

DATE: January 13, 2021

TO: Brad Cole, Executive Director

FROM: Mitchell Remmert, Director of Legislative Affairs

RE: SFA #2 to HB 3653 – Criminal Justice Reform Omnibus

This memo serves as a final analysis of Senate Floor Amendment (SFA) #2 to House Bill (HB) 3653, which comprises the criminal justice reform omnibus legislation passed by the Illinois General Assembly today. While not comprehensive, this analysis summarizes aspects of the legislation that will or may have a measurable impact on municipal governments. If signed into law, the Act takes effect on July 1, 2021, with certain provisions having later effective dates, as noted below.

Article 2 – All provisions take effect January 1, 2025

No Representation without Population Act (pg. 2)

Requires the Illinois Department of Corrections (IDOC) to maintain an electronic record of the legal residence for an incarcerated individual if outside of any correctional facility.

Requires IDOC to provide a report to the State Board of Elections within 30 days of the effective date and on or before May 1 of each year thereafter.

Requires the State Board of Elections to prepare redistricting population data to reflect incarcerated persons at their residential address, not at a correctional facility, which shall serve as the basis of legislative and representative districts.

Article 3 – All provisions take effect July 1, 2021

Deaths in Custody (pg. 6)

Creates the Deaths in Custody Act and requires law enforcement agencies to report to the Illinois Criminal Justice Information Authority (ICJIA) any case in which a person dies while in the custody of a law enforcement agency, local or state correctional facility or in custody of a peace officer; and as a result of the peace officer's use of force.

The reports will be public records and ICJIA shall issue an annual report tabulating and evaluating trends and information on deaths in custody that shall be submitted to the Governor and General Assembly.



Article 4 – All provisions take effect July 1, 2021

Constitutional Rights and Remedies (pg. 12)

Creates the Constitutional Rights and Remedies Act and the Task Force on Constitutional Rights and Remedies. Requires the Task Force to develop and propose policies and procedures to review and reform constitutional rights and remedies, including qualified immunity for police officers. Requires the Task Force to meet at least three times with the first meeting occurring within 60 days of the effective date.

Repeals the Act on January 1, 2022.

Article 10 – All provisions take effect July 1, 2021 (unless specifically noted otherwise below)

Amendatory Provisions (pg. 15)

Replaces all reference to bail, bail bond or conditions of bail to be construed as “pretrial release” or “conditions of pretrial release.”

This provision takes effect January 1, 2023.

Community-Law Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act (pg. 33)

Changes the name to the Community-Law Enforcement and Other First Responder Partnership for Deflection and Substance Use Disorder Treatment Act and makes the following changes:

- Adds to the definition of “deflection program” to include co-responder approaches that incorporate behavioral health, peer or social work professionals with law enforcement or other first responders at the scene.
- Adds to the list of subjects for which law enforcement agencies participating in such a program must be trained (pg. 40).
- Allows appropriated funds to ICJIA to be expended on activities related to knowledge dissemination, training, technical assistance, or other similar activities.
- Requires funding for deflection programs to be prioritized for communities that have been impacted by the war on drugs, communities that have a police/community relations issue and communities that have a disproportionate lack of access to mental health and drug treatment.

The Attorney General Act (pg. 43)

Prohibits any governmental authority or agent of a governmental authority to engage in a pattern or practice of conduct by officers that deprives any person of rights, privileges or immunities secured or protected by the Constitution or laws of Illinois.

- Requires the Attorney General to commence a civil action in the name of the People of the State to obtain appropriate equitable and declaratory relief if he or she believes that a violation of this section has occurred.
- Stipulates the process by which the Attorney General may conduct a preliminary investigation to initiate a civil action.

Public Officer Prohibited Activities Act (pg. 59)

Prohibits units of local government, agents or representatives of units of local government or another employee to retaliate against an employee or contractor who:

- Reports an improper governmental action under this Section;
- Cooperates with an investigation related to a report of improper governmental action; or, testifies in a proceeding or prosecution arising out of an improper governmental action.

Requires an employee who invokes the protections conferred by the article to make a written report of improper governmental action to the appropriate auditing official. Further requires an auditing official to establish a written process and procedures for managing complaints filed under the Section.

Local Records Act (pg. 66)

Stipulates that police misconduct records, all public records and nonpublic records related to complaints, investigations and adjudications of police misconduct shall be permanently retained and may not be destroyed.

This provision takes effect January 1, 2023.

Illinois Police Training Act (pg. 66)

Requires the Illinois Law Enforcement Training and Standards Board (ILETSB) to establish statewide minimum standards regarding regular mental health screenings for probationary and permanent police officers, ensuring that counseling sessions and screenings remain confidential.

Rules and Standards for Schools (pg. 69)

Requires the curriculum for probationary police officers to include: 1) at least 12 hours of hands-on, scenario-based role-playing; 2) at least six hours of instruction on the use of force techniques, including the use of de-escalation techniques to prevent or reduce the need for force whenever safe and feasible; 3) specific training on officer safety techniques, including cover, concealment and time; and, 4) at least six hours of training focused on high-risk traffic stops.

Adds emergency medical response training and certification, crisis intervention training and officer wellness and mental health to the list of minimum in-service training requirements a police officer must satisfactorily complete at least annually

Mandatory Training to Complete Every Three Years (pg. 76)

Requires ILETSB to adopt rules and minimum standards for in-service training requirements consisting of at least 30 hours of training every three years and specifies the content of the training.

Crisis Intervention Team Training (pg. 77)

Requires ILETSB to approve a standard curriculum for certified training programs in crisis intervention of at least 40 hours. Requires crisis intervention training programs to be a collaboration between law enforcement professionals, mental health providers, families and consumer advocates.

Law Enforcement Officer-Worn Body Camera Act (pg. 78)

Requires all law enforcement agencies to employ the use of officer-worn body cameras and further stipulates the schedule by which all agencies must implement the use of body cameras as follows:

- Municipalities with populations of 500,000 or more – January 1, 2022;
- Municipalities with populations of 100,000 or more but under 500,000 – January 1, 2023;
- Municipalities with populations of 50,000 or more but under 100,000 – January 1, 2024; and,
- Municipalities under 50,000 – January 1, 2025.

A law enforcement agency that complies with these requirements shall receive preference by ILETSB in awarding grant funding under the Law Enforcement Camera Grant Act.

Requires each law enforcement agency to provide an annual report on the use of officer-worn body cameras to ILETSB on or before May 1 of each year.

Monthly Reporting (pg. 90)

Adds to the list of reports that all law enforcement agencies shall submit to the Illinois State Police (ISP) on a monthly basis to include:

- Beginning July 1, 2021 – a report on any incident where a law enforcement officer was dispatched to deal with a person experiencing a mental health crisis or incident, including the number of incidents, the level of law enforcement response and the outcome of each incident.
- Beginning July 1, 2021 – a report on use of force, including any action that resulted in death or serious bodily injury of a person or the discharge of a firearm at or in the direction of a person.
- Provides that a law enforcement agency's compliance with the reporting requirements shall be a factor in awarding grant funding under the Law Enforcement Camera Grant Act, with a preference to agencies which are in compliance with the new reporting requirements.

The Police and Community Relations Improvement Act (pg. 93)

Amends the act to do the following:

- Removes a requirement for an officer to be informed of the names of all complainants prior to an administrative proceeding;
- Removes a requirement for an officer under investigation to be informed of the name, rank and unit or command of the officer in charge of the investigation;
- States that it shall not be a requirement for a person filing a complaint against a sworn peace officer to have the complaint supported by a sworn affidavit or any other legal documentation.; and,
- States that this ban on an affidavit requirement shall apply to any collective bargaining agreements entered after the effective date of the provision.

Stipulates that any person may file notice of an anonymous complaint to ILETSB of any misconduct the person believes a law enforcement officer has committed. Requires the Board to accept notice and investigate any allegations from individuals who remain anonymous, notwithstanding any provision in state law or any collective bargaining agreement.

This provision takes effect January 1, 2023.

Counties Code (pg. 112)

Prohibits a sheriff's department from requesting or receiving specified equipment from any military surplus program. If the sheriff requests property from such a program, the sheriff shall publish notice of the request on a publicly accessible website maintained by the sheriff or the county within 14 days of the request.

Illinois Municipal Code (pg. 113)

Prohibits a police department from requesting or receiving specified equipment from any military surplus program. If a police department requests property from such a program, the department shall publish notice of the request on a publicly accessible website maintained by the department or the municipality within 14 days of the request.

Illinois Vehicle Code (pg. 187)

Requires, as soon as practicable and no later than July 1, 2021, the Illinois Secretary of State to rescind the suspension, cancellation or prohibition of renewal of a person's driver's license that has been suspended, canceled or whose renewal has been prohibited before the effective date of this amendatory Act due to the person having failed to pay any fine or penalty for traffic violations, automated traffic law enforcement system violations or abandoned vehicle fees.

Criminal Code of 2012 (pg. 283)

The Criminal Code of 2012 is amended to alter conditions when a peace officer may use any force, including deadly force. Specifically:

- A peace officer is justified in the use of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to effect the arrest and any force which he reasonably believes, based on the totality of the circumstances, to be necessary to defend himself or another from bodily harm while making the arrest;
- This language (underlined above) is also inserted into provisions allowing the use of deadly force along with the requirement that the officer reasonably believes that the person to be arrested cannot be apprehended at a later date and the officer reasonably believes that the person to be arrested may cause great bodily harm to another;
- Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify as a peace officer and to warn that deadly force may be used, unless the officer has reasonable grounds to believe that the person is aware of those facts;

- A peace officer shall not use deadly force against a person based on the danger that the person poses to himself or herself if a reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person; and,
- A peace officer shall not use deadly force against a person who is suspected of committing a property offense, unless that offense is terrorism or unless deadly force is otherwise authorized by law.

The amended language also encourages law enforcement agencies to adopt and develop policies designed to protect individuals with physical, mental health, developmental or intellectual disabilities, who are significantly more likely to experience greater levels of physical force during police interactions.

Prohibited Use of Force by a Peace Officer (pg. 287)

The language prohibits a peace officer or any person acting on behalf of a peace officer to use a restraint above the shoulders with risk of asphyxiation in addition to the use of chokeholds, as currently provided in law. The language also prohibits the following activities:

- Use of force as punishment or retaliation;
- Discharge of kinetic impact projectiles and all other non- or less-lethal projectiles in a manner that targets the head, pelvis or back;
- Discharge of kinetic impact projectiles indiscriminately into a crowd; or,
- Use of chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.

Use of Force to Prevent Escape (pg. 288)

The language prohibits the use of deadly force to prevent escape, unless deadly force is necessary to prevent death or great bodily harm to the officer or another person.

Duty to Render Aid (pg. 289)

The language inserts a new section that requires all law enforcement officers to render medical aid and request emergency medical assistance if necessary.

Duty to Intervene (pg. 290)

The language mandates an affirmative duty to intervene to stop or prevent another peace officer in his or her presence from using any unauthorized force or force that exceeds the degree of force permitted. The language further requires such an officer to report the intervention. Prohibits the discipline or retaliation against a peace officer for intervening as required by the section.

Official Misconduct (pg. 306)

The language adds a new section on law enforcement misconduct and provides situations by which a law enforcement officer commits misconduct. Specifically, the language provides that an officer commits misconduct in the course of official duties when he or she knowingly and intentionally:

- Misrepresents or fails to provide facts describing an incident in any report or during any investigations regarding the law enforcement officer's conduct;
- Withholds any knowledge of the misrepresentations of another law enforcement officer from the law enforcement employee's supervisor, investigator, or other person or entity tasked with holding the law enforcement officer accountable;
- Fails to comply with the provisions of Section 10-20 of the Law Enforcement Officer-Worn Body Camera Act; or,

The language provides that law enforcement misconduct is a Class 3 felony.

Abolition of Monetary Bail (pg. 307)

Provides that "pretrial release" has the meaning ascribed to bail in Section 9 Article I of the Illinois Constitution that is non-monetary (pg. 307).

Establishes offenses and conditions upon which pretrial release may be granted or denied and provisions for release without appearance before a judge (pg. 326).

The language removes the requirement of posting monetary bail on and after the effective date of the Act. Exceptions are provided in the Uniform Criminal Extradition Act, the Driver License Compact and the Nonresident Violator Compact (pg. 335).

This provision takes effect January 1, 2023.

Release on Own Recognizance (pg. 335)

The language provides that it is presumed that a defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit a criminal offense. Additional conditions of release shall only be set when it is determined they are necessary to assure the defendant's appearance in court. The language requires the court to make a written finding as to why less restrictive conditions would not ensure the safety to the community and ensure the defendant's appearance in court if the court decides to detain the defendant.

This provision takes effect January 1, 2023.

Options for Warrant Alternatives (pg. 338)

If a defendant fails to comply with any condition of pretrial release, a court may issue an order to show cause why a person is subject to revocation of pretrial release. A certified copy of the order shall be served to the person at least 48 hours in advance of a scheduled hearing. If the person does not appear at the hearing, the court may issue a warrant for the arrest of the person.

This provision takes effect January 1, 2023.

Pretrial Release (pg. 340)

All persons charged with an offense shall be eligible for pretrial release before conviction. Pretrial release may only be denied when a person is charged with specific offenses listed in Section 110-6.1 of the Criminal Code of 2012, or who has a high likelihood of willful flight, and after the court has held a hearing.

This provision takes effect January 1, 2023.

Determining the Amount of Bail and Conditions of Release

The language adds to the list of factors a court shall take into consideration in determining the conditions of pretrial release that will ensure the appearance of a defendant (pg. 342).

Adds additional factors the court may consider in cases of stalking or aggravated stalking (pg. 353).

The language further allows the court to use a regularly validated risk assessment tool to aid in its determination of appropriate conditions of release but states that such tools may not be used as the sole basis to deny pretrial release (pg. 354).

This provision takes effect January 1, 2023.

Revocation of Pretrial Release (pg. 358)

Provides conditions through which pretrial release may be revoked, and further provides conditions of re-arrest, jurisdiction for newly committed offenses and prescribes the hearing process for pretrial release revocation.

This provision takes effect January 1, 2023.

Denial of Pretrial Release (pg. 370)

Upon a verified petition by the State, the court shall hold a hearing and may deny pretrial release only if certain conditions and offenses are met or occur. These include but are not limited to:

- The defendant is charged with a forcible felony offense and pretrial release poses a real and present threat to a specific, identifiable person or persons;
- The defendant is charged with stalking or aggravated stalking and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of a victim;
- The victim of abuse was a family or household member; and
- The defendant is charged with domestic battery and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of any person.

This provision takes effect January 1, 2023.

Treatment While in Custody (pg. 410)

Stipulates persons in custody shall be treated without unreasonable delay if need for medical treatment is apparent.

Right to Communicate with Attorney and Family; Transfers (pg. 410)

Grants a person the right to three phone calls within three hours of being taken into custody to communicate with an attorney and family members, free of charge, and allows them to access their own cell phone for contact numbers. Further requires this information to be posted on a sign.

Use of Force in Execution of Warrant (pg. 412)

Allows for no-knock warrants if body-worn cameras are in use or the interaction is otherwise recorded, requires steps to be taken to plan for the presence of children or vulnerable people on-site, and allows for an internal investigation if a warrant is executed at an incorrect address.

Rights of Crime Victims (pg. 415)

Maintains that the safety of the victim will be considered in determination of a defendant's release and conditions of release, but removes provisions denying or fixing amount of bail.

This provision takes effect January 1, 2023.

Quasi-Criminal and Misdemeanor Bail Act (pg. 445)

Amends the act name to the "Quasi-Criminal and Misdemeanor Pretrial Release Act" and allows authorized authorities to grant pretrial release based on Illinois Supreme Court form for certain cases. Removes references to bail or bond and replaces with the term pretrial release.

This provision is effective on January 1, 2023.

Powers of the Attorney General (pg. 567)

Stipulates changes to the Attorney General's role in investigating and reporting claims.

Article 25 – All provisions take effect January 1, 2022

Open Meetings Act (pg. 612)

Adds exemptions under the Freedom of Information Act (FOIA) to include records contained in the Officer Conduct Database under Section 9.4 of the Illinois Police Training Act, except to the extent authorized under that Section. This includes documents supplied to the Illinois Law Enforcement Training Standards Board (ILETSB) from ISP and the State Police Merit Board (SPMB).

Provisions concerning the licensure of law enforcement officers take effect on January 1, 2022.

Exemptions (pg. 621)

Includes records contained in the Officer Professional Conduct Database under Section 9.4 of the Illinois Police Training Act, except to the extent authorized under that Section. This includes documents supplied to Illinois Law Enforcement Training Standards Board from ISP and SPMB.

Definitions (pg. 670)

The language adds new definitions for the following terms: 1) full time law enforcement officer, 2) governmental agency, 3) state governmental agency; and, 4) Panel. The language replaces the phrase “police officer” with “law enforcement officer” throughout.

Law Enforcement Training and Standards Board Composition (pg. 673)

The language states that the Illinois Attorney General, the Director of the Illinois State Police, the Director of the Illinois Department of Corrections, the Superintendent of the Chicago Police Department, the Sheriff of Cook County and the Clerk of the Circuit Court of Cook County shall serve as *ex officio* members of the Illinois Law Enforcement Training and Standards Board.

Illinois Law Enforcement Certification Review Panel (pg. 676)

Creates the Illinois Law Enforcement Certification Review Panel with specified membership to be appointed no later than 30 days after the effective date of the Act.

Allows the Governor to appoint three members. The Attorney General shall appoint eight members.

Powers and Duties of the Board (pg. 680)

Grants the Law Enforcement Training and Standards Board the following powers and duties:

- To review and ensure all law enforcement officers remain in compliance with the Act and any administrative rules adopted under the Act;
- The power to suspend any certificate for a definite period, limit or restrict any certificate, or revoke any certificate;
- The power to secure by its subpoena and bring before it any person or entity in the State and to take testimony;
- Subpoena the production of documents, papers, files, books, documents and records; and,
- Administer state certification examinations.

Automatic Decertification of Full-Time and Part-Time Law Enforcement officers (pg. 684)

Provides that the Board must review law enforcement conduct and records to ensure that no officer is certified if the officer has been convicted of, found guilty of, entered a plea of guilty or of *nolo contendere* to a felony offense under the laws of the State or any other state. If an officer has been found to have committed an offense as described, the Board must appoint investigators.

States that is the responsibility of the sheriff or the chief executive officer of every governmental (as opposed to local law enforcement) agency or department within the State to report any arrest, convictions, finding of guilt, plea of guilty or plea of *nolo contendere* of any officer for an offense identified.

Requires the Board's investigators to be law enforcement officers and that an investigator shall not have been terminated for good cause, decertified, had his or her law enforcement license or certificate revoked or been convicted of any conduct listed.

The language adds definitions for: duty to intervene, excessive use of force, false statement, perjury, tampers with or fabricates evidence and decertification.

Discretionary Decertification of Full-Time and Part-Time Law Enforcement Officers (pg. 697)

Grants the authority to decertify a full-time or a part-time law enforcement officer upon a determination by the Board that the law enforcement officer has committed certain specified acts.

Notice of Alleged Violation (pg. 700)

Requires the following individuals and agencies to notify the Board within seven days of becoming aware of any alleged violation:

- a governmental agency or any law enforcement officer, the executive director of the Board and a state's attorney's office.

Also allows confidential reporting of misconduct by any person and requires the Board to accept notice and investigate any allegations from individuals who remain confidential.

Preliminary Review (pg. 702)

Requires the Board to complete a preliminary review of allegations to determine whether there is sufficient information to warrant a further investigation of any violation of the Act. The Board is required to notify the head of the governmental agency that employs the law enforcement officer subject of the allegations. Requires a governmental agency to submit any copies of investigative finding, evidence or documentation at the request of the Board.

Investigation Requirements (pg. 705)

Requires a governmental agency that submits a notice of violation to the Board to be responsible for conducting an investigation of the underlying allegations except in certain circumstances.

Requires each governmental agency to adopt a written policy regarding the investigation of misconduct and stipulates the minimum requirements of the policy.

Expressly states that nothing in the Act shall prohibit a governmental agency from conducting an investigation for the purpose of internal discipline. However, such an investigation shall be conducted in a manner that avoids interference with, and preserves the integrity of, any separate investigation being conducted.

Formal Complaints and Formal Complaint Hearing (pg. 709)

Requires the Board to review reports and any relevant evidence obtained and determine whether there is a reasonable basis to believe that the law enforcement officer committed any conduct that would be deemed a violation of this Act. If the Board determines that a reasonable basis does exist, the Board shall file a formal complaint with the Certification Review Panel. Upon the issuance of a formal complaint, the Panel is required to set the matter for an initial hearing in front of an administrative law judge. At least 30 days prior to the date set for the hearing, the panel must notify the law enforcement officer subject to the complaint in writing and include specified information.

Final Action by the Board (pg. 714)

After receiving the Panel's recommendations, the Board, by majority vote, shall issue a final decision to decertify a law enforcement officer or take no action. A copy of the Board's final decision shall be served upon the officer by the Board and to the employing governmental agency.

Certification and Decertification Procedures under Act Exclusive (pg. 716)

Provides that notwithstanding any other law, the certification and decertification procedures under the Act are the sole and exclusive procedures for certification as law enforcement officers in Illinois and are not subject to collective bargaining under the Illinois Public Labor Relations Act or appealable except as set forth in the Act.

Full-Time Law Enforcement and County Corrections Officers (pg. 724)

Prohibits an uncertified individual from being assigned the duties of a law enforcement officer, be authorized to carry firearms by an employer, and mandates that a failure to certify in accordance with the Act will cause the officer to forfeit the position.

Prohibits an employing agency from granting a person status as a law enforcement officer unless the person has been granted an active law enforcement officer certification by the Board. Details the scenarios by which a law enforcement officer's certification becomes inactive.

Emergency Order of Suspension (pg. 734)

Provides the authority for the Board to immediately suspend a law enforcement officer's certification under certain circumstances.

Law Enforcement Compliance Verification (pg. 736)

Places requirements on law enforcement officers to submit a verification form confirming compliance with the Act. Stipulates that the verification shall apply to the three calendar years preceding the date of verification. Details the recordkeeping requirements of individual law enforcement officers, governmental agency and the Board.
