BENCH MEMORANDUM REGARDING UNLAWFUL IMPOSITION OF ASSESSMENTS IN CASES OF NEGOTIATED PLEA AGREEMENTS

The Court cannot approve plea agreement provisions that purport to impose assessments on indigent persons because such provisions are prohibited by the Criminal and Traffic Assessment Act (CTAA) and Illinois Supreme Court Rule (SCR) 404.

In 2018, the Illinois General Assembly passed the CTAA, which reformed Illinois' assessments system. A key reform of the Act, implemented through SCR 404, was the creation of criminal assessment waivers to "extend the financial protections offered to indigent civil litigants to their counterparts in the criminal justice system." Statutory Ct. Fee Task Force, *Illinois Court Assessments: Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings* 34 (2016) [hereinafter *Report*].[1] The CTAA and SCR 404 thus prohibited and limited the imposition of criminal and traffic assessments on indigent persons.

Nothing in those laws permits the State to circumvent this prohibition on assessments by requiring them as a term of a negotiated plea agreement. Moreover, the ordinary principles of contract law that undergird plea agreements prohibit terms, like these, that violate public policy. Going forward, this Court should reject any plea terms that purport to require indigent defendants to pay assessments.

[1] Available at: https://www.illinoiscourts.gov/Resources/4b970035-98ba-4110-86fc-60e02b6a126b/2016_Statutory_Court_Fee_Task_Force_Report.pdf.

I. A PLEA AGREEMENT TERM THAT PURPORTS TO IMPOSE ASSESSMENTS ON AN INDIGENT PERSON VIOLATES THE CTAA AND SCR 404.

Imposing assessments on indigent defendants through plea agreements violates the CTAA and SCR 404. Both the plain text and legislative purpose of those laws make clear that assessment waivers are mandatory, with no exception for negotiated pleas.

A. The Plain Text of the CTAA and SCR 404 Prohibits the Imposition of Unlawful Assessments on Indigent Defendants, Including All Defendants Represented by the Public Defender.

The plain text of the CTAA and SCR 404 mandates the waiver of assessments for indigent people, without any exception allowing the imposition of assessments in the context of a negotiated plea. Under the CTAA, courts "shall grant [indigent persons][2] a full assessment waiver exempting [them] from the payment of any assessments" for criminal offenses, 725 ILCS 5/124A-20(b)(1), and "shall grant" indigent persons a waiver of "50% of all assessments" for "traffic and petty offenses" 5/124A-20(b-5)(1).[3] Individuals represented by a public defender "shall be entitled to waiver of assessments . . . without necessity of an Application" for a waiver. Ill. S. Ct. R. 404(e) (eff. Sep. 1, 2023); 5/124A-20(c) ("[T]he procedure for deciding the [assessment waiver] applications[] shall be established by Supreme Court Rule.")

These provisions should be interpreted to require a waiver of assessments across the board, with no exception for negotiated pleas. "The fundamental rule of statutory construction is

[2] The statute defines "indigent person" as "any person who meets one or more of the following criteria:" (1) the individual receives assistance from an enumerated list of means-based governmental public benefits programs; (2) the individual's "available personal income is 200% or less of the current poverty level," subject to an exception; or (3) the individual is "unable to proceed in an action with payment of assessments and [] payment of those assessments would result in substantial hardship to the person or his or her family." 725 ILCS 5/124-20(a).

[3] The statute contains a narrow exception for traffic and petty offenses if an indigent person's "assets that are not exempt under Part 9 [Exemption of Homestead] or 10 [Exemption of Personal Property] of Article XII of the Code of Civil Procedure are such that the [person] is able, without undue hardship, to pay the total assessments." *Id*.

to ascertain and give effect to the legislature's intent," the "best indicator" of which "is the statutory language itself, given its plain and ordinary meaning." *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 12 (citing *Mich. Ave. Nat'l Bank v. County of Cook*, 191 Ill.2d 493, 503–04 (2000); *Ill. Graphics Co. v. Nickum*, 159 Ill.2d 469, 479 (1994)). Notably, 5/124A-20(b)(1) and (b-5)(1) state that "the court *shall* grant" (emphasis added) an indigent person an assessments waiver, and SCR 404(e) explicitly requires that every person represented by a public defender "*shall* be entitled to waiver of assessments" (emphasis added). Both uses of "shall" indicate the intention of the General Assembly and the Illinois Supreme Court to impose a mandatory obligation to waive assessments for indigent persons, who have an already demonstrated inability to pay. *See* 5/124A-20(a)(3). This interpretation of the CTAA and SCR 404 is consistent with the ordinary meaning of "shall," defined as, "[h]as a duty to; more broadly, is required to." *Shall*, *Black's Law Dictionary* (12th ed. 2024). Moreover, this mandatory definition of "shall" prevails in Illinois courts, which hold that "[t]he use of the word 'shall' generally indicates that the legislature intended to impose a mandatory obligation." *Schultz*, 2013 IL 115738, ¶ 16 (citing *People v. Boeckmann*, 238 Ill.2d 1, 15–16 (2010); *Holly v. Montes*, 231 Ill.2d 153, 160 (2008)).

Moreover, neither the CTAA nor SCR 404 contain any exception allowing assessments to be imposed on indigent defendants as a condition of a negotiated plea. *See* 5/124A-20(b)(1). Courts "must read [] statute[s] in the manner in which [they were] written and must not read into [them] exceptions, limitations or conditions that are not already there." *Carroll v. Dep't of Emp. Sec.*, 389 Ill. App. 3d 404, 409 (2009) (citing *Ultsch v. Ill. Mun. Ret. Fund*, 226 Ill.2d 169, 190 (2007)). Accordingly, this Court should not find an unwritten exception in the CTAA or SCR 404 allowing it to deny granting of the waiver.

For these reasons, the plain text of the CTAA and SCR 404 imposes a strict mandate to waive assessments for all indigent people.

B. The Legislative History of the CTAA and SCR 404 Demonstrates That Imposing Assessments on an Indigent Person, Including Through a Plea Agreement, Directly Contravenes the Core Purposes of the Statute.

A negotiated plea that imposes assessments on indigent persons frustrates the core purposes of the CTAA and SCR 404. These purposes are: to avoid the potentially unconstitutional imposition of fees on people unable to pay; to establish a uniform statewide assessments system; and to alleviate the administrative burden on courts from administering assessments on those least able to pay. *See generally Report*; 100th Ill. Gen. Assem., House Proceedings, April 27, 2018, at 5-15 [hereinafter House Proceedings]. "[T]his court has a duty to avoid a construction of the statute that would defeat the statute's purpose or yield an absurd or unjust result." *People v. Latona*, 184 Ill.2d 260, 269 (1998). The Court should thus "keep[] in mind 'the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute[s] one way or another.'" *County of Jackson v. Mediacom Ill., LLC*, 2012 IL App (5th) 110350, ¶ 12 (quoting *People v. Gutman*, 2011 IL 110338, ¶ 12). The Court may look to a statute's legislative history to ascertain legislative intent. *See People v. Pierce*, 367 Ill. App. 3d 203, 206 (2006) (quoting *People v. Whitney*, 188 Ill.2d 91, 97-98 (1999)).

1. A Core Purpose of the CTAA and SCR 404 is to Eliminate the Unjust and Potentially Unconstitutional Practice of Levying Assessments on People Unable to Pay.

The fundamental purpose of the CTAA and SCR 404 is to prohibit the unjust and potentially unconstitutional imposition of assessments on indigent persons. The 2016 Statutory Fee Task Force Report, the direct precursor to the CTAA, stated that "it is unjust and unwise to burden indigent criminal defendants with court assessments that are beyond their ability to

pay[.]" *Report*, at 34.[4] Former State Representative Steven Andersson, the CTAA's primary sponsor and a member of the Task Force, echoed this grave concern in his House floor speech immediately before the General Assembly voted on the bill. He explained that the CTAA would "fundamentally" accomplish multiple purposes, the "most important[]" of which would be "provid[ing] waivers for low income individuals[.]" House Proceedings, at 7.

These concerns reflect the constitutional backdrop behind the CTAA, which casts grave doubt on the constitutionality of imposing fees beyond a person's ability to pay. Citing the federal Bill of Rights[5] and the Illinois Constitution's free access clause, Ill. Const. art. I, § 12 (every person "shall obtain justice by law[] freely"), the Task Force raised the alarm that imposing fees on indigent persons poses "a serious threat to [the] fundamental right of equal access to justice[.]" *Report*, at 7. In other contexts, courts have held unconstitutional fines and fees imposed on indigent people. *See Williams v. Illinois*, 399 U.S. 235, 240-41 (1970) (holding that imprisoning a person solely because they are too poor to pay a fine violates the Fourteenth Amendment and constitutes "an impermissible discrimination that rests on ability to pay"); *Tate v. Short*, 401 U.S. 395, 399 (1971) (holding that converting a fine into a jail term solely because the defendant is indigent violates the Fourteenth Amendment because "[i]mprisonment in such a case is not imposed to further any penal objective" but rather "to augment the State's revenues"); *Bearden v. Georgia*, 461 U.S. 660, 674 (1983) (holding that a court cannot revoke a person's probation for failure to pay fees unless the person had the ability to pay but willfully refused to

[4] This Report led directly to the drafting and passage of the CTAA. House Proceedings, at 6-7 (statements of Representative Andersson) (The CTAA "is a result of the Statutory Fees Task Force . . . [The Task Force] studied the issue to determine how best to resolve the issue. The Result of that is House Bill 4594.").

[5] Specifically, the Task Force cited the U.S. Constitution's protections ensuring equal access to justice, including the right to a jury trial, the right to counsel, and the prohibition against excessive fines. *See* U.S. Const. amends. VI-VIII; *Report*, at 7.

do so); *People v. Harris*, 41 Ill. App. 3d 690, 694 (4th Dist. 1976) (declining to hold the defendant in contempt for failing to pay fees since his failure to pay was due to insufficient funds).

Given this constitutional backdrop, the Illinois Supreme Court, in anticipation of the CTAA's passage, sent a letter to the General Assembly "uniformly recommend[ing]" the statute's adoption and "implicit[ly] threat[ening]" to take matters into its own hands and "declare the fees unconstitutional" if the legislature failed to pass the law. House Proceedings, at 8 (statements of Representative Andersson).[6] In consideration of the Court's stance, the General Assembly passed the CTAA and echoed its concerns regarding the constitutionality of imposing assessments on those with a demonstrated inability to pay. *See id*. at 8, 14 (statements of Representative Andersson and Representative Ammons).

In passing the CTAA, the legislature was also motivated more broadly by the negative consequences that can result from unjustly imposing assessments on indigent people. The Task Force identified that this practice "can have the unintended and counterproductive consequence of burdening a criminal defendant's reentry into society and increasing the potential for recidivism." *Report*, at 31 (citing U.S. Dep't of Health & Hum. Servs., *HHS Poverty Guidelines for 2016* (2016), https://aspe.hhs.gov/poverty-guidelines). Failure to pay assessments can impact credit scores, interfere with efforts to expunge or seal records, and lead to driver's license suspension—impeding one's ability to secure stable housing, employment, and transportation, and successfully reintegrate into society. *See id*.; House Proceedings, at 13 (statements of Representative Andersson) ("So that backlog of expungements that can't be expunged because of the fact that there's outstanding fees[,] that's not going to happen anymore."). Ultimately, these

[6] The Supreme Court's letter is notable because such intervention is a "somewhat rare" occurrence as the "Judicial Branch does not typically weigh in on pending legislation." *Id.*

barriers to reentry may lead "a formerly incarcerated individual [to] return to criminal activity to cover their expenses, including crippling court debt." *Report*, at 31 (citing Ctr. for Just., *Criminal Justice Debt: A Barrier to Reentry*, 27-30 (2010), http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf).

Given these animating goals behind the CTAA, plea agreement terms that impose assessments on indigent persons violate the statute's core purpose. The legislature's intent is especially clear considering that the majority of criminal cases are resolved through a plea bargain. *See* Lily Gleicher & Caitlin Delong, Ill. Crim. Just. Info. Auth., *The Cost of Justice: The Impact of Criminal Justice Financial Obligations on Individuals and Families* (Aug. 1, 2018) (surveying attendees at expungement and sealing events throughout Illinois in 2017 and finding that 72% had resolved their cases through a plea bargain)[7]; Sean Baker, *The Saving Grace of Public Defense? Is the "Client-Choice" Method a Cure-All for Problems That Plague This Overburdened System?*, 50 J. Marshall L. Rev. 307, 330 (2017) ("In Cook County, 86% of criminal cases decided are with a guilty plea[.]"); Sean Rosenmerkel et al., U.S. Dep't of Just., *Bureau of Justice Statistics: Statistical Tables* 1 (2010). Given the "critically important" role of assessment waivers in the CTAA's statutory scheme, the legislature could not have intended them to apply to such a small number of criminal defendants. House Proceedings, at 12 (statements of Representative Andersson). Such a meager result would be "absurd" and "unjust"; it would "defeat the statute's purpose" altogether. *Latona*, 184 Ill.2d at 269.

The statute should thus be interpreted, consistent with its core purpose, to prohibit the imposition of assessments on an indigent person, without any exception allowing for the imposition of assessments in a negotiated plea.

[7] Available at https://icjia.illinois.gov/researchhub/articles/the-cost-of-justice-the-impact-of-criminal-justice-financial-obligations-on-individuals-and-families.

2. Plea Agreements That Impose Assessments on Indigent Persons Frustrate the CTAA's Additional Purposes of Establishing a Uniform Assessments System and Relieving the Courts' Administrative Burden.

The legislature also intended the CTAA to establish a "transparent and uniform" statewide system for the collection of assessments. House Proceedings, at 7 (statements of Representative Andersson). The new system was designed to rectify the old one, which was "dispirit" [sic] and "out of control" since "the clerks of the 102 counties [] collect[ed] the fees in 102 different ways." *Id*. This reform was designed to ensure that an individual's assessments obligation (or lack thereof) would not depend simply on the county in which they are prosecuted.

Allowing plea agreements that impose assessments on indigent persons frustrates this purpose. Right now, the majority of indigent defendants in Pike County are required to pay assessments that similarly situated individuals in other counties are not. Counsel is not aware of any counties outside the Eighth Judicial Circuit that permit the imposition of assessments on indigent persons in the context of negotiated pleas. Chicago Appleseed Center for Fair Courts surveyed 10 counties across northern, central, and southern Illinois and found that all had stopped this practice following the CTAA's enactment.[8] Therefore, the financial consequences of a crime for an indigent person pleading guilty in Pike County are greater than for those in other Illinois counties pleading guilty to the same crime. This variation is precisely the problem the legislature intended to eliminate through the CTAA.

The legislature also intended the CTAA to relieve the courts' administrative burden. The Task Force found that a "relatively small percentage of assessments imposed in criminal cases is ever collected." *Report*, at 31. This finding is unsurprising considering that the vast majority of criminal defendants are indigent. *See* Caroline Wolf Harlow, U.S. Dep't of Just., *Bureau of*

[8] This data was collected anecdotally, and the surveyed counties consisted of Cook, Macon, Christian, Kane, DeKalb, Jackson, McLean, Boone, Champaign, and McHenry Counties.

Justice Statistics: Special Report 1 (2000) ("At felony case termination, court-appointed counsel represented 82% of State defendants in the 75 largest counties"). Therefore, "[c]ompared to any revenue that they generate," assessments impose a "substantial" administrative burden on court clerks since "criminal cases are not closed if assessments have not been paid." *Report*, at 31.

Plea agreements that impose assessments on indigent persons undermine this purpose. Many indigent persons in Pike County who enter plea agreements unsurprisingly have trouble paying off their assessments, which in turn imposes a significant burden upon the time and resources of this Court and its staff. Those who cannot make their regular payments are brought in on multiple payment review hearings and sometimes even probation revocation hearings. Sometimes, the Court extends the term of an individual's probation just to give them more time to finish making payments, further delaying the case's closure and increasing its administrative burden, as well as increasing court costs due to the monthly probation service fee. The result is a system that, in the name of recouping costs, significantly diverts the time, energy, and resources of almost all players in Pike County's criminal court system—including judges, clerks, attorneys, and probation officers.[9]

Therefore, the imposition of assessments on indigent persons through plea agreements violates the CTAA, interpreted in light of its purposes to establish uniformity and reduce the administrative burden on courts.

[9] To the extent that there is concern about raising revenue for the County, the legislature explicitly contemplated the possibility of budget shortfalls caused by mandatory assessment waivers but nonetheless passed the CTAA. Representative Andersson explained that if a governmental body is financially suffering due to the reforms, the legislature can adjust the statute's assessments schedule as needed. *See* House Proceedings, at 11-13.

II. UNDER CONTRACT PRINCIPLES, A PLEA AGREEMENT TERM THAT IMPOSES ASSESSMENTS ON AN INDIGENT PERSON CANNOT BE APPROVED BY THE COURT.

The State's Attorney's Office (SAO) has argued that negotiated pleas that impose assessments on indigent persons are akin to contracts and should be approved by the Court on that basis. But even under contract principles, plea agreement provisions that impose assessments on indigent people are illegal contract terms that violate the public policy set forth in the CTAA and SCR 404. Additionally, although the SAO has previously argued that *People v. Evans*, 174 Ill.2d 320 (1996) and *People v. Wells*, 2024 IL 129402 allow parties to contract around certain statutory requirements in the context of a negotiated plea, the plea terms (and statute) that the court confronts here are fundamentally different from the ones at issue in *Evans* and *Wells*. This Court cannot approve such plea terms on a contract theory

A. Plea Agreement Terms That Impose Assessments on Indigent Persons Are Illegal Contract Provisions That Violate Public Policy.

A negotiated plea agreement term that imposes assessments on an indigent person is an illegal contract provision that violates public policy. Plea agreements are "governed to some extent by contract law principles." *Evans*, 174 Ill.2d at 326. But a contract, or a provision of a contract, is illegal if it "expressly contravenes the law or a known public policy of this State." *Swavely v. Freeway Ford Truck Sales, Inc*., 298 Ill. App. 3d 969, 976-77 (quoting *Holstein v. Grossman*, 246 Ill. App. 3d 719, 726 (1993)). "The public policy of the state is reflected in its constitution, statutes and judicial decisions." *Id*. at 976 (citing *Holstein,* 246 Ill. App. 3d at 725–26). "There is no exception to the rule that a contract which violates a valid statute is void, as the law cannot enforce a contract which it prohibits." *Id*. (quoting *Sibley v. Health & Hosp.'s Governing Comm'n,* 22 Ill. App. 3d 632, 637 (1974)).

Under this doctrine, plea agreement terms that impose assessments on indigent persons are illegal because they "expressly contravene[]" the public policy enacted by the CTAA. *Id*. at 976-77 (citation omitted). It is immaterial that the CTAA does not specifically prohibit plea agreements that impose fees upon indigent people because "[a] statute need not expressly declare a particular contract void or unenforceable" to render the contract illegal. *E & B Mktg. Enters., Inc. v. Ryan*, 209 Ill. App. 3d 626, 629 (1991) (citing *Leoris v. Dicks*, 150 Ill. App. 3d 350 (1986); *American Buyers Club of Mt. Vernon*, 53 Ill. App. 3d 611 (1977); *Zeigler v. Ill. Tr. & Sav. Bank*, 245 Ill. 180 (1910)). The simple fact that the plea terms at issue here have the effect of violating the prohibition on assessments laid down in the CTAA and SCR 404 means that those plea terms are void.

Thus, for example, in *E & B Mktg. Enters., Inc.*, the Court refused to uphold a professional fee-splitting contract that violated the public policy established by the Medical Practice Act, even though that Act did not expressly prohibit such contracts. 209 Ill. App. 3d at 629-30. The Court reasoned that because the Act's plain text prohibited the receipt of fees "for professional services not actually rendered," the parties could not contract around the prohibition. *Id*. at 629-30. As in *E & B*, the CTAA's silence on plea agreements does not mean that prosecutors may contract around its mandate to waive assessments for indigent persons. Allowing this practice would violate the precise public policy the CTAA was enacted to establish: *i.e.* that indigent people should not pay criminal assessments.

Moreover, because this public policy was established to safeguard constitutional rights, *see supra* Sec. I(B)(1), and is not a mere commercial arrangement, the Court should be particularly unwilling to approve such "contractual" agreements. *Cf. Evans*, 174 Ill.2d at 326 (The "underlying contract right [in plea agreements] is constitutionally based and therefore

reflects concerns that . . . run wider than those of commercial contract law.") (quotations and citations omitted).

For these reasons, plea terms that impose assessments on indigent persons are void, unenforceable, and should not be approved by the Court.

B. The Supreme Court's decisions in *Wells* and *Evans* are not to the contrary.

The SAO has previously argued that it is permitted to insist on assessments, despite the mandates of the CTAA and SCR 404, because the Illinois Supreme Court has suggested in a pair of decisions that courts should not readily disturb the terms of a negotiated plea "contract." However, the matter at issue here is fundamentally different from those in *Evans*, 174 Ill.2d 320 and *Wells*, 2024 IL 129402.

In *Evans* and *Wells*, the defendants bargained for a specific punishment in a plea agreement and then, after entering their pleas, sought to reduce those sentences by invoking certain statutes. *See Evans*, 174 Ill.2d at 321-24; *Wells*, 2024 IL 129402, ¶¶ 1-9. The courts in both cases declined to allow the defendants, in effect, two bites at the apple: first, an opportunity to negotiate for a shorter sentence by plea, and then, to invoke sentence-reduction statutes to further reduce the length of their sentences. *See Evans*, 174 Ill.2d at 321-24; *Wells*, 2024 IL 129402, ¶¶ 1-9. These cases have no bearing on the legality of plea terms at issue here, which do not concern punishments or sentences but instead seek to impose illegal assessments across the board as a condition of every negotiated plea in this county. There are several reasons why *Evans* and *Wells* do not support the SAO's practice here:

First, in *Wells* and *Evans*, nothing in the plea agreements violated any law. The negotiated sentences were within the ranges permitted by statute. *See Evans*, 174 Ill.2d at 321-23 (plea agreement recommending 10 years' imprisonment for reckless homicide and concurrent sentences of 11 and five years' imprisonment for armed violence and aggravated unlawful

restraint); *Wells*, 2024 IL 129402, ¶ 1 (plea agreement recommending the minimum sentence with 54 days of credit for time served). Here, by contrast, the SAO asks the Court to approve plea agreements that contain an illegal term that contravenes the CTAA and SCR 404. Nothing in *Wells* or *Evans* suggests that contract law permits parties to enter—or courts to approve—plea agreements that go outside what is authorized by law. A plea agreement imposing assessments on an indigent person is, in this respect, like a plea that would purport to impose a sentence exceeding the statutory maximum, or to exempt an individual convicted of criminal sexual assault from registering as a sex offender,[10] or to alter how much time an individual must spend on mandatory supervised release.[11] Any of these pleas would violate statutory mandates that neither criminal defendants nor the SAO have discretion to bargain over. The same is true with respect to the uniform assessments system established by the CTAA: it creates a mandatory assessments waiver and removes such assessments from the menu of options over which the parties can bargain during plea negotiations. This was not the case in *Wells* and *Evans*.

***Second*,** in *Wells* and *Evans*, the defendants sought relief *after* the Court had already approved their negotiated pleas and thereby brought their "contracts" into force. In both cases, the courts approved the defendants' negotiated plea agreements and sentenced them in accordance with their terms. *See Evans*, 174 Ill.2d at 321-23; *Wells*, 2024 IL 129402, ¶ 1. *Subsequently*, the defendants moved to reconsider or amend their sentences to take advantage of statutes that, they argued, entitled them to further sentence reductions. The Court in both cases rejected that gambit, reasoning that the individuals were "seeking to hold the State to its part of the bargain while unilaterally modifying the sentences to which they had earlier agreed." *Evans*,

[10] 730 ILCS 150/3, 150/2(E)(1) (Those convicted of criminal sexual assault "*shall* . . . register in person and provide accurate information as required by the Illinois State Police.") (emphasis added).
[11] 730 ILCS 5/3-3-8(a), 5/5-8-1(d) (the "mandatory supervised release term . . . *shall* be as follows") (emphasis added).

174 Ill.2d at 327 (refusing to allow the defendants "to negotiate with the State to obtain the best deal possible . . . and then attempt to get that sentence reduced even further by reneging on the agreement."); *Wells*, 2024 IL 129402, ¶ 27 (Mr. Wells could not "unilaterally seek to modify the credit term of the agreement" because "when a defendant enters a negotiated plea of guilty in exchange for specified benefits, such as . . . the promise of a certain sentence or sentencing recommendation, *both the State and the defendant* must be bound by the terms of the agreement.") (emphasis in original) (quoting *People v. Whitfield*, 217 Ill.2d 177, 190 (2005)).

That is not what is happening here. Defendants are asking the Court to strike the illegal assessments terms from their plea agreements *before* approval by the Court—in other words, *before* the contract is brought into existence. Thus, unlike *Wells* and *Evans*, defendants here are not obtaining the benefit of a negotiated plea and then attempting a second bite at the apple. They are seeking the Court's help in the first instance to strike an illegal term.

***Third*,** in *Wells* and *Evans*, the plea terms at issue were the product of a genuine negotiation between the parties, who had negotiated over the length of the sentences they proposed to the Court. But here, the Pike County SAO appears to have a practice of categorically insists on imposing assessments as a condition of every plea. Assessments do not appear to be up for negotiation, and are not traded off against, say, a lighter sentence or reduced charge. Through this practice, the SAO is, in effect, circumventing the mandatory assessments waiver created by the CTAA and SCR 404. Without this Court's intervention to disapprove these plea terms, there is no way for indigent defendants in this county to negotiate around these illegal assessments—except by insisting on trial in every case or completely foregoing the practice of negotiated pleas. The Court should not continue putting indigent defendants to that unlawful choice. *People v. Henderson*, 211 Ill.2d 90, 103 (2004) (It is "well established" that a "circuit court may reject a

plea in the exercise of sound judicial discretion.") (citing *Santobello v. New York*, 404 U.S. 257, 262 (1971); *People v. Peterson*, 311 Ill. App. 3d 38, 45 (1999)); *see* Ill. S. Ct. R. 402(d)(2)-(3) (eff. Jul. 1, 2012).

For these reasons, *Wells* and *Evans* do not control. The prosecution cannot contract around a legislative mandate to waive assessments for indigent defendants.

III. CONCLUSION

Through the CTAA, the Illinois General Assembly established that the court system shall not be funded on the backs of indigent defendants. Plea terms imposing assessments on indigent defendants violate the text and legislative purposes of the CTAA and SCR 404. Such plea terms cannot be endorsed under contract principles because they are illegal and contrary to the public policy enacted by the legislature and Supreme Court Rule. Accordingly, this Court should henceforth strike any terms purporting to impose assessments as part of a negotiated plea with an indigent defendant, including all defendants represented by the Public Defender.

DATED: April 29, 2025

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