No. 124965

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- PATRICK A. LEGOO Defendant-Appellant	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-16-0667. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 16 CM 530. Honorable H. Chris Ryan, Jr. Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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POINT AND AUTHORITIES

Patrick Legoo, who was charged with violating 720 ILCS 5/11-9.4-1(b), which prohibits those convicted of certain child sex offenses from entering public parks under any circumstances, was exempt from being prosecuted or convicted of that charge because section 11-9.3(a-10) of that same article excludes from prosecution a parent who is present in a public park when that offender's minor child is also in the park, as in the instant case.

NATURE OF THE CASE

Following a bench trial, Patrick A. Legoo was convicted of unlawful presence of a child sex offender in a public park and was sentenced to two (2) years' conditional discharge and 30 days in the county jail (C15; R39). On appeal, the Illinois Appellate Court, Third Judicial District, affirmed the defendant's conviction in a published opinion. *People v. Legoo*, 2019 IL App (3d) 160667, ¶ 14. The Appellate Court found that although "there is overlap" between two sections of the Article governing "Vulnerable Victim Offenses" in Section 11 of the Criminal Code of 2012 – one of which (section 11-9.3(a-10)) states that it is unlawful for a child sex offender to be present in a public park "when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds," while the other (section 11-9.4-1(b)) simply prohibits sexual predators or child sex offenders from being present in public parks – there are "clear differences" in the penalties, the list of offenders who are governed by the two sections, and the acts that are proscribed. *Legoo*, 2019 IL App (3d) 160667, ¶13. The Appellate Court concluded that although "this statutory scheme may not be the cleanest means of achieving its desired end, there is no reason to read the exception from section 11-9.3(a-10) into section 11-9.4-1(b)," and held that the circuit court did not err when it convicted Legoo of being a sex offender in a park. *Legoo*, 2019 IL App (3d) 160667, ¶¶ 13, 14.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

WHETHER THE STATUTE THAT CRIMINALIZES A CHILD SEX OFFENDER'S MERE PRESENCE IN A PARK UNCONSTITUTIONALLY CONFLICTS WITH A SECTION OF THE SAME ARTICLE THAT EXCEPTS FROM PROSECUTION A CHILD SEX OFFENDER WHO IS PRESENT IN A PUBLIC PARK AT THE SAME TIME AS HIS MINOR CHILD.

STATUTES INVOLVED

720 ILCS 5/11-9.3(2016) Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited.

. . . .

(a-10) It is unlawful for a child sex offender to knowingly be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds.

. . . .

(f) Sentence. A person who violates this Section is guilty of a Class 4 felony.

720 ILCS 5/11-9.4-1(b)(2016) Sexual predator and child sex offender; presence or loitering in or near public parks prohibited.

. . . .

(b) It is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park.

. . . .

(d) Sentence. A person who violates this Section is guilty of a Class A misdemeanor, except that a second or subsequent violation is a Class 4 felony.

STATEMENT OF FACTS

The defendant, Patrick Legoo, was charged by information with violating section 11-9.4-1(b) of the Criminal Code of 2012, which makes it unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park. 720 ILCS 5/11-9.4-1(b) (2016). The information alleged that Legoo was a child sex offender, and that he had been knowingly present in a public park in Mendota, Illinois (C1). The defendant waived his right to a jury trial (C9).

The matter proceeded to a bench trial before the Honorable H. Chris Ryan, Jr. (R1-29). David Lawson, a detective sergeant with the Mendota Police Department, testified that one May evening in 2016, he attended his grandson's T-ball game at Strauss Park in Mendota (R4). After he was approached by a parent, Lawson realized that Legoo, with whom Lawson was familiar, was riding his bicycle through the area surrounding the three baseball diamonds at the park (R5-7). Believing that Legoo was a registered sex offender, Lawson called the Mendota Police Department (R7).

Officer Kevin Corrigan went to Legoo's house that night (R11). When asked, Legoo stated that he had gone to the park that evening to look for his son (R12-13). Legoo did not know that he was in violation of his registry (R12). After the officers testified, the court took judicial notice of a certified copy of the defendant's conviction, in 2006, of criminal sexual abuse (R14-15). The State then rested (R15).

Defense counsel moved for a directed finding (R15). Counsel argued that another section of the Act governing sex offenses, section 11-9.3, exempts the presence of a sex offender in a public park when that offender's minor child is

also in the park (R16). Counsel noted that the provision that allows a parent who is looking for his minor child to enter a park conflicts with the provision under which Legoo was charged (R16). The circuit court denied the defendant's motion (R17).

The defendant's son testified that he was watching a baseball game in May of 2016, when his dad came to the park and told him to go home (R19). Legoo's son refused to leave and Legoo left (R19).

Legoo also testified that he had ridden "over by the park looking for [his] son," stopped when he saw him and told him to go home because it was getting late (R22). Legoo's fiancee could not have gone to the park to get Legoo's son because she was out of town (R24). When his son refused, Legoo rode his bike home (R22). He spent less than five minutes in the park (R23).

After the defendant rested his case, the State argued. The State first noted that it had proved each of the elements of the offense (R25). The State asserted that section 11-9.3 does not provide a defense because that section relates to a felony offense, while Legoo was charged under a misdemeanor provision (R25). Defense counsel argued that it "doesn't make any sense" when there are conflicting statutes, one of which says a child sex offender cannot be charged with a felony if he enters a park to look for his own minor child, but another makes the mere presence of a child sex offender a misdemeanor (R26).The circuit court noted that one provision of the article governing sex offenses allows a child sex offender to go on park grounds and communicate with a child under the age of 18 if the offender is the guardian of a child under 18, but the provision under which the defendant was charged strictly forbids one's presence in the park (R28). Judge Ryan stated

that the conflict was "ridiculous, but that's the way it is" (R28). As a result, the circuit court was convinced beyond a reasonable doubt that the defendant was guilty of the charged offense. After initially refusing to schedule a sentencing hearing, the court ordered the preparation of a "short form P.S.I." (R28).

At the outset of the sentencing hearing, the defendant requested that the guilty finding be vacated because of the conflict in the statutes (R33-34). The State asserted that there "is no conflict at all" because while the defendant "certainly would have had a defense to the Class 4 felony had he been charged with that Class 4 felony, that is not relevant to this because the legislature said that regardless of that Class 4 charge, if you are a child sex offender and you're in a park, regardless of what you're doing there, it's a Class A misdemeanor which is what he has been charged with and what he has been convicted of" (R34). The court denied the defendant's motion to vacate (R35).

When he imposed sentence, Judge Ryan stated as follows:

> "[w]hen it's sex offenders in the park, I get this conflicting statute argument all the time and nobody bothers to straighten it out for us. Well, this time I'm going to encourage it to be done so we can put this thing to bed. I'm going to sentence this gentleman to the county jail, but I will stay the execution of the sentence if he chooses to file an appeal until the appeal has been ruled upon so that maybe somebody can help us out so I don't have to hear this any more about what's – what the law is" (R39).

The defendant then filed a written motion to vacate the court's finding (C18-19). This motion was also denied by the court (C21; R49). A timely notice of appeal was filed (C22). The Office of the State Appellate Defender was appointed to represent the defendant on appeal (C23; R50).

On direct appeal, the defendant argued that because section 9.3 of Article

11 states that it is unlawful for a child sex offender to be present in a public park "when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds," Legoo could not be prosecuted under another section of the same Article, section 11-9.4-1, which prohibits, without exception, sexual predators or child sex offenders from being present in public parks. *People v. Legoo*, 2019 IL App (3d) 160667, ¶¶1, 8. The Appellate Court, Third District, quickly concluded that although "there is overlap between these two statutes," there are "clear differences" in the penalties, the list of offenders who are governed by the two sections, and the acts that are proscribed. *Legoo*, 2019 IL App (3d) 160667, ¶13.The Appellate Court concluded that although "this statutory scheme may not be the cleanest means of achieving its desired end, there is no reason to read the exception from section 11-9.3(a-10) into section 11-9.4-1(b)," and held that the circuit court did not err when it convicted Legoo of being a sex offender in a park. *Legoo*, 2019 IL App (3d) 160667, ¶¶ 13, 14.

This Court allowed leave to appeal on September 25, 2019.

ARGUMENT

PATRICK LEGOO, WHO WAS CHARGED WITH VIOLATING 720 ILCS 5/11-9.4-1(b), WHICH PROHIBITS THOSE CONVICTED OF CERTAIN CHILD SEX OFFENSES FROM ENTERING PUBLIC PARKS UNDER ANY CIRCUMSTANCES, WAS EXEMPT FROM BEING PROSECUTED OR CONVICTED OF THAT CHARGE BECAUSE SECTION 11-9.3(a-10) OF THAT SAME ARTICLE EXCLUDES FROM PROSECUTION A PARENT WHO IS PRESENT IN A PUBLIC PARK WHEN THAT OFFENDER'S MINOR CHILD IS ALSO IN THE PARK, AS IN THE INSTANT CASE.

Standard of Review

De novo review is properly applied to the purely legal question of statutory construction. *People v. Burns*, 2015 IL 117387, ¶ 19; *People v. Amigon*, 239 Ill. 2d 71, 84 (2010). To the extent that a statute must be construed so as to avoid a constitutional violation, *de novo* remains the proper standard of review. *Miller v. Rosenberg*, 196 Ill.2d 50, 57 (2001).

Argument

After the defendant – who had been convicted of a child sex offense nearly nine years earlier – rode his bicycle on a sidewalk in a Mendota park while looking for his son, who was watching a baseball game at one of the diamonds in the park, he was charged with, and convicted of, violating section 9.4-1(b) of Article 11 of

the Criminal Code of 2012, which states: "[i]t is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park." 720 ILCS 5/11-9.4-1(b) (2016). At trial, the defendant argued that he was authorized to be in the park by another section of Article 11, which states:

> "[i]t is unlawful for a child sex offender to knowingly be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, *unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds* "(emphasis added). 720 ILCS 5/11-9.3(a-10)(2016).

The circuit court considered it "ridiculous" that one section of Article 11 permitted child sex offenders to approach a child in a public park, but under the provision elected by the State, Legoo could not even "be in the park" (R28). Nonetheless, the trial judge entered a judgment of conviction against Legoo (R28). Thus, the question presented in this case is whether sections 9.3(a-10) and 9.4-1(b) of Article 11 of the Criminal Code should be read with reference to one another so as to exclude from prosecution under either section a parent such as Legoo who enters a public park while looking for his minor child who is in fact present in the park. The answer is that sections 11-9.3(a-10) and 11-9-4-1(b) must be read together both so that the Legislature's aims can be met, and because to interpret the statutes otherwise renders the latter section unconstitutional as applied to the defendant, because it interferes with his fundamental right to protect and raise his child.

The Legislative Histories of Sections 11-9.3(a-10) and 11-9.4-1(b), Demonstrate that the Legislature Intended for both Sections to be Read Together so as to Protect Children from Convicted Sex Offenders While Still Preserving the Families of Convicted Sex Offenders.

When the legislative histories of section 11-9.3 and section 11-9.4-1 – as well as that of repealed section 11-9.4, which was incorporated into section 11-9.3 when the Legislature sought to consolidate numerous statutes so as to create clarity and simplicity – are thoroughly considered, it is clear that the statutes are designed to be read together, and that section 11-9.3 excludes from prosecution a child sex offender who, like defendant Legoo, was looking for his minor child, who was present in the park. A review of the legislative histories of these sections further demonstrates that the Legislature intended not just to protect children from sex offenders, but to also protect a parent's fundamental right to raise his child, a goal which the Legislature promoted by specifically allowing child sex offenders to be present at public schools and in public parks when their minor children are also present. Prohibiting a child sex offender from being present in a public park when his child is also present defeats the purpose of the statute and potentially leaves the offender's own child unprotected. Therefore, this Court should hold that section 11-9.3(a-10) exempts from prosecution child sex offenders who enter a public park when their minor children are present, and reverse Patrick Legoo's conviction.

"The controlling principles of statutory construction are well settled." *Knolls Condominium Ass'n v. Harms*, 202 Ill.2d 450, 458 (2002). When construing a legislative enactment, a court should ascertain and give effect to the overall intent of the drafters. *Villegas v. Board of Fire & Police Commissioners*, 167 Ill.2d 108,

123 (1995). In determining the intent of the legislature, reviewing courts are not confined to a literal examination of a statute's language; rather, it is proper to consider the history and course of the legislation. *People v. Pronger*, 118 Ill.2d 512 , 520 (1987). When construing a statute, the court must consider the statute in its entirety, keeping in mind the subject it addresses and the Legislature's apparent objective in enacting it. See *People v. Davis*, 199 Ill.2d 130, 135-136 (2002) (Court examined the Criminal Code, the Firearm Owners Identification Card Act and the Air Rifle Act to determine if a BB gun was meant to be considered a "firearm"). A cardinal rule of statutory construction thus ordains that sections in *pari materia* should be considered with reference to one another so that both sections may be given harmonious effect. *People v. Scheib*, 76 Ill.2d 244, 250 (1979). Moreover, a "fundamental rule of statutory construction is that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied." *People v. Botruff*, 212 Ill.2d 166, 175 (2004).

The legislative history and course of section 11-9.3, former section 11-9.4, and section 11-9.4-1 demonstrate that the legislature intended to exclude from prosecution child sex offenders who are in a public park at the same time as their minor children. In the instant case, the prosecutor stated that she did not find that section 11-9.4-1(b) had "any reference to" section 11-9.3 (R48). However, the histories of section 11-9.3 and section 11-9.4-1, as well as that of section 11-9.4 – which was repealed when it was incorporated into section 11-9.3 in 2011, just six months after section 11-9.4-1 took effect – demonstrate that sections 11-9.3 and 11-9.4-1 are inextricably intertwined with one another, and must be read together so as to effectuate the purposes for which the major sex offenses law was enacted. 720 ILCS 5/11-0.1, *et seq.* (2016)

Section 11-9.3 was initially added to the Criminal Code in 1998 as section 11-9.2, but was renumbered that same year. 720 ILCS 5/11-9.3 (1998, 1999). Section 11-9.3 made it unlawful for a sex offender to be present in or on school property when persons under the age of 18 were present in the building or on the grounds unless the offender was a parent or guardian of a student who was present on the grounds or the offender had the permission of a school administrator. 720 ILCS 5/11-9.3(a)(1998). It was also unlawful for a sex offender to loiter within 500 feet of school property when persons under the age of 18 were present in the building or on the grounds, again unless the offender was a parent or guardian of a student who was present on the grounds or the offender had the permission of a school administrator. 720 ILCS 5/11-9.3(b)(1998).

Section 11-9.4 was added to the Criminal Code two years after section 11-9.3 was enacted. 720 ILCS 5/11-9.4 (2000). Section 11-9.4 made it unlawful for a sex offender to be present in a public park when persons under the age of 18 were present and to approach, contact or communicate with a child unless the offender was a parent or guardian of a child present on the grounds. 720 ILCS 5/11-9.4(a) (2000). And, unless the offender was a parent or guardian of a student who was present on the grounds, it was unlawful for a sex offender to loiter within 500 feet of park property when persons under the age of 18 were present in the building or on the grounds. 720 ILCS 5/11-9.4(b) (2000). A third provision made it unlawful for a child sex offender to knowingly operate, work at or volunteer at a facility providing programs exclusively directed toward persons under the age of 18. 720 ILCS 5/11-9.4(c) (2000). A person who violated section 11-9.4 was guilty of a Class 4 felony. 720 ILCS 5/11-9.4(d) (2000).

Over the course of the next ten years, the Legislature added several more subsections to section 11-9.4, including residency restrictions. See 720 ILCS 5/11-9.4(b-5) (2001) (sex offender prohibited from living within 500 feet of a playground); 720 ILCS 5/11-9.4(b-6) (2002) (prohibition against sex offenders living within 500 feet of their victim); 720 ILCS 5/11-9.4(c-6) (2009) (prohibiting sex offenders from providing services to minors within any residence); 720 ILCS 5/11-9.4(c-6, 7) (2010) (prohibiting sex offensers from renting property to families with children). In 2008, it became unlawful for a child sex offender to knowingly work, manage, be employed by or be associated with a county fair when persons under the age of 18 were present. 720 ILCS 5/11-9.4(c-5) (2008). Effective January 1, 2010, child sex offenders were prohibited from operating ice cream trucks, emergency vehicles or rescue vehicles. 720 ILCS 5/11-9.4(c-8) (2010). Another enactment in 2010 prohibited sex offenders from communicating with persons under the age of 18 via the Internet, unless the minor was the child of the offender. 720 ILCS 5/11-9.4(b-7) (2010).

Thus, as of the beginning of 2010, sections 11-9.3 and 11-9.4 were part of a coordinated and comprehensive plan to limit child sex offenders from having unsupervised access to minor children. Notable in each section, the Legislature evinced a clear intent that the general protections accorded in Article 11 were not to interfere with a parent's right to have contact with his or her own child. Section 11-9.3, for example, which pertained to schools, sets forth numerous assurances that parents who had previously been convicted of a child sex offense nonetheless had the right to be present at school functions involving their children. And, most relevant to the instant case, section 11-9.4 clearly established that parents could be present on or within 500 feet of a public park if and when their children

were at the park. 720 ILCS 5/11-9.4(a) and (b) (2010). By allowing parents who were child sex offenders to be present in parks where their children were also present, the Legislature not only provided safe zones for children, but also preserved what has long been recognized as among the most fundamental of rights: a parent's liberty interest in raising and caring for his or her children. See *In re N.G.*, 2018 IL 121939, ¶¶24, 26 (the Court recognized that a "natural parent's right to the care of his or her child is, in fact, an interest far more precious than any property right protected by" the due process clause).

As the above history shows, Sections 11-9.3 and 11-9.4 each initially governed a single subject, but evolved to cover several different areas. At the same time, a project referred to as the "CLEAR" (Criminal Law Edit, Alignment and Reform) Initiative sought to give laypeople better access to the Criminal Code to help them better obey the law; provide judges and lawyers with an easier to understand and easier to apply set of rules; reduce disputes over the Criminal Code, thus reducing costly re-trials, court delays, mistakes, and appeals; reduce the Criminal Code's size; improve the Criminal Code's indexing; and give policy makers a better understanding of the implications of their proposed amendments. Timothy P. O'Neill, The CLEAR Initiative and Mental States: 1 ½ Problems Solved, 41 J. Marshall L. Rev 701, fn. 4 (2008). In 2010, the Legislature undertook a re-editing of the Criminal Code as part of the CLEAR Initiative; many of the Code's provisions were moved to different parts of the Code to improve its internal organization. 96th Ill.Gen. Assem., Senate Proceedings, December 1, 2010, at 10 (statements of Senator Dillard). This re-editing of the Criminal Code consolidated many current criminal offenses that had been set out in separate sections into a single section

in an effort to eliminate redundant language and "bring related provisions together for clarity." 96th Ill. Gen. Assem., Senate Proceedings, December 1, 2010, at 10 (statements of Senator Dillard). It repealed some existing criminal offenses in favor of covering those offenses with a general provision or an offense. 96th Ill.Gen. Assem., Senate Proceedings, December 1, 2010, at 11 (statements of Senator Dillard).

In this way, sections 11-9.3 and 11-9.4 were consolidated, effective July1, 2011. Each of the prohibitions and exemptions previously contained in section 11-9.4, specifically including the exceptions that allowed child sex offenders who were parents of children present in a park to themselves be present in the park or within 500 feet of the park (subsections (a-10), and (b-2)), were moved to section 11-9.3, and section 11-9.4 was repealed, effective July 1, 2011. 720 ILCS 5/11-9.3 (2011 Supp.). Section 11-9.3 also added sexual predators to the group of offenders to whom its prohibitions applied (See 720 ILCS 5/11-9.3(d)(a)(iii) (eff, July 1, 2011). As a result, the provision that made it unlawful for a child sex offender to knowingly be present in a public park and to approach, contact or communicate with a child under 18 years of age if the offender's child under 18 years of age is present in the park came to be set forth solely in section 11-9.3. 720 ILCS 5/11-9.3(a-10, b-2) (2011). Taking the history and evolution of section 11-9.3 into consideration, it is clear that the legislature intended to protect children from being approached by child sex offenders in public parks while at the same time protecting the parent-child relationship, just as section 11-9.3 protected children in schools while still allowing parents to be involved in school activities.

Unfortunately, while the consolidation of sections 11-9.3 and 11-9.4 into section 11-9.3 alone was intended to make the prohibitions applicable to child sex offenders easier to locate and understand, another enactment by the Legislature confused matters. While the CLEAR Initiative was working its way through the Legislature, in the Spring of 2010, the Legislature adopted a new section, 11-9.4-1, which expressly added sexual predators to the prohibitions contained in sections 11-9.3 and 11-9.4, and "exclude[d] those convicted of criminal sexual abuse involving consensual sex when accused is under seventeen and the victim is nine to sixteen years of age." 96th Ill.Gen. Assem., Senate Proceedings, March 15, 2010, at 11 (statements of Senator Althoff). Section 11-9.4-1 made it unlawful for a sexual predator or a child sex offender to be present in a public park building or on public park grounds regardless of whether persons under the age of 18 were also present. 720 ILCS 5/11-9.4-1(b) (2011 Supp.). Section 11-9.4-1 defined "child sex offender" as having "the meaning ascribed to it in subsection (d) of Section 11-9.4," which, as noted above, was repealed effective six months after section 11-9.4-1 was enacted. 720 ILCS 5/11-9.4-1(a) (2011 Supp.)[1]. Under section 11-9.4-1, it is also unlawful for such a person to knowingly loiter on a public way within 500 feet of a public park. 720 ILCS 5/11-9.4-1(c)(2011). Violation of either of the two acts prohibited by this section is a Class A misdemeanor for a first offense. 720 ILCS 5/11-9.4-1(d) (2011 Supp.). A second or subsequent violation is a Class 4 felony. 720 ILCS 5/11-9.4-1(d) (2011 Supp.).

The State was wrong to argue at sentencing that the section with which it charged the defendant, section 11-9.4-1, "says that if you're a child sex offender,

[1]A subsequent amendment to Section 11-9.4-1 changed its reference from Section 9.4 to Section 9.3. 720 ILCS 5/11-9.4(a) (2013 Supp.).

you can't go to parks. Period" (R34). To the contrary, part of the stated purpose of section 9.4-1, as set forth by the legislator spearheading the legislation, was to allow the class of offenders who stood convicted "of criminal sexual abuse involving consensual sex when accused is under seventeen and the victim is nine to sixteen years of age" to enter public parks. 96th Ill.Gen. Assem., Senate Proceedings, March 15, 2010, at 11 (statements of Senator Althoff). In other words, section 11-9-4.1 created an exception for certain child sex offenders, just as section 11-9.3 excludes from prosecution child sex offenders who are present in public parks when their minor children are present, too. The legislative history of section 11-9.4-1 thus demonstrates that the Legislature did not intend to completely ban sex offenders from public parks. Similarly, the legislative histories of sections 11-9.3 and 11-9.4 demonstrate that the sections are meant to be read together to protect children from sex offenders while still preserving the integrity of child sex offenders' families.

The Court below erred when it Concluded that Sections 11-9.3(a-10) and 11-9.4-1(b) Should Not be Read Together.

The plain language of section 11- 9.3(a-10) indicates that parents who have been convicted of child sex offenses were not meant to be excluded from public parks when their children are present. Although the Appellate Court recognized that "there is overlap between these two statutes," it was wrong when it determined that there are "clear differences" in the penalties, the list of offenders who are governed by the two sections, and the acts that are proscribed. *People v. Legoo*, 2019 IL App (3d) 160667, ¶13. The language chosen by the Legislature regarding the first perceived difference between the statutes – the penalties applicable to

each – is especially noteworthy. Section 11-9.3(a-10) does not state that a convicted child sex offender commits an offense, felony or misdemeanor, by being present in a public park; rather, section 11-9.3(a-10) states that it is "unlawful" for a child sex offender to be present in a public park unless his child is also present in the park. 720 ILCS 5/11-9.3(a-10) (2016). Similarly, section 11-9.4-1(b) states that "[i]t is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park." 720 ILCS 5/11-9.4-1(b)(2016). The defendant respectfully submits that the term "unlawful" does not distinguish between a felony and a misdemeanor. Rather, that a child sex offender does not act unlawfully when he is in a park at the same time his minor child is present in the park means that he has committed neither a felony nor a misdemeanor. He has simply not committed any criminal violation. Thus, there is no distinction between the two sections as regards their penalties.

Another distinction between sections 11-9.3 and 11-9.4-1 that was used by the Appellate Court to support its determination that section 11-9.3(a-10) need not be read into Section11- 9.4-1(b) is that, unlike Section 11-9.3(a-10), Section 9.4-1(b) excludes "Romeo and Juliet" offenders. *Legoo*, 2019 IL App (3d) 160667, ¶13. As noted above, however, the Legislature considered it appropriate to allow into public parks those who were convicted of criminal sexual abuse involving consensual sex when accused was under seventeen and the victim was nine to sixteen years of age. Similarly, this Court has stated that the former section 11-9.4(a), now section 11-9.3(a-10), "purportedly reflect[s] reasonable attempts by the Legislature to tailor a prohibition regarding sex offenders in public parks to the goal of protecting the public by preventing sexual assaults." *People v. Pepitone*,

2018 IL 122034, ¶ 28. The Legislature's clear attempt to limit the application of section 11-9.4-1(b) thus demonstrates that it should be read together with section 11-9.3(a-10).

Additionally, the Appellate Court noted that "section 11-9.4-1(b) includes 'sexual predators,' as defined in section 2 of the Sex Offender Registration Act (730 ILCS 150/2 (2016)), in its list of prohibited persons." *Legoo*, 2019 IL App (3d) 160667, ¶13. Each of the offenses listed in section 730 ILCS 150/2 (2016), however, is included in 720 ILCS 5/11-9.3(d)(2) (2016), because section 11-9.3 also added sexual predators to the group of offenders to whom its prohibitions applied when sections 11-9.3 and 11-9.4 were merged. See 720 ILCS 5/11-9.3(d)(a)(iii) (eff, July 1, 2011). Thus, sexual predators are excluded from parks by both sections. As a result, sections 11-9.3(a-10) and 11-9.4-1 are not distinguishable on the basis of the persons prohibited from entering parks.

The final difference set forth by the court below is that "section 11-9.3(a-10) criminalizes particular conduct – being a child sex offender in a park and approaching, contacting, or communicating with minors, while section 11-9.4-1(b) criminalizes mere presence in public parks." *Legoo*, 2019 IL App (3d) 160667, ¶13. This statement from the Appellate Court mirrors a statement recently made by this Court: "Section 11-9.4(a) [now section 11-9.3(a-10)] did not criminalize sex offenders' mere presence in public parks but rather specific conduct by sex offenders – approaching, contacting, or communicating with minors." *People v. Pepitone*, 2018 IL 122034, ¶ 28. In *Pepitone*, this Court stated that section 11-9.4-1(b) "makes the status of the defendant an element of the offense." *Pepitone*, 2018 IL 122034, ¶ 26. Notably, the conduct prohibited by section 11-9.3(a-10) was not at issue in

either *Pepitone* or the instant case. Because it was the defendant's status as a sex offender, coupled with his mere presence in a park, that was at issue in the instant case, the Appellate Court was wrong to conclude that section 11-9.3(a-10) should not be read into section 11-9.4-1(b).

The Appellate Court was wrong to conclude that the language of section 11-9.4-1(b) "does not conflict with section 11-9.3(a-10)." *Legoo*, 2019 IL App (3d) 160667, ¶13. Section 11-9.4-1 "completely bars sex offenders who have targeted children from public parks." *Pepitone*, 2018 IL 122034, ¶ 18. As such, it conflicts directly with section 11-9.3(a-10), which states that it is unlawful for a child sex offender to be present in a public park "unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds." 720 ILCS 5/11-9.3(a-10)(2016). Therefore, the Appellate Court erred when it refused to consider section 11-9.4-1(b) in the context of section 11-9.3(a-10).

It does not matter that section 11-9.3(a-10) additionally allows a parent who is present in the park with his minor child to also approach, contact or communicate with a minor: to do these things, the offender must, of necessity, be on park grounds or in a park building. That the child sex offender may *also* approach, contact or communicate with a minor is immaterial. Because it is not unlawful for a child sex offender whose child is also present in the park to be present and speak with a child, a parent who is merely present, by definition, also does not act unlawfully. If it is not a felony for a child sex offender, under specifically enumerated circumstances, to be present in a public park and talk to another child, it seems an absurdity that he can nonetheless be prosecuted for a misdemeanor because of his mere presence under the exact same circumstances. However, it

is presumed that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice. *Michigan Avenue National Bank v. County of Cook*, 191 Ill.2d 493, 504 (2000). Therefore, the Appellate Court erred when it found that the defendant was guilty of being in a public park despite section 11-9.3's clear statement that it is not unlawful for a parent to be present in a public park if that offender's child is present in the park, too.

The Appellate Court erred when it refused to read section 11-9.3(a-10) into section 11-9.4-1(b). "When the literal enforcement of a statute would result in great injustice and lead to consequences which the legislature could not have contemplated, the courts are bound to presume that such consequences were not intended and will adopt a construction which it may be reasonable to presume was contemplated by the Legislature." *City of Chicago v. Mayer*, 290 Ill. 142, 146 (1919), cited with approval in *People ex rel. Casson v. Ring*, 41 Ill. 2d 305, 312-13 (1968). In *Ring*, an amendment to the Election Code in 1967 removed certain language granting registered voters the right to request the county clerk to erase names of unqualified voters for the 1968 election, a practice that was in effect for 25 years before 1968 and was again available in 1970. *People v. Hudson*, 46 Ill.2d 177, 181 (1970). Reviewing caselaw, the *Ring* Court held that an act of the legislature would not be construed so as to lead to absurd, inconvenient or unjust consequences and that the statute should be construed as the Legislature presumptively intended. *Hudson*, 46 Ill.2d at 181. Noting that courts could, in a proper case, supply words that had been omitted by the legislature, the *Ring* Court construed the amendment so as to provide for the erasure right in 1968 even though the literal reading of the statute precluded the exercise of that right.

Hudson, 46 Ill.2d at 181. Similarly, although the plain language of section 11-9.4-1(b) prohibits, without exception, the mere presence of a child sex offender in public parks, the Appellate Court should have considered the context of the entire Article and construed the statute as the Legislature presumptively intended.

Interpreting Section 11-9.4-1(b) Without Incorporating the Exemption Language from Section 11-9.3(a-10) Violates the Doctrine of Constitutional Avoidance.

In addition to meeting the Legislature's twin goals of protecting children from convicted child sex offender and protecting the families of child sex offenders, this Court should read the exception from section 11-9.3(a-10) into section 11-9.4-1(b), because doing so follows the commands of the doctrine of constitutional avoidance, which requires courts "when faced with two plausible constructions of a statute – one constitutional and the other unconstitutional – to choose the constitutional reading." *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 213 (2009) (Thomas, J., concurring in judgment in part and dissenting in part). In the instant case, failing to read the exception from section 11-9.3(a-10) into section 11-9.4-1(b) renders the latter section unconstitutional, because it deprives parents who have been convicted of child sex offenses of their constitutional right to the society of their children, a right effectively protected by the Legislature when it enacted 720 ILCS 5/11-9.3(a-10)(2016). When applied to child sex offenders who, *unlike* Legoo, are not present in a pubic park at the same time as their minor child, section 9.4-1(b) does not violate substantive due process rights. *People v. Pepitone*, 2018 IL 122034.

This Court's decision in *Pepitone* is instructive. Pepitone, who was arrested while walking his dog in a public park, was convicted of violating section 11-9.4-1(b). *Pepitone*, 2018 IL 122034, ¶¶ 4-5. Pepitone raised a substantive due process claim, although he acknowledged that "being present in a park is not a fundamental right." *Pepitone*, 2018 IL 122034, ¶ 14. This Court stated that section 11-9.4-1(b) "does not criminalize dog walking or punish any other innocent conduct. It punishes conduct by sex offenders." *Pepitone*, 2018 IL 122034, ¶ 26. The specific conduct prohibited by section 11-9-4.1(b) was the defendant's mere presence in a public park, because section 11-9.4-1(b) made "the status of the defendant an element of the offense." *Pepitone*, 2018 IL 122034, ¶ 26. That Pepitone "was walking a dog was merely incidental" to the fact that he was in a park and had been convicted of a child sex offense. *Pepitone*, 2018 IL 122034, ¶ 26.

Section 11-9.4(a), the precursor to section 11-9.3(a-10), which this Court in *Pepitone* termed a reasonable attempt to tailor a prohibition regarding sex offenders in public parks, makes clear that approaching, contacting or communicating with minors in a public park is unlawful conduct for child sex offenders "*unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds*." 720 ILCS 5/11-9-3(a-10)(2016) (emphasis added); see also 720 ILCS 5/11-9.4(a)(2010). *Pepitone*, 2018 IL 122034, ¶ 27. Neither the old section 11-9.4(a), nor the current section 11-9.3(a-10) applied to Pepitone because he was not present in the park at the same time as his child. Conversely, because his minor child was present in the park, Legoo's own presence there was not unlawful. In effect, the fact that Legoo was present in the park at the same time as his minor child changed his status from child sex offender to

that of an offender who was the parent of a minor child who was present in the park. In other words, Pepitone's presence in a public park was unlawful because of his status as a child sex offender, but Legoo's presence was not unlawful because his status was that of a child sex offender whose child was present in a public park. When read together, sections 11-9.3(a-10) and 11-9.4-1(b) serve to reasonably tailor a prohibition regarding sex offenders in public parks that both protects the public and preserves the fundamental rights of parents.

The Appellate Court's refusal to read the exception from section 11-9.3(a-10) into section 11-9.4-1(b) renders the latter section unconstitutional, because it deprives parents who have been convicted of child sex offenses of their constitutional right to the society of their child, a right effectively protected by the Legislature when it enacted sections 11-9.3 and 11-9.4 twenty years ago. A parent's liberty interest in raising and caring for his or her children has long been recognized as among the most fundamental of rights. See *In re N.G.*, 2018 IL 121939, ¶¶24, 26 (the Court recognized that a "natural parent's right to the care of his or her child is, in fact, an interest far more precious than any property right protected by" the due process clause). Because this Court is faced with two plausible constructions of a statute – one constitutional and the other unconstitutional – it should adopt the constitutional reading.

"All statutes carry a strong presumption of constitutionality." *Pepitone*, 2018 IL 122034, ¶ 12, citing *People v. Hollins*, 2012 IL 112754, ¶ 13. In *Pepitone*, the exclusion of the defendant from public parks was upheld because, as Pepitone conceded, he did not have a fundamental right to walk his dog in a park. *Pepitone*, 2018 IL 122034, ¶ 14. Legoo, however, possessed a fundamental right to be present

with his child, a right protected in, and recognized by, section 11-9.3(a-10). By failing to read sections 11-9.3(a-10) and 11/9-4.1(b) together, the Appellate Court, Third District, rendered section 119.4-1(b) unconstitutional as applied to the parent of a child who was present in the public park. This Court should, therefore, reverse Patrick Legoo's conviction of unlawful presence of a child sex offender in a public park because the statutory scheme established to protect children in vulnerable places states that an offender does not act unlawfully when he is present in a park at the same time as his minor child, in recognition of a parent's fundamental right to the society and care of his child.

CONCLUSION

For the foregoing reasons, Patrick A. Legoo, defendant-appellant, respectfully requests that this Court reverse his conviction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Jay Wiegman, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 26 pages.

/s/Jay Wiegman
JAY WIEGMAN
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Patrick A. Legoo No. 124965

People v. Legoo, Patrick A
16-CM-530 3-16-0667
ISC - 124965

R1 Report of Proceedings of August 25, 2016
Bench Trial

R3 State/Defense waive opening Statement

Witness	DX	CX	RDX	RCX
David Lawson	R4	R8	R10	
Kevin Corrigan	R10	R13		

R15 State rests
Defense Motion for directed finding

R17 Motion denied

Witness	DX	CX	RDX	RCX
Cameron Patrick Gibbon	R17	R20		
Patrick Albert Legoo	R20	R23	R23	

R24 Proof closed
State's Summation

R26 Defense Summation

R28 Guilty

R31 Report of Proceedings of October 6, 2016
Sentencing

R33 Defense Motion to vacate the conviction due to the conflicting statutes

R34 State's response to defense Motion

R36 State's Argument

R37 Defense Argument
Defendant's statement

R39 Sentence

R40	Defense request Notice of Appeal Court advises of Notice of Appeal
R44	Report of Proceedings of October 28, 2016 Motion to Vacate Court's finding
R49	Motion to Vacate/Denied

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PATRICK A. LEGOO
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2016-CM-530

2019 IL App (3d) 160667

Opinion filed May 20, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0667
v.	)	Circuit No. 16-CM-530
	)	
PATRICK A. LEGOO,	)	The Honorable
	)	Howard C. Ryan Jr.
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court, with opinion.
Justices O'Brien and Wright concurred in the judgment and opinion.

OPINION

¶ 1 The defendant, Patrick A. Legoo, was convicted of the misdemeanor offense of being a child sex offender in a public park (720 ILCS 5/11-9.4-1(b) (West 2016)) and was sentenced to 30 days in jail and two years of conditional discharge. On appeal, Legoo argues that he was wrongfully convicted because a different statute's exemption should be read into the statute under which he was charged. We affirm.

¶ 2 FACTS

¶ 3 On May 6, 2016, an off-duty police officer who knew of Legoo's status as a convicted child sex offender saw Legoo riding a bicycle in a park in Mendota and called the police. The Mendota police located Legoo at his apartment and questioned him about being in the park. Legoo admitted he had been in the park looking for his son.

¶ 4 Legoo's son was in the park watching a baseball game. Legoo located his son in the park and told him to come home because it was getting late. Legoo's son said he wanted to watch the rest of the game, and Legoo rode away. Legoo's fiancée was out of town, so he was the only one who could retrieve his son.

¶ 5 After a bench trial, the circuit court found Legoo guilty after noting that there were two different statutes on being a sex offender in a park—one that results in a felony and one that results in a misdemeanor. The court commented, "[a]pparently, one, you just can't be in the park. The second one, if you want to get away from the felony, you can approach, but only if it's a kid. That's ridiculous, but it's the way it is."

¶ 6 Later, Legoo was sentenced to 30 days in jail and two years of conditional discharge. Legoo appealed.

¶ 7 ANALYSIS

¶ 8 On appeal, Legoo argues that he was wrongfully convicted because a different statute's exemption should be read into the statute under which he was charged.

¶ 9 Our primary objective when considering statutory construction issues is to determine and give effect to legislative intent. *People v. Williams*, 239 Ill. 2d 503, 506 (2011). A statute's language is the most reliable indicator of legislative intent. *Id.* If statutory language is clear and unambiguous, a reviewing court must apply that language without resorting to other aids statutory construction. *Id.* Statutory construction issues are reviewed *de novo*. *Id.*

¶ 10 Legoo was charged in this case with a violation of section 11-9.4-1(b) of the Criminal Code of 2012 (Code) (720 ILCS 5/11-9.4-1(b) (West 2016)), which provides, in relevant part, that "[i]t is unlawful for a sexual predator or a child sex offender to knowingly be present *** on real property comprising any public park." *Id.* A first-time violation of section 11-9.4-1(b) is a Class A misdemeanor, while a second or subsequent violation is a Class 4 felony. *Id.* § 11-9.4-1(d).

¶ 11 It is undisputed that Legoo was a convicted child sex offender who was present in a public park. He contends, however, that an exemption to a similar statute should be read into section 11-9.4-1(b).

¶ 12 In relevant part, section 11-9.3(a-10) of the Code (*id.* § 11-9.3(a-10)) provides that

> "[i]t is unlawful for a child sex offender to knowingly be present *** on real property comprising any public park when persons under the age of 18 are present *** on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present *** on the grounds." *Id.*

A violation of section 11-9.3(a-10) is a Class 4 felony. *Id.* § 11-9.3(f).

¶ 13 Undoubtedly, there is overlap between these two statutes, but there are also clear differences in more than just the penalty. See, *e.g.*, *People v. Pepitone*, 2018 IL 122034, ¶¶ 27-30. Section 11-9.4-1(b) borrows its definition of "child sex offender" from section 11-9.3(d), but it also specifically exempts "Romeo and Juliet" offenders from that definition, unlike section 11-9.3(d). 720 ILCS 11-9.4-1(a) (West 2016). Additionally, section 11-9.4-1(b) includes "sexual predators," as defined in section 2 of the Sex Offender Registration Act (730 ILCS 150/2 (West 2016)), in its list of prohibited persons. 720 ILCS 11-9.4-1(a), (b) (West 2016). Also, section 11-

9.3(a-10) criminalizes particular conduct—being a child sex offender in a park *and* approaching, contacting, or communicating with minors, while section 11-9.4-1(b) criminalizes mere presence in public parks. *Compare* 720 ILCS 5/11-9.3(a-10) (West 2016), with 720 ILCS 5/11-9.4-1(b) (West 2016). While this statutory scheme may not be the cleanest means of achieving its desired end, there is no reason to read the exception from section 11-9.3(a-10) into section 11-9.4-1(b) as Legoo requests.

¶ 14 The language of section 11-9.4-1(b) is clear and does not conflict with section 11-9.3(a-10). No error occurred in the application of section 11-9.4-1(b) to the undisputed facts of this case. For the foregoing reasons, we hold that the circuit court did not err when it convicted Legoo of being a sex offender in a public park.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of La Salle County is affirmed.

¶ 17 Affirmed.

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
FROM THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS

The People of the State of Illinois

vs. **No: 2015-CM-530**

PATRICK A. LEGOO

NOTICE OF APPEAL

AN APPEAL IS TAKEN FROM THE ORDER AND JUDGMENT DESCRIBED BELOW

1. Court to which appeal is taken:
   Third District Appellate

2. Name of Appellant and address to which notices shall be sent
   PATRICK A. LEGOO
   1811 LINCOLN AVE. APT. 6
   MENDOTA, IL. 61342

3. Name and address of Appellants Attorney on Appeal:
   NAME: Peter Carusona
   ADDRESS: State Appellate Defender
   770 E Etna Road
   Ottawa, Il. 61350

4. If appellant is indigent and has no attorney, does he want one appointed?
   Yes

5. Date of judgment or order:
   October 6, 2016

6. Offense of which convicted:
   Unlawful Presence of a Child Sex Offender in a Public Park (Class A Misdemenor)

7. Sentence:
   30 days in the LaSalle County Jail (stayed)

8. If appeal is not from a conviction, nature of order appealed from:

Jim Olson
Clerk of the Circuit Court

No. 124965

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- PATRICK A. LEGOO Defendant-Appellant	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-16-0667. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 16 CM 530. Honorable H. Chris Ryan, Jr., Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

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Ms. Karen Donnelly, LaSalle County State's Attorney, 707 Etna Road, Room 251, Ottawa, IL 61350;

Mr. Patrick A. Legoo, 1000 Main Street, Apt 1, Mendota, IL 61342

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 30,2019, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the Court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mailbox in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Esmeralda Martinez
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