of Midlothian*, No. 05 C 3020, 2005 U.S. Dist. LEXIS 33370, at *12–13 (N.D. Ill. Dec. 16, 2005)

¹³⁹ *SMJ Towing, Inc.*, 2005 U.S. Dist. LEXIS 21355, at *13–14; see also *Ramos v. City of Peru*, 333 Ill. App. 3d 75, 76–77, 80 (3d Dist. 2002) (holding that a police department's distribution of an arrestee's photograph that incorrectly identified him as wanted for aggravated criminal sexual abuse was immune); *Union Pac. R.R. v. Vill. of S. Barrington*, 958 F. Supp. 1285, 1292–93 (N.D. Ill. 1997) (holding that the village was immune from an injury caused by an employee's libel regarding a subdivision).

¹⁴⁰ 745 ILCS 10/2-210.

¹⁴¹ *Goldberg v. Brooks*, 409 Ill. App. 3d 106 (1st Dist. 2011) (finding that there is no inference that the Act protects only the negligent provision of information); Tort Liability: Recorder's Access to Mortgage Electronic Registration System, Op. Ill. Atty. Gen. 97-008 (setting forth the opinion that there is immunity from assisting individuals in looking up mortgage identification numbers and providing access to telephone or computer equipment in connection with the Mortgage Electronic Registration System), available at <http://illinoisattorneygeneral.gov/opinions/1997/97-008.pdf> (last visited Feb. 8, 2014).

¹⁴² *King v. City of Chicago*, 324 Ill. App. 3d 856 (1st Dist. 2001) (holding that a city employee who made statements about a former employee was immune for negligent statements); *Sitton v. Gibbs*, 73 Ill. App. 3d 812 (1st Dist. 1979) (holding that a school superintendent was protected against claims of negligent misrepresentation by this Act).

¹⁴³ *Bryant v. Gardner*, 587 F. Supp. 2d 951 (N.D. Ill. 2008).

¹⁴⁴ *Ernst v. Anderson*, No. 02 C 4884, 2005 U.S. Dist. LEXIS 7469, at *18–19 (N.D. Ill. Mar. 3, 2005); see also *Fatigato v. Vill. of Olympia Fields*, 281 Ill. App. 3d 347 (1st Dist. 1996) (holding that summary judgment was not proper in an action arising from injuries caused by a drunk driver who had not been taken into custody following a domestic dispute, because the officers could be held liable for willful and wanton conduct under 745 ILCS 10/2-210).

¹⁴⁵ *Doe-3 v. McLean Cnty. Unit Dist. No. 5 Bd. of Dirs.*, 2012 IL 112479.

¹⁴⁶ *Doe-3*, 2012 IL 112479, ¶ 5.

¹⁴⁷ *Id.* ¶¶ 6–8.

¹⁴⁸ *Id.* ¶¶ 42–45.

¹⁴⁹ *Goldberg v. Brooks*, 409 Ill. App. 3d 106 (1st Dist. 2011).

¹⁵⁰ *Goldberg*, 409 Ill. App. 3d at 108.

¹⁵¹ *Id.* at 111.

¹⁵² 745 ILCS 10/3-106.

¹⁵³ *Rooney v. Franklin Park Park Dist.*, 256 Ill. App. 3d 1058, 1060 (1st Dist. 1993).

¹⁵⁴ *Moore v. Chi. Park Dist.*, 2012 IL 112788, ¶ 22.

¹⁵⁵ 745 ILCS 10/3-106.

¹⁵⁶ *Bubb v. Springfield Sch. Dist. 185*, 167 Ill. 2d 372 (1995).

¹⁵⁷ *Bielema v. River Bend Cmty. Sch. Dist. No. 2*, 2013 IL App (3d) 102808, ¶12; *Winfrey v. Chi. Park Dist.*, 274 Ill. App. 3d 939, 944 (1st Dist. 1995).

¹⁵⁸ *Geimer v. Chi. Park Dist.*, 272 Ill. App. 3d 629, 637 (1st Dist. 2011).

¹⁵⁹ *Thurman v. Champaign Park Dist.*, 2011 IL App (4th) 101024; *Burlingame v. Chi. Park Dist.*, 293 Ill. App. 3d 931 (1st Dist. 1997); *Pomaro v. Cmty. Sch. Dist. 21*, 278 Ill. App. 3d 266 (1st Dist. 1995); *Winfrey v. Chi. Park Dist.*, 274 Ill. App. 3d 939 (1st Dist. 1995).

¹⁶⁰ *Koltes v. St. Charles Park Dist.*, 293 Ill. App. 3d 171 (2d Dist. 1997); *Oravek v. Cmty. Sch. Dist. 146*, 264 Ill. App. 3d 895 (1st Dist. 1994); *Bialek v. Moraine Valley Cmty. College*, 267 Ill. App. 3d 857 (1st Dist. 1994).

¹⁶¹ 745 ILCS 10/3-109(a).

¹⁶² *Id.* § 3-109(a).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* § 3-109(c)(1).

¹⁶⁶ 745 ILCS 10/3-109(c)(2).

¹⁶⁷ *Id.* § 3-109(d).

¹⁶⁸ *Id.*

¹⁶⁹ *McGurk v. Lincolnway Cmty. Sch. Dist. No. 210*, 287 Ill. App. 3d 259 (3d Dist. 1997).

¹⁷⁰ *Murray v. Chi. Youth Ctr.*, 352 Ill. App. 3d 95 (1st Dist. 2004).

¹⁷¹ *Grandalski v. Lyons Twp. High Sch.*, 305 Ill. App. 3d 1 (1st Dist. 1999).

¹⁷² *Steinbach v. CSX Transp., Inc.*, 393 Ill. App. 3d 490 (3d Dist. 2009).

¹⁷³ *Steinbach*, 393 Ill. App. 3d at 491.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 501.

¹⁷⁷ *Id.*

¹⁷⁸ *Steinbach*, 393 Ill. App. 3d at 493.

¹⁷⁹ *Id.* at 513–14.

¹⁸⁰ *Id.* at 514 (quoting the trial court’s opinion).

¹⁸¹ 745 ILCS 10/3-102(a) (“Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property”)

¹⁸² *Steinbach*, 393 Ill. App. 3d at 514.

¹⁸³ *Id.* (citing *First Midwest Trust Co., N.A. v. Britton*, 322 Ill. App. 3d 922 (2d Dist. 1992) (holding that, in a case involving a motorbike collision on village property, the village had no duty to warn of an alleged dangerous condition because the property

was not intended to be used as a motorbike recreational area, and therefore the injured party was not an intended user of the property)).

¹⁸⁴ *Id.* at 517.

¹⁸⁵ *Id.* (quoting 745 ILCS 10/3-101).

¹⁸⁶ *Id.* at 518.

¹⁸⁷ *Id.* at 510; see also *Choice v. YMCA of McHenry Cnty.*, 2012 IL App (1st) 102877, ¶ 34 (holding Section 3-109 immunity is not available to a school and a school board for drownings that occurred at a camp operated and maintained by the YMCA of McHenry County, because the deaths did not occur on “property of the public entity”)

¹⁸⁸ 745 ILCS 10/2-202.

¹⁸⁹ See *id.*

¹⁹⁰ *Hess v. Flores*, 408 Ill. App. 3d 631 (1st Dist. 2011); see also *Ries v. City of Chicago*, 242 Ill. 2d 205 (2011).

¹⁹¹ 745 ILCS 10/4-102.

¹⁹² *Prough v. Madison Cnty.*, 2013 IL App (5th) 110146, ¶ 23.

¹⁹³ 745 ILCS 10/4-102.

¹⁹⁴ But see *Moore v. Green*, 219 Ill. 2d 470 (2006) (holding that the legislature restricted the absolute immunity indirectly by enacting legislation that was more “specific” in nature).

¹⁹⁵ *A.R. ex. rel. M.R. v. Chi. Bd. of Educ.*, 311 Ill. App. 3d 29 (1st Dist. 1999) (overruled on other grounds).

¹⁹⁶ *Doe ex rel. Ortega-Piron v. Chi. Bd. of Educ.*, 213 Ill. 2d 19 (2004); see also *Betts v. City of Chicago*, 2013 IL App (1st) 123653, ¶¶ 27–29 (overturning the trial court’s dismissal of a negligence claim against a police officer because the officer’s affidavit did not set forth sufficient facts to allow the court to conclude that he was executing or enforcing the law when he crashed into the plaintiff’s car).

¹⁹⁷ *Anthony v. City of Chicago*, 382 Ill. App. 3d 983 (1st Dist. 2008) (involving police at the scene of a nightclub when patrons were trampled in a stairwell).

¹⁹⁸ *DeSmet ex. rel. Estate of Hays v. Cnty. of Rock Island*, 219 Ill. 2d 497 (2006) (finding “police protective services” implicated where police are called upon to locate a missing person).

¹⁹⁹ *Moore*, 219 Ill. 2d at 479.

²⁰⁰ 750 ILCS 60/305.

²⁰¹ *Moore*, 219 Ill. 2d at 488–90.

²⁰² *Id.*

²⁰³ 745 ILCS 10/4-103.

²⁰⁴ *Jefferson v. Sheahan*, 279 Ill. App. 3d 74 (1st Dist. 1996).

²⁰⁵ 745 ILCS 10/5-101.

²⁰⁶ *Id.* § 5-102.

²⁰⁷ *Id.* § 5-106.

²⁰⁸ *Hatteberg v. Cundiff*, 2012 IL App (4th) 110417, ¶ 16.

²⁰⁹ *Hatteberg*, 2012 IL App (4th) 110417, ¶ 16.

²¹⁰ *Id.*

²¹¹ Merriam–Webster’s Collegiate Dictionary 377 (10th ed. 1998) (quoted in *Young v. Forgas*, 308 Ill. App. 3d 553, 561 (4th Dist. 1999)).

²¹² *E.g.*, *Hatteberg*, 2012 IL App (4th) 110417; *Young*, 308 Ill. App. 3d at 553.

²¹³ *Bielema v. River Bend Cmty. Sch. Dist. No. 2*, 2013 IL App (3d) 102808, ¶ 12; *Winfrey v. Chi. Park Dist.*, 274 Ill. App. 3d 939, 944 (1st Dist. 1995).

²¹⁴ *Koltes v. St. Charles Park Dist.*, 293 Ill. App. 3d 171 (2d Dist. 1997); *Oravek v. Cmty. Sch. Dist. 146*, 264 Ill. App. 3d 895 (1st Dist. 1994); *Bialek v. Moraine Vall. Cmty. Coll.*, 267 Ill. App. 3d 857 (1st Dist. 1994).

²¹⁵ See, *e.g.*, *Williams v. City of Evanston*, 378 Ill. App. 3d 590 (1st Dist. 2007); *Young*, 308 Ill. App. 3d at 553; *Hampton v. Cashmore*, 256 Ill. App. 3d 23 (2d Dist. 1994); see also *Carter v. Simpson*, 328 F.3d 948 (7th Cir. 2003).

- ²¹⁶ *Williams*, 378 Ill. App. 3d at 597.
- ²¹⁷ *Dezort v. Vill. of Hinsdale*, 35 Ill. App. 3d 703, 708 (2d Dist. 1976).
- ²¹⁸ *Dezort*, 35 Ill. App. 3d at 709.
- ²¹⁹ See *id.* (finding that 745 ILCS 10/4-105 requires no more than the general duty imposed on jailers to provide ordinary and reasonable care).
- ²²⁰ 745 ILCS 10/4-105.
- ²²¹ *Cooper ex rel. Cooper v. Sheriff of Will County*, 333 F. Supp. 2d 728 (N.D. Ill. 2004).
- ²²² *Cooper ex rel. Cooper*, 333 F. Supp. 2d at 731.
- ²²³ *Id.*
- ²²⁴ *Id.* at 732.
- ²²⁵ *Id.* at 732–33.
- ²²⁶ *Williams v. Rodriguez*, 509 F.3d 392, 403–04 (7th Cir. 2007) (finding that the constitutional standard of care applicable to pre-trial detainees is derived from the Fourteenth Amendment substantive due process, whereas the Eighth Amendment’s prohibition against cruel and unusual punishment governs the standard of care available to post-trial prisoners).
- ²²⁷ *Estelle v. Gamble*, 429 U.S. 97, 103–05 (1976).
- ²²⁸ *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).
- ²²⁹ *Woods v. Morris*, No. 04-1440, 2007 U.S. Dist. LEXIS 68846, at *22–23 (C.D. Ill. Sept. 18, 2007) (quoting *Mathis v. Fairman*, 120 F.3d 88, 91 (7th Cir. 1997)).
- ²³⁰ *Farmer*, 511 U.S. at 837; *Miller v. Neathery*, 52 F.3d 634, 638 (7th Cir. 1995).
- ²³¹ *Woods*, 2007 U.S. Dist. LEXIS 68846, at *22–23; *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997).
- ²³² *Mayan v. Weed*, 310 Fed. Appx. 38, 41 (7th Cir. 2009); *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 988 (7th Cir. 1998).
- ²³³ *Ducey v. Siddiqui*, No. 08-CV-0692, 2009 U.S. Dist. LEXIS 71499, at *10 (S.D. Ill. Aug. 13, 2009) (internal quotation marks omitted) (quoting *Jackson v. Kotter*, 541 F.3d 688, 697 (7th Cir. 2008)).
- ²³⁴ See *Ducey*, 2009 U.S. Dist. LEXIS 71499, at *10 (holding that a prison doctor was not deliberately indifferent where she discontinued anxiety medications that the plaintiff had been prescribed prior to incarceration at the prison and prescribed different anxiety medications instead).
- ²³⁵ *Moore v. State of Indiana*, 999 F.2d 1125, 1129 (7th Cir. 1993).
- ²³⁶ *Gossmeyer v. McDonald*, 128 F.3d 481, 495 (7th Cir. 1997); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995).
- ²³⁷ *Boyce v. Moore*, 314 F.3d 884, 888 (7th Cir. 2002).
- ²³⁸ *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 987–88 (7th Cir. 1998).
- ²³⁹ *Collignon*, 163 F.3d at 988 (quoting *Youngberg v. Romero*, 457 U.S. 307, 322–23 (1982)).
- ²⁴⁰ *Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010).
- ²⁴¹ *Estate of Rice v. Corr. Med. Servs.*, 675 F.3d 650, 676 (7th Cir. 2012).
- ²⁴² *Johnson v. Doughty*, 433 F.3d 1001, 1010–11 (7th Cir. 2006).

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About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org.

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