



# **Minnesota Court of Appeals**

## **Significant Decisions**

**September 2022-August 2023**

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## **Part I – CIVIL CASES**

### **Administrative Law**

***In re McCulloch*, 980 N.W.2d 599 (Minn. App. Sept. 19, 2022) (A22-0148).**

Section 144.99 of the Minnesota Health Enforcement Consolidation Act of 1993, Minn. Stat. §§ 144.989-.993 (2020), authorizes the Minnesota Department of Health to enforce against a licensee the applicable provisions of an emergency executive order duly promulgated under the Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01-.61 (2020).

***In re Lannon*, 984 N.W.2d 575 (Minn. App. Dec. 19, 2022) (A22-0507).**

A surviving spouse of a public safety officer who dies by suicide is entitled to the death benefit for survivors of officers “killed in the line of duty” under Minn. Stat. § 299A.44 (2022) if the officer’s death resulted from post-traumatic stress disorder (PTSD) caused by performing duties peculiar to a public safety officer.

***Twin City Petroleum & Props., LLC v. Kessler*, 985 N.W.2d 576 (Minn. App. Jan. 17, 2023), *rev. denied* (Minn. Apr. 18, 2023) (A22-0918).**

A petition for review of an administrative penalty order under Minn. Stat. § 116.072, subd. 7(a) (2022), must be dismissed as untimely if the person subject to the order fails both to serve and file the petition within 30 days of receiving the order.

***In re Designation of Ct. of Appeals Judges for Cong. Dists.*, 984 N.W.2d 250 (Minn. App. Jan. 3, 2023) (mem.).**

This administrative order fulfills the statutory requirement that eight judges of the court of appeals be redesignated for Minnesota’s eight congressional districts after each reapportionment. *See* Minn. Stat. § 480A.02, subd. 5 (2022).

***Minn. Auto. Dealers Ass’n v. Minn. Pollution Control Agency*, 986 N.W.2d 225 (Minn. App. Jan. 30, 2023), *rev. denied* (Minn. May 16, 2023), *cert. denied* (Oct. 10, 2023) (A22-0796).**

The Minnesota Pollution Control Agency (MPCA) did not improperly delegate its rulemaking authority to another state when it incorporated by reference California’s motor-vehicle emission standards into Minn. R. 7023.0150-.0300 (2021).

***In re Shakopee Mdewakanton Sioux Community*, 988 N.W.2d 135 (Minn. App. Feb. 27, 2023) (A22-0946).**

1. This court exercises original jurisdiction over declaratory-judgment actions brought under Minn. Stat. § 14.44 (2022), even when the petition challenges an administrative-law judge's decision under Minn. Stat. § 14.381 (2022), and such declaratory-judgment actions are not subject to a time limit.

2. The Minnesota Gambling Control Board's unpromulgated rule interpreting Minn. Stat. § 349.12, subd. 12b(3) (2022), to allow it to approve electronic-pull tabs with open-all functionality is invalid and cannot be used as a basis for agency action.

***Chorolec v. Comm'r of Dep't of Hum. Servs.*, 990 N.W.2d 474 (Minn. App. Apr. 24, 2023) (A22-1302).**

To timely appeal an order of the commissioner of human services under Minn. Stat. § 256.045, subd. 7 (2022), a party must serve the notice of the appeal within 30 days after the commissioner issues the challenged order and must file the notice with the district court. The party need not file the notice with the district court within 30 days after the commissioner issues the challenged order.

***In re SIRS Appeal by Best Care, LLC*, 994 N.W.2d 333 (Minn. App. July 24, 2023), *rev. granted and stayed* (Minn. Oct. 25, 2023) (A22-1688).**

Minnesota Statutes section 256B.064, subdivision 1c (2022), authorizes the Minnesota Commissioner of Human Services to recover funds paid to a Minnesota Health Care Programs vendor when the funds were "improperly paid" as a result of conduct constituting "abuse" as defined by Minnesota Rule 9505.2165, subpart 2 (2021). A determination that abuse has occurred alone does not allow recovery. The statute also requires a determination that the vendor was improperly paid the funds sought to be recovered.

***S. Country Health All. v. Minn. Dep't of Hum. Servs.*, 994 N.W.2d 904 (Minn. App. Aug. 14, 2023), *rev. granted* (Minn. Nov. 28, 2023) (A22-1643).**

I. The Minnesota Department of Human Services may not avoid complying with the unambiguous language of Minn. Stat. § 256B.69, subd. 3a(c) (2022), which concerns county-based purchasing in relation to the state's Medicaid program, by asserting that it has not received federal approval under Minn. Stat. § 256B.692, subd. 9 (2022), if the federal government has not definitively prohibited county-based purchasing, and the department has implemented county-based purchasing in the past.

II. There is no irreconcilable conflict between Minn. Stat. § 256B.694 (2022) and Minn. Stat. § 256B.69, subd. 3a(c), they can be read in harmony, and section 256B.694 does not give the department discretion as to whether to comply with the county-based purchasing requirements of section 256B.69, subdivision 3a(c).

III. Under the unambiguous language of Minn. Stat. § 256B.69, subd. 3a(d) (2022), an entity created by a joint-powers agreement, executed by its member counties to engage in county-based purchasing, is entitled to mediation as set forth in subdivision 3a(d).

***Trails Truck & Travel Plaza, LLC v. Albert Lea Township*, 995 N.W.2d 185 (Minn. App. Aug. 21, 2023) (A23-0048).**

Review by the Minnesota Office of Administrative Hearings (OAH) of a joint resolution for annexation under Minn. Stat. § 414.0325, subd. 1(h) (2022), is limited to determining satisfaction of the conditions and procedural requirements in Minn. Stat. § 414.0325, subds. 1, 1b (2022).

### **Appellate Procedure & Review**

***City of Minneapolis v. Leo A. Daly Co.*, 981 N.W.2d 785 (Minn. App. Oct. 24, 2022) (A22-0923).**

An order granting relief under Minn. R. Civ. P. 60.02(a) and vacating the deemed dismissal of an action under Minn. R. Civ. P. 5.04(a) is not appealable as of right.

***Minn. Dep’t of Corr. v. Knutson*, 981 N.W.2d 774 (Minn. App. Oct. 24, 2022), *rev. denied* (Minn. Jan. 25, 2023) (A21-0300).**

An arbitrator’s decision under Minn. Stat. § 43A.33, subd. 3(d) (2020), is reviewed under the common-law standard of review applicable to a quasi-judicial decision that is not subject to the Minnesota Administrative Procedure Act.

***Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237 (Minn. App. Feb. 6, 2023), *rev. granted* (Minn. May 16, 2023) (A22-0928).**

An order denying a defendant’s motion to dismiss for failure to state a claim upon which relief can be granted is immediately appealable when the defendant’s motion is based on the plaintiff’s lack of standing.

***Goede v. Astra Zeneca Pharms., LP*, 992 N.W.2d 700 (Minn. App. June 12, 2023), *rev. denied* (Minn. Sept. 19, 2023) (A22-1320) (see page 10 for syllabus point 2).**

1. An assertion on appeal by the Minnesota Department of Employment and Economic Development that the decision of an unemployment-law judge should be reversed does not alter this court’s standard of review under Minnesota Statutes section 268.105, subdivision 7(d) (2022).

***14 Cherrywood, LLC v. City of North Oaks*, 993 N.W.2d 287 (Minn. App. June 26, 2023), *rev. granted and stayed* (Minn. Sept. 19, 2023) (A22-1637).**

An alternative writ of mandamus cannot form the basis for awarding mandamus damages under Minnesota Statutes section 586.09 (2022).

## **Civil Procedure**

***Bell v. St. Joseph Mut. Ins. Co.*, 990 N.W.2d 504 (Minn. App. May 1, 2023), rev. denied (Minn. Aug. 8, 2023) (A22-1433).**

When a district court proceeds under Minn. R. Civ. P. 56.06(c) to consider summary judgment on its own initiative, the district court’s notice must identify for the parties the material facts that may not be genuinely in dispute, which requires identification of the issue under consideration for summary judgment.

***Cambria Co. v. M&M Creative Laminants, Inc.*, 995 N.W.2d 426 (Minn. App. Aug. 21, 2023), rev. granted (Minn. Dec. 19, 2023) (A22-0723) (see page 4 for syllabus point 1).**

2. Under Minn. R. Civ. P. 68.01, an unaccepted offer of zero dollars entitles the offeror to recover costs and disbursements as provided in Minn. R. Civ. P. 68.03 if the relief awarded is less favorable to the offeree than the unaccepted offer.

## **Education**

***Special Educ. Complaint 22-027C ex. rel. V.S.*, 981 N.W.2d 201 (Minn. App. Oct. 10, 2022) (A22-0250).**

A school district that offers a student with a disability special-educational services in conformity with the student’s existing individualized education program (IEP) does not violate Minnesota Statutes section 125A.08(b)(1) (2020), which requires a school district to ensure that “all students with disabilities are provided the special instruction and services which are appropriate to their needs,” or the corresponding federal regulation, 34 Code of Federal Regulations section 300.17(d) (2021), which requires such educational services to be “provided in conformity with an [IEP],” when the student does not receive the services made available due to a parent’s rejection of the services and refusal to cooperate with the school district.

***In re Application of Yanez*, 983 N.W.2d 89 (Minn. App. Nov. 28, 2022) (A22-0049).**

To avoid constitutional infirmity, “immoral character or conduct” that is grounds for denial of an application for a teaching license under Minn. Stat. § 122A.20, subd. 1(a)(1) (2020), must relate to professional morals in the occupation of teaching and indicate that the individual is unfit to teach.

***Resol. Relating to Termination & Nonrenewal of Teaching Cont. of a Probationary Tchr.*, 986 N.W.2d 251 (Minn. App. Feb. 13, 2023) (A22-0776).**

Teaching experience in a charter school does not constitute “teaching experience in Minnesota in a single district” for purposes of determining the probationary period of a teacher under the Minnesota Continuing Contract Law, Minn. Stat. § 122A.40 (2022).

## **Contracts**

***Cambria Co. v. M&M Creative Laminants, Inc.*, 995 N.W.2d 426 (Minn. App. Aug. 21, 2023), rev. granted (Minn. Dec. 19, 2023) (A22-0723) (see page 4 for syllabus point 2).**

1. For purposes of the Minnesota Franchise Act (MFA), Minn. Stat. §§ 80C.01-.22 (2022), a payment for a customized or fabricated good at a bona fide wholesale price is not a franchise fee under Minn. Stat. § 80C.01, subd. 9, when the predominant purpose of the parties’ contracts is a finished product and not services.

## **Environmental Law**

***In re City of Cohasset’s Decision on Need for an Env’t Impact Statement for the Proposed Frontier Project*, 985 N.W.2d 370 (Minn. App. Feb. 6, 2023) (A22-0550).**

Preparation of an environmental-impact statement is mandatory under Minnesota Rule 4410.4400, subpart 20 (2021), when a proposed project will eliminate a public waters wetland. Under Minnesota Statutes section 103G.005, subd. 15a (2022), public waters wetlands have two qualifying characteristics—wetland type and minimum acreage. A proposed project will eliminate a public waters wetland if it will deprive the public waters wetland of either of its two qualifying characteristics.

***Keystone Township v. Red Lake Watershed Dist.*, 989 N.W.2d 897 (Minn. App. Apr. 17, 2023), rev. granted (Minn. Aug. 8, 2023) (A22-1163).**

1. Under Minn. Stat. § 103D.625, subd. 4 (2022), a petition to improve a drainage system that is located within the physical boundaries of a watershed district must be filed with the watershed district, regardless of whether the watershed district previously acted as drainage authority for the system. A directive from a county drainage authority to “take over” the system under Minn. Stat. § 103D.625, subd. 1 (2022), is not a prerequisite to the watershed district establishing jurisdiction with respect to the improvement.

2. Proceedings to improve a drainage system under Minn. Stat. § 103D.625, subd. 4, “conform to chapter 103E” when watershed district officers and employees follow the procedures specified in that chapter.



## **Family Law**

***Bayer v. Bayer*, 979 N.W.2d 507 (Minn. App. Sept. 6, 2022) (A21-1663).**

We review for abuse of discretion a district court's determination that a proposed modification of parenting time constitutes a de facto change of custody. Under this standard, if the district court's findings of fact are supported by the evidence, appellate review is limited to assessing whether the district court misapplied the law, or the decision is against logic and the facts on record.

***Easter v. Alyea*, 983 N.W.2d 455 (Minn. App. Dec. 5, 2022), *rev. denied* (Minn. Mar. 14, 2023) (A22-0533).**

If a foreign court awards to a person other than a child's parent what, in Minnesota, would be legal or physical custody of the child, and if that foreign court's determination otherwise satisfies Minnesota's version of the Uniform Child Custody Jurisdiction and Enforcement Act (MUCCJEA), Minn. Stat. §§ 518D.101-.317 (2020), it is proper for a Minnesota court to recognize and enforce that foreign court's child-custody determination even if the person awarded those rights did not also petition a Minnesota court for those rights under Minn. Stat. §§ 257C.01-.08 (2020).

***Nelson v. Nelson*, 983 N.W.2d 923 (Minn. App. Dec. 27, 2022) (A22-0077).**

In calculating a parenting-expense adjustment as part of the determination of a child-support obligation, a district court shall use the court-ordered amounts of parenting time, not the amounts of parenting time actually being exercised.

***Mathison v. Webb*, 987 N.W.2d 597 (Minn. App. Mar. 13, 2023) (A22-0779).**

A grandparent who resided with a grandchild for 12 or more months may petition for visitation rights under Minn. Stat. § 257C.08, subd. 3 (2022), after the child's parent removes the child from the home the grandparent and child shared even if the grandparent no longer resided in the home at the time of removal.

***Backman v. Backman*, 990 N.W.2d 478 (Minn. App. May 1, 2023) (A22-0602).**

On a motion to modify an award of permanent spousal maintenance, this court's opinion in *Madden v. Madden*, 923 N.W.2d 688 (Minn. App. 2019), prevents the district court from finding that the obligee has potential income only if the obligor argues that the obligee failed to make reasonable efforts to increase his or her earning capacity by obtaining additional education or vocational training.

## **Government & Immunity**

***Sterry v. Minn. Dep’t of Corr.*, 986 N.W.2d 715 (Minn. App. Mar. 13, 2023), rev. granted (Minn. June 20, 2023) (A22-0829).**

I. To determine whether the state is vicariously liable for its employee’s acts or omissions under the Minnesota State Tort Claims Act (MSTCA), Minn. Stat. § 3.736 (2022), we presume the definition of “scope of office or employment” in Minn. Stat. § 3.732, subd. 1(3) (2022), is consistent with the common-law understanding of scope of employment.

II. The state is not entitled to the dismissal of tort claims under Minn. R. Civ. P. 12.02(e) when those claims are based on allegations that a corrections officer sexually assaulted an inmate while the corrections officer was on duty performing assigned tasks including supervision of the inmate because evidence may be produced consistent with these allegations showing that the officer was acting within the scope of employment as provided in the MSTCA.

***Snell v. Walz*, 993 N.W.2d 669 (Minn. App. July 10, 2023), rev. granted (Minn. Oct. 17, 2023) (A21-0626).**

The Minnesota Emergency Management Act of 1996, Minn. Stat. §§ 12.01-.61 (2022), authorizes the governor to declare a peacetime emergency based on a public-health emergency such as the COVID-19 pandemic.

## **Insurance Coverage**

***Shardlow Townhomes Ass’n v. Midwest Fam. Mut. Ins. Co.*, 988 N.W.2d 502 (Minn. App. Apr. 10, 2023) (A22-1264).**

A property loss notice generated by a third-party insurance agent at the insured’s direction and on the insured’s behalf constitutes a “written notice of claim” sufficient to start the accrual of preaward interest under Minnesota Statutes section 549.09, subdivision 1(b) (2022).

## **Jurisdiction & Procedure**

***Husky Constr., Inc. v. Gestion G. Thibault, Inc.*, 983 N.W.2d 101 (Minn. App. Dec. 5, 2022), rev. denied (Minn. Mar. 14, 2023) (A22-0467).**

In examining the sufficiency of contacts with the forum state to determine the existence of specific personal jurisdiction over a nonresident defendant, we generally focus on those contacts leading up to and surrounding the accrual of the cause of action.

***Rued v. Comm’r of Hum. Servs.*, 993 N.W.2d 295 (Minn. App. June 26, 2023), rev. granted (Minn. Sept. 19, 2023) (A22-1420).**

A person commencing a proceeding pursuant to Minnesota Statutes section 256.045, subdivision 7 (2022), must serve the notice of appeal on the commissioner of human services and “any adverse party of record.” If the person commencing the proceeding does not serve the notice of appeal on each adverse party of record, the district court does not have subject-matter jurisdiction over the proceeding.

## **Labor & Employment**

***Laliberte v. Dollar Tree, Inc.*, 987 N.W.2d 590 (Minn. App. Mar. 6, 2023) (A22-1031).**

Under the plain language of the Minnesota Whistleblower Act (MWA), Minn. Stat. §§ 181.931-.935 (2022), the civil penalty identified in section 181.935(b) for failing to timely notify an employee of the reasons for the termination of their employment is available only to an employee who was injured by a violation of section 181.932.

***Brisson v. State*, 994 N.W.2d 920 (Minn. App. Aug. 21, 2023), rev. granted and stayed (Minn. Nov. 28, 2023) (A22-1827).**

An inmate who asserts a claim for sex discrimination in the provision of public services under Minnesota Statutes section 363A.12 (2022), arising out of a sexual assault by a corrections officer who had custody of the inmate, is not required to prove that the corrections officer’s employer knew or should have known of the sexual assault to hold the employer vicariously liable.

## **Local Government**

***Zimmer v. Pine Lake Township*, 991 N.W.2d 886 (Minn. App. May 22, 2023) (A22-1606).**

Dedication of a public road that does not meet a township’s standards does not impose on that township an obligation to improve and maintain that road.

## **Probate**

***In re Est. of Zych*, 983 N.W.2d 466 (Minn. App. Dec. 12, 2022) (A22-0227).**

The personal representative of an estate may not sell real property that the testator has specifically devised by will.

***In re Otto Bremer Tr.*, 984 N.W.2d 888 (Minn. App. Jan. 17, 2023), rev. granted (Minn. Apr. 18, 2023) (A22-0906).**

A district court does not abuse its discretion when it removes the trustee of a charitable trust: (1) who has engaged in a series of breaches of trust that collectively constitute “a serious breach of trust” under Minn. Stat. § 501C.0706(b)(1) (2022); or (2) whose repeated improprieties demonstrate that removal is in “the best interest” of the charitable trust and its beneficiaries under Minn. Stat. § 501C.0706(b)(3) (2022).

***In re Hanson Living Tr.*, 986 N.W.2d 1 (Minn. App. Jan. 30, 2023) (A22-0826).**

When the unambiguous terms of a trust instrument provide an exclusive method to amend the trust, Minn. Stat. § 501C.0602 (2022) prohibits consideration of any other method of amending the trust found in another writing, such as a power of attorney.

***Swanson v. Wolf*, 986 N.W.2d 217 (Minn. App. Jan. 30, 2023) (A22-0688).**

Minnesota Statutes section 501C.0204 (2022) dictates that a district court cannot remove a trustee in an in rem proceeding. Rather, the district court must act in an in personam proceeding to remove a trustee.

***Est. of King*, 992 N.W.2d 410 (Minn. App. May 22, 2023) (A22-1262).**

In a probate proceeding involving a nondomiciled decedent, a district court does not abuse its discretion by sua sponte raising the issue of improper venue and dismissing the case without prejudice under Minn. Stat. § 524.3-201 (2022) if the petitioner fails to establish a prima facie case that decedent owned property located in the State of Minnesota at the time of death.

## **Real Estate & Property Rights**

***Cnty. Action P’ship of Scott, Carver & Dakota Cntys. v. Britton*, 982 N.W.2d 404 (Minn. App. Nov. 14, 2022), *rev. denied* (Minn. Apr. 18, 2023) (A22-1014).**

When a tenant appeals a judgment in an eviction action against the tenant for holding over after the expiration or termination of a lease, a district court does not abuse its discretion by requiring the landlord to provide security in accordance with Minn. Stat. § 504B.371, subd. 7 (2020), before issuing a writ of recovery.

***Kuhn v. Dunn*, 990 N.W.2d 491 (Minn. App. May 1, 2023), *rev. granted* (Minn. Aug. 8, 2023) (A22-1298).**

The intestate transfer of a property interest purchased pursuant to a contract for deed is not prohibited by an anti-transfer provision in the contract for deed stating that the purchaser “may not sell, assign, or otherwise transfer [p]urchaser’s interest” without the seller’s consent.

***Hous. & Redevelopment Auth. of St. Cloud v. Royston*, 990 N.W.2d. 730 (Minn. App. May 1, 2023), rev. denied (Minn. Aug. 22, 2023) (A22-1386).**

When a landlord who has initiated an eviction action against a residential tenant cannot find the tenant in the county, Minnesota Statutes section 504B.331(d) (2022) allows service of the summons by posting it in a conspicuous place on the property for not less than one week before the first hearing in the action. But service by posting under section 504B.331(d) is effective only if the following have also occurred not less than one week before the first hearing in the action: (1) there have been two attempts at personal service on two different days, including one attempt between the hours of 6:00 p.m. and 10:00 p.m. and (2) the landlord or landlord's attorney has signed and filed an affidavit with the court stating that the tenant cannot be found or is believed to be out-of-state and that the summons has been mailed to the tenant's last known address or that such an address is unknown to the landlord.

***Hous. & Redevelopment Auth. of Duluth v. Young*, 995 N.W.2d 1 (Minn. App. July 31, 2023) (A22-1645).**

District courts have inherent authority to expunge judicially held eviction records.

## **Remedies**

***State by Cunningham v. Iron Waffle Coffee Co.*, 990 N.W.2d 513 (Minn. App. May 8, 2023) (A22-1292).**

Minnesota Statutes section 588.10 (2022), which restricts district courts from imposing a fine greater than \$250 per day on a person guilty of contempt, applies only to criminal contempt and therefore does not restrict the district court when imposing a sanction for constructive civil contempt. Nor did the district court abuse its discretion by imposing sanctions under its inherent authority based on the party's failure to comply with the district court's orders.

***State v. Schaffer*, 995 N.W.2d 177 (Minn. App. Aug. 7, 2023), rev. granted (Minn. Nov. 14, 2023) (A23-0036).**

A district court awarding attorney fees in an eminent-domain proceeding under Minnesota Statutes section 117.031(a) (2022) is not limited to the amount specified in the landowner's attorney-fee agreement.

## **Torts**

***Aromashodu v. Swarovski N. Am. Ltd.*, 981 N.W.2d 791 (Minn. App. Oct. 31, 2022) (A22-0248).**

The applicability of a qualified privilege in a defamation action based on race discrimination cannot be determined as a matter of law when a genuine dispute of fact exists as to whether the defamatory statement was motivated by discriminatory animus. *Abdul-Haqq v. LaLiberte*, 985 N.W.2d 357 (Minn. App. Jan. 30, 2023), *rev. denied* (Minn. May 16, 2023) (A22-0738).

Minnesota law does not recognize a qualified privilege for defamatory statements made while dispensing unsolicited career advice.

*Berrier v. Minn. State Patrol*, 992 N.W.2d 421 (Minn. App. June 12, 2023), *rev. granted* (Minn. Aug. 22, 2023) (A22-1545).

Minnesota Statutes section 347.22 (2022), which makes a dog owner strictly liable for injuries caused by the dog during an unprovoked attack, does not apply if the dog owner is the State of Minnesota because the statute does not waive the state's sovereign immunity for such claims.

## **Unemployment Benefits**

*Goede v. Astra Zeneca Pharms., LP*, 992 N.W.2d 700 (Minn. App. June 12, 2023), *rev. denied* (Minn. Sept. 19, 2023) (A22-1320) (see page 3 for syllabus point 1).

2. An unemployment-law judge's denial of unemployment benefits based on an applicant's refusal to comply with an employer's COVID-19 vaccination policy violates the Free Exercise Clause of the First Amendment, and must be reversed, if the applicant's vaccine refusal was based on sincerely held religious beliefs. This court will not disturb a factual finding that an applicant's vaccine refusal was based on purely secular reasons, and not sincerely held religious beliefs, if that finding is supported by substantial evidence.

## **PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS**

### **Constitutional Law**

*State v. Trifiletti*, 980 N.W.2d 357 (Minn. App. Sept. 12, 2022), *rev. granted and stayed* (Minn. Jan. 17, 2023), *and stay dissolved* (Minn. Apr. 18, 2023) (A21-1101).

A witness's possible exposure to a contagious virus by itself does not render her unavailable for purposes of the Sixth Amendment's Confrontation Clause if the witness is able to be present.

*Mast v. County of Fillmore*, 993 N.W.2d 895 (Minn. App. July 10, 2023), *rev. granted* (Minn. Oct. 17, 2023), *and stayed* (Minn. Nov. 7, 2023) (A22-1534).

Under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc-2000cc-5 (2018), the government has the burden to demonstrate a compelling state interest in enforcing the challenged law against the particular claimant whose sincere exercise of religion is being substantially burdened.

***State v. Gant*, 996 N.W.2d 1 (Minn. App. Aug. 21, 2023) (A22-1333).**

A criminal defendant must either expressly or impliedly waive the right to counsel before proceeding pro se at a felony sentencing hearing.

***State v. Epps*, 996 N.W.2d 226 (Minn. App. Aug. 28, 2023), *rev. denied* (Minn. Dec. 19, 2023) (A21-0938).**

In a criminal case, a defense attorney's failure to challenge a defendant's competence to proceed is deficient representation if a reasonably skilled attorney would have doubted the defendant's competence under the circumstances.

## **DWI & Implied Consent**

***Underhill v. Comm'r of Pub. Safety*, 989 N.W.2d 909 (Minn. App. Apr. 24, 2023) (A22-1108).**

In a proceeding under section 171.19 of the Minnesota Statutes for judicial review of the suspension of a Minnesota driver's license based on an out-of-state conviction pursuant to section 171.18, subdivision 1(a)(7), a district court may not overturn the suspension on the ground that the out-of-state conviction is based on evidence that was obtained in violation of the licensee's Fourth Amendment rights.

***Nash v. Comm'r of Pub. Safety*, 989 N.W.2d 705 (Minn. App. May. 1, 2023), *rev. granted* (Minn. July 18, 2023) (A22-1238).**

A search-warrant advisory that deviates from the exact wording in Minn. Stat. § 171.177, subd. 1 (2022), is insufficient to sustain the revocation of a person's driving privileges if it is an inaccurate statement of law, misleading, or confusing when considered in its context as a whole.

## **Evidence**

***State v. Ramirez*, 985 N.W.2d 581 (Minn. App. Feb. 13, 2023), *rev. granted* (Minn. Mar. 14, 2023), *and appeal dismissed* (Minn. July 31, 2023) (A22-1490).**

The statutory privileges afforded to medical and mental-health records by Minnesota Statutes section 595.02, subdivision 1(d) and (g) (2022), do not permit disclosures of protected information to a district court for *in camera* review in a criminal prosecution without the consent of the patient or another applicable statutory exception.

## **Guilty Pleas**

***State v. Lawrence*, 982 N.W.2d 772 (Minn. App. Dec. 5, 2022) (A22-0080).**

A guilty plea is not constitutionally valid if the defendant does not personally sign his or her petition to plead guilty, entered pursuant to Minn. R. Crim. P. 15.03, subd. 2, and the record does not otherwise demonstrate the defendant entered a voluntary and intelligent guilty plea.

## **Juvenile Delinquency**

***In re Welfare of D.J.F.-D.*, 986 N.W.2d 17 (Minn. App. Feb. 13, 2023), rev. granted (Minn. App. Apr. 26, 2023) (A22-0654).**

Pursuant to Minnesota Rule of Juvenile Delinquency Procedure 20.01, subdivision 7(A)(2), when a child is found incompetent to proceed in juvenile delinquency proceedings, the state may file more than one notice of intention to prosecute the child following a district court's finding of incompetency. Pursuant to Minnesota Rule of Juvenile Delinquency Procedure 20.01, subdivision 7(A), any such filing extends the suspension of the proceedings for a one-year period, except that the suspension ends earlier if (1) the child regains competency, (2) the district court exercises its discretion to dismiss the proceedings, or (3) the proceedings are mandatorily dismissed because the child ages out of juvenile jurisdiction upon the child's 19th or 21st birthday.

***State v. Thompson*, 995 N.W.2d 415 (Minn. App. Aug. 21, 2023) (A22-1669).**

The grant of district court jurisdiction in Minn. Stat. § 260B.193, subd. 5(d) (2022), which applies to a proceeding alleging an offense committed by an adult prior to the adult's 18th birthday, does not apply if the alleged offense occurred before the adult became 14 years of age.

## **Postconviction**

***Gilbert v. State*, 982 N.W.2d 763 (Minn. App. Nov. 28, 2022), rev. granted (Minn. Feb. 22, 2023) (A21-1560).**

I. If the state asserts that a postconviction claim is procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976), the postconviction court abuses its discretion by granting relief without either explicitly determining that the claim is not procedurally barred or explaining an implied determination to that effect.

II. An expert witness's trial testimony is not false under the first prong of the *Larrison* test for false testimony merely because it is inconsistent with the posttrial testimony of a different expert.

***Aery v. State*, 989 N.W.2d 363 (Minn. App. Mar. 27, 2023) (A22-1123).**



A petition for an order declaring eligibility for compensation based on exoneration under Minn. Stat. § 590.11 (2022) is a postconviction proceeding for which no filing fee or order granting in forma pauperis status is required.

***Brouillette v. State*, 994 N.W.2d 322 (Minn. App. July 10, 2023), rev. granted (Minn. Sept. 27, 2023) (A23-0020).**

If no direct appeal is filed, the two-year statute of limitations for filing a petition for postconviction relief under Minnesota Statutes section 590.01, subdivision 4(a) (2022), does not restart when a district court executes an imposed but stayed sentence.

## **Pretrial Procedure**

***Houck v. Houck*, 979 N.W.2d 907 (Minn. App. Sept. 6, 2022) (A22-0174).**

A district court abuses its discretion by not granting a requested hearing when presented with a harassment-restraining-order (HRO) petition unless the petition is without merit.

***State v. Thompson*, 988 N.W.2d 149 (Minn. App. Mar. 20, 2023), rev. denied (Minn. June 20, 2023) (A22-0737).**

The defendant bears the burden of proof in a contested competency proceeding under Minn. R. Crim. P. 20.01 when the defendant asserts their own competence.

***State v. Abdus-Salam*, 988 N.W.2d 493 (Minn. App. Apr. 3, 2023), rev. granted (Minn. July 18, 2023) (A22-1551) (see page 16 for syllabus point 2).**

1. A charge of second-degree riot under Minnesota Statutes section 609.71, subdivision 2 (2020), can survive a motion to dismiss for lack of probable cause over the defendant's assertion that cars are not dangerous weapons under section 609.02, subdivision 6 (2020), if the state presented facts showing that the defendant knew that the cars would be driven with passengers hanging from them and in a reckless manner dangerously close to onlookers during an illegal intersection "take-over."

## **Probation**

***State v. Redford*, 986 N.W.2d 257 (Minn. App. Feb. 13, 2023) (A22-0696).**

Under Minn. Stat. § 609.14, subd. 1 (2016), the district court must take two steps to initiate probation-revocation proceedings: (1) issue an order revoking the stay of execution and (2) issue a warrant to take the defendant into custody or a summons for the defendant to appear in court.

***State v. Fortner*, 989 N.W.2d 368 (Minn. App. Apr. 10, 2023) (A22-1459).**

When determining whether to revoke probation and order imprisonment, a district court must independently determine whether revocation and imprisonment are appropriate under the applicable legal standards and is not bound by a joint recommendation of the parties and the probation department to continue the offender on probation.

***State v. Smith*, 994 N.W.2d 317 (Minn. App. July 10, 2023), rev. denied (Minn. Sept. 27, 2023) (A22-1715).**

When a defendant convicted of first-degree criminal sexual conduct (penetration, victim under 16, significant relationship, multiple acts over time) has a probation condition of no contact with females under 18, and that defendant has repeated contact with a female under 18, a district court does not abuse its discretion when it determines that the defendant's need for confinement outweighs the policies favoring probation because confinement is necessary to protect the public from further criminal activity by the defendant.

### **Search & Seizure**

***State v. Schell*, 994 N.W.2d 326 (Minn. App. July 24, 2023), rev. denied (Minn. Oct. 25, 2023) (A22-1115).**

When law enforcement lawfully impounds a motor vehicle after a search for firearms under the automobile exception reveals controlled substances, law enforcement retains the authority to further search the vehicle and any containers in it that may contain firearms or controlled substances while the vehicle remains in the custody and control of law enforcement and no facts or circumstances suggest that the search has become less reasonable in the six days following the vehicle's impoundment.

### **Sentencing & Restitution**

***State v. Musse*, 981 N.W.2d 216 (Minn. App. Oct. 17, 2022), rev. denied (Minn. Dec. 28, 2022) (A22-0121).**

Denial of a defendant's request for a downward durational sentencing departure for second-degree intentional murder was not an abuse of discretion where the defendant fired approximately 15 shots at the victim with a handgun, striking the victim approximately six

times, in a confrontation that arose at a public mall after the victim cut in line in front of the defendant at a tea-shop.

***State v. Vanengen*, 983 N.W.2d 479 (Minn. App. Dec. 19, 2022), rev. granted (Minn. Mar. 14, 2023) (A22-0105).**

An aggravated sentence for criminal sexual conduct against a sleeping victim may be based on the offense occurring within the victim’s zone of privacy when it is committed in the victim’s own bedroom.

***State v. Snyder*, 984 N.W.2d 590 (Minn. App. Jan. 17, 2023), rev. granted (Minn. Mar. 28, 2023) (A22-0318).**

The imposition of a lifetime period of conditional release does not constitute a punishment of life imprisonment for purposes of rule 17.01, subdivision 1, of the Minnesota Rules of Criminal Procedure, and the underlying offense need not be prosecuted by indictment.

***State v. Woolridge Carter*, 986 N.W.2d 7 (Minn. App. Feb. 13, 2023), rev. granted (Minn. May 16, 2023) (A22-0164).**

Guideline 2.B.2.a of the Minnesota Sentencing Guidelines (Supp. 2019) authorizes a district court to assign one custody-status point to a defendant who committed the present offense while on probation after pleading guilty to another felony charge, even if the prior guilty plea resulted in a stay of adjudication rather than a conviction.

***State v. White*, 996 N.W.2d 206 (Minn. App. Aug. 28, 2023), rev. granted (Minn. Nov. 28, 2023) (A23-0126).**

1. The procedural and timing requirements for a defendant challenging a restitution award under Minn. Stat. § 611A.045, subd. 3 (2022), are not jurisdictional.

2. Life-insurance proceeds that a murder victim’s family receives are not an economic benefit conferred by the defendant and should not be considered in determining restitution and the amount of economic loss sustained by the victim as a result of the offense under Minn. Stat. § 611A.045, subd. 1(a)(1) (2022).

## **Substantive Criminal Law**

***State v. Paulson*, 984 N.W.2d 902 (Minn. App. Jan. 23, 2023), rev. denied (Minn. Apr. 18, 2023) (A22-1243).**

1. A group of persons collectively participating in or authorizing a pattern of criminal activity and deriving proceeds from that activity is an “enterprise” within the

meaning of the Racketeer Influenced and Corrupt Organizations (RICO) Act, Minn. Stat. §§ 609.901–.912 (2018).

2. An enterprise under the RICO Act can exist within a corporation that is otherwise conducting lawful activities and is unaware of the criminal activity of a group of persons in the corporation.

***State v. Lehman*, 985 N.W.2d 365 (Minn. App. Jan. 30, 2023), rev. granted (Minn. Apr. 26, 2023) (A22-0200).**

A conviction for knowingly permitting a child to ingest methamphetamine under Minn. Stat. § 152.137, subd. 2(b) (2020), does not require proof that the defendant knew the victim’s age.

***State v. Abdus-Salam*, 988 N.W.2d 493 (Minn. App. Apr. 3, 2023), rev. granted (Minn. July 18, 2023) (A22-1551) (see page 13 for syllabus point 1).**

2. If a car is used in a manner that qualifies it as a dangerous weapon under Minnesota Statutes section 609.02, subdivision 6, the person so using the car during a riot is “armed with a dangerous weapon” under the second-degree riot statute, section 609.71, subdivision 2.

***State v. Chauvin*, 989 N.W.2d 1 (Minn. App. Apr. 17, 2023), rev. denied (Minn. July 18, 2023) (A21-1228) (see page 17 for syllabus point I).**

II. A police officer can be convicted of second-degree unintentional felony murder for causing the death of another when the officer uses unreasonable force constituting third-degree assault to effect a lawful arrest.

***Tichich v. State*, 989 N.W.2d 692 (Minn. App. Apr. 17, 2023), rev. granted (Minn. July 18, 2023) (A22-1063).**

Guilty verdicts for completed third-degree criminal sexual conduct, Minn. Stat. § 609.344, subd. 1(d) (2016), and attempted third-degree criminal sexual conduct, Minn. Stat. § 609.17, subd. 1 (2016), are not legally inconsistent.

***Isenhower v. Isenhower*, 993 N.W.2d 91 (Minn. App. June 26, 2023) (A22-1225).**

A domestic abuse no contact order (DANCO) is not an order for protection (OFP) for purposes of issuing a subsequent OFP pursuant to Minnesota Statutes section 518B.01, subdivision 6a (2022).

***Wocelka v. State*, 995 N.W.2d 12 (Minn. App. July 31, 2023), rev. granted (Minn. Nov. 28, 2023) (A22-1239).**

“Sexual contact” in Minnesota Statutes section 609.341, subdivision 11(a)(i) (2014), includes an actor touching a complainant’s intimate parts using a handheld object. As we announced when we expressed our holding in *State v. Ohrtman*, 466 N.W.2d 1, 4 (Minn. App. 1991), in defining touching as “contact primarily by hand or fingers or other organ used for feeling,” we did not intend to say that touching is always so limited.

***State v. Gutzke*, 996 N.W.2d 219 (Minn. App. Aug. 28, 2023), rev. denied (Minn. Dec. 19, 2023) (A22-1444).**

A motorist does not “read an electronic message” as prohibited under Minnesota Statutes section 169.475, subdivision 2(a)(1) (2020), or “engage in a cellular phone call” as prohibited under subdivision 2(a)(2) (2020), by picking up his cellphone and viewing the caller-identification information of an incoming call.

## **Trial Procedure**

***State v. Olson*, 982 N.W.2d 491 (Minn. App. Nov. 21, 2022) (A21-1742).**

The circumstantial-evidence standard of review is applied by the court on appellate review; a fact-finder is not required to apply that standard when determining whether the state has proved a defendant’s guilt beyond a reasonable doubt at trial.

***State v. Chauvin*, 989 N.W.2d 1 (Minn. App. Apr. 17, 2023), rev. denied (Minn. July 18, 2023) (A21-1228) (see page 16 for syllabus point II).**

I. When a criminal defendant moves to change venue, continue trial, or sequester the jury on the grounds that publicity surrounding the trial created either actual or presumed juror prejudice, a district court does not abuse its discretion by denying the motions if it takes sufficient mitigating steps and verifies that the jurors can set aside their impressions or opinions and deliver a fair and impartial verdict.