Illinois Supreme Court upholds SAFE-T Act, cash bail abolished.

Illinois Supreme Court justices made a decision months in the making, upholding the controversial SAFE-T Act, particularly when it came to cash bail.

Justices had to answer whether or not the term "bail" inherently had a definition tied to money and whether or now Illinois lawmakers violated the "separation of powers."

Pritzker released the following statement on the Supreme Court ruling:

“I’m pleased that the Illinois Supreme Court has upheld the constitutionality of the SAFE-T Act and the elimination of cash bail. We can now move forward with historic reform to ensure pre-trial detainment is determined by the danger an individual poses to the community instead of by their ability to pay their way out of jail. My thanks to Attorney General Raoul’s office and the many people who worked tirelessly over the last months to defend these important reforms. I look forward to continuing to work with the General Assembly and our many other partners as we transition to a more equitable and just Illinois.”

Ultimately, justices sided with Illinois Attorney General Kwame Raoul and his associates who argued from the first Illinois Constitution in the 1800s that bail was not rooted money, but certain conditions which allowed their release before trial. They also agreed that "separation of powers" weren't violated with lawmakers amending policy, but not that state's constitution which would have required your vote on a future ballot.

All five Stateline counties were part of the lawsuit against ending cash bail, but now all five will have to follow the new policies, which also include which charges people can be released for ahead of their day in court.

Cash bail's end is effective September 18, or 60 days following this ruling.

The conclusion states,

"Sixty days after the filing of this opinion, on September 18, 2023, this court’s stay of pretrial release provisions in Public Acts 101-652 and 102-1104 shall be vacated. On that date, the circuit courts are directed to conduct hearings consistent with Public Acts 101-652 and 102-1104, and Illinois Supreme Court Rules implementing those pretrial release provisions shall become effective."

“Today’s ruling by the Supreme Court confirms Illinois’ status as the state of lawlessness and disorder. The court ignored the pleas of nearly every prosecutor in the state of Illinois, Democrat and Republican, that the elimination of cash bail will put dangerous criminals back on the street, instead of keeping them in jail or forcing them to post cash bail as they await trial. Many of those offenders will commit crimes again within hours of their release. And who will have to arrest those offenders again and again? The police officers whose jobs have been made immeasurably more difficult by all of the new anti-law enforcement measures that are in place. Today’s ruling is a slap in the face to those who enforce our laws and the people those laws are supposed to protect.” -Fraternal Order of Police

“I am disappointed with the partisan Supreme Court’s ruling because the Legislature did indeed infringe upon the rights and responsibilities of the judicial branch of government when they stripped away judges’ abilities to set cash bail. The Democrat Party has enacted the most radical soft-on-crime policies in the country, and nobody in this state will be immune from the consequences. This pro-criminal brand

of justice will put many criminals back on the streets within hours of a serious arrest. Crime victims and Illinois families will continue to feel less safe, and the State of Illinois will continue to grab national headlines for its growing crime rates." -Andrew Chesney

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Illinois State Senator Dave Syverson released a statement, saying he was 'disappointed' with court ruling:

"State's attorneys and law enforcement personnel from across Illinois have stated in no uncertain terms that their work – and the ultimate safety of their communities – will be threatened by many provisions of this controversial overhaul of the state's criminal justice system. With crime increasing across the state, eliminating cash bail just puts more criminals back on the streets." I am not surprised that the politically aligned Court would side with the Governor, but this is certainly not the ruling I had hoped for. It clearly sends yet another message that there are limited consequences for committing crimes in Illinois."

House Republican Leader Tony McCombie also released a response:

"Politically compelled public policy has never been in the best interest of the people. The liberal court's decision today is not surprising, and this decision will undoubtedly hurt families and businesses around the state. Anyone that is familiar with the court system knows that this is not about the ability whether an offender can post bail, but a progressive movement to decriminalize crime and promote an environment for repeat offenders. This policy is not about bail reform, but about elevating criminals. The Illinois House Republicans will join families around the state to bring light to the failings of the liberal imbalance of the General Assembly. We know there is an approach to address comprehensive criminal justice reform, but that must start with offenders being held accountable for the crimes they commit. I look forward to working with victim advocates and our law enforcement partners to bring forth changes that ensure safe neighborhoods, thriving business districts and most importantly protect victims of crime."

State Representative John Cabello responds to Illinois Supreme Court ruling on "no cash bail":

"The Democrat controlled legislature passed the so-called SAFE-T Act in the early morning hours in January of 2021. This huge legislation with massive impact to public safety was given little time for debate and provided for very little input from law enforcement. The Democrat Governor then signed it.

The opposition from law enforcement, including nearly every Sheriff in the state, was almost unanimous. This bill was viewed as a danger to the public and their safety. The bill is an anti-law enforcement bill that prioritizes criminals over police and perpetrators over their victims. "No cash bail" allows criminals to walk free while victims live in fear of perpetrators and their associates walking the same streets as they do.

Two Democrat State's Attorneys who put public safety over party affiliation were the first to challenge the SAFE-T Act in the court system. Dozens more State's Attorneys joined in the lawsuits and battled for justice for victims. Ultimately the new Democrat controlled Illinois Supreme Court ignored the victims and sided with this radical progressive agenda.

The headlines say that Illinois is the "first state to have no cash bail". The Democrats in Chicago and Springfield have now made our state and all of our residents the Guinea Pigs for their big social experiment. Even California and New York State do not have "no cash bail" but New York City and Los Angeles have the equivalent and the crime rates there are soaring.

Keeping our people safe is the number one priority of any government entity and our Democrat dominated state have just launched a major offensive against every citizen's right to not live in fear. The main argument in the case against the "no cash bail" provision of the SAFE-T Act was the premise that this issue should have gone to the people to decide as is provided for under our constitution. Evidently some elected officials don't understand the oath they take to uphold our constitution and the duty they have to the safety of our people."

PART A

Summary of Provisions in Illinois House Bill 3653: Criminal Justice Omnibus Bill

On January 13, 2021, in the final hours of the lame duck session of the 101st General Assembly, the Illinois House and Senate passed a broad criminal justice reform bill. House Bill 3653 Senate Amendment 2, sponsored by Senator Elgie Sims, Jr. and Representative Justin Slaughter, impacts many aspects of the criminal justice system including policing, pretrial court processes and sentencing and prison policies. The following is an abbreviated summary of the major provisions included in the bill. The provisions of this Act take effect on July 1, 2021, unless noted otherwise.

Policing Reforms

- **Standardized Use of Force**: Creates the Statewide Use of Force Standardization Act, stating that it is the intent of the General Assembly to establish statewide use of force standards for law enforcement agencies effective January 1, 2022.

- **Residency Requirements:** Amends the Illinois Public Labor Relations Act relating to arbitration on residency requirements, reducing the size of a municipalities eligible for arbitration with regard to residency requirements from municipalities under a population of 1 million to municipalities under a population of 100,000.

- **Co-Responder Model**: Amends the Community-Law Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act by adding "Other First Responder" language for purposes of developing and implementing collaborative deflection programs for substance use treatment and other services as an alternative to traditional criminal justice system involvement and unnecessary emergency department admissions. Adds funding and training requirements. In order to receive funding, planning for the deflection program must include an agreement with participating licensed treatment providers authorizing the release of statistical data to the Illinois Criminal Justice Information Authority (ICJIA). Up to 10% of funding for law enforcement and other first responder entities may be spent on training, education and technical assistance. Includes a requirement that funding for deflection programs be prioritized for communities impacted by the war on drugs, communities with police/community relations issues and that disproportionately lack access to mental health and drug treatment. Allows for funding eligibility for naloxone and related overdose reversal supplies and treatment necessary to prevent gaps in service delivery between coverage by other funding sources.

- **Unconstitutional Patterns or Practice of Conduct**: Amends the Attorney General Act to authorize the Illinois Attorney General to investigate and bring civil action to eliminate a pattern or practice of conduct by officers that deprives any person of rights, privileges, or immunities protected by the U.S. Constitution or laws or the Illinois Constitution or laws. Provides the Attorney General with the authority to conduct examinations and collect statements under oath and issue subpoenas or conduct hearings to aid the investigation. The civil action must be commenced within 5 years of the occurrence or termination of an alleged violation. Allows the Attorney General to

require the payment of civil penalties up to $25,000 and up to $50,000 for a second violation within 5 years.

- **Sworn Affidavits**: Amends the State Police Act and the Uniform Peace Officers' Disciplinary Act to allow for the filing of a complaint against a police officer without a sworn affidavit or other legal documentation. The elimination of the affidavit requirement also applies to any collective bargaining agreements entered into after the effective date.

- **Administrative Investigation Notice Requirements**: Amends the Uniform Peace Officers' Disciplinary Act to remove requirements that officers under investigation be informed of the names of complainants in advance of administrative proceedings and the name, rank and unit or command of the officer in charge of the investigation.

- **Anonymous Complaints**: Amends the Police and Community Relations Improvement Act to allow any person to file a notice of an anonymous complaint to the Illinois Law Enforcement Training Standards Board (ILETSB) for conduct that would qualify an officer for decertification (this includes the following: a felony or misdemeanor, excessive use of force, failing to comply with duty to intervene, tampered with a dash camera or body camera, committed perjury, made a false statement, tampered with or fabricated evidence, or engaged in unprofessional or unethical conduct). Provides that ILETSB will investigate allegations and complete a preliminary review to determine whether further investigation is warranted. If ILETSB determines there is objective verifiable evidence to support the allegations, the Board will complete a sworn affidavit override. Effective January 1, 2023.

- **Limits on Military Equipment**: Amends the State Police Act, the Counties Code and the Illinois Municipal Code to forbid the Illinois State Police, sheriffs' departments and police departments from purchasing, requesting or receiving from any military surplus program the following equipment: tracked armored vehicles, weaponized aircraft or vehicles, .50-caliber or higher firearms and ammunition, grenade launchers, or bayonets.

- **Whistleblower Protection**: Amends the Public Officer Prohibited Activities Act to prohibit a unit of local government, a representative of a local government, or another employee from retaliating against an employee or contractor who reports an improper governmental action, cooperates with an investigation, or testifies in a proceeding or prosecution. To invoke these protections, the employee must make a written report to the appropriate auditing official, and each auditing official is required to establish written procedures for managing complaints. To remedy adverse actions against employees for reporting improper government action, the employee may receive restitution. Retaliatory actions are subject to a penalty of between $500 and $5,000, suspension without pay, demotion, discharge, and civil or criminal prosecution.

- **Retention of Police Misconduct Records**: Amends the Local Records Act, requiring that all public and nonpublic records related to complaints, investigations, and adjudications of police misconduct be permanently retained and may not be destroyed.

- **Officer Professional Conduct Database**: Amends the Illinois Police Training Act to require law enforcement agencies to notify the Illinois Law Enforcement Training Standards Board of misconduct or a violation of agency policy when an officer resigns during the course of an investigation based on any felony or sex offense. Previously law enforcement agencies were required to notify the Board of any Class 2 felony or greater offense. Provides State's Attorneys with access to the officer professional conduct database.

- **Police Officer Training Requirements**: Amends the Illinois Police Training Act. Requires crisis intervention training for probationary police officers, including: 12 hours of hands-on, scenario-based role playing; 6 hours of instruction on use of force techniques including de-escalation techniques; specific training on officer safety techniques; and 6 hours of training focused on high-risk traffic stops. Requires implicit bias and racial and ethnic sensitivity training as part of minimum in-service training an officer must complete every three years. Requires training on emergency medical response training and certification, crisis intervention training, and officer wellness and mental health to be completed as part of minimum in-service training an officer must complete annually (previously officer wellness and mental health training were required every three years). Requires 40 hours of crisis intervention training addressing specialized policing responses to people with mental illness. Requires the Illinois Law Enforcement Training Standards Board to adopt rules and minimum standards for in-service training requirements (mandatory training of 30 hours to be completed every three years) including on use of force and de-escalation techniques.

- **Mental Health Screening**: Amends the Illinois Police Training Act by adding to the powers and duties of the Illinois Law Enforcement Training Standards Board the authority to establish statewide standards regarding regular mental health screenings for probationary and permanent police officers, ensuring that counseling sessions and

screenings remain confidential.

- **Body Cameras**: Amends the Law Enforcement Officer-Worn Body Camera Act to require all law enforcement agencies to use officer-worn body cameras, to be phased in between January 1, 2022 and January 1, 2025 based on population size of the municipality or county. Law enforcement agencies in compliance with the requirements will receive preference by the Illinois Law Enforcement Training Standards Board in awarding grant funding under the Law Enforcement Camera Grant Act. Revises some of the guidelines and requirements for use of body cameras, including allowing only supervisors and not the recording officer to review recordings prior to completing incident reports. Requires all law enforcement agencies to provide an annual report on the use of officer-worn body cameras to the Illinois Law Enforcement Training Standards Board.

- **Crime Statistics Reporting**: Amends the Uniform Crime Reporting Act to include monthly reports required from each law enforcement agency to be made available by the Department of State Police, in addition to compilations of annual crime statistics.

- **Use of Force Reporting**: Amends the Uniform Crime Reporting Act to require the Department of State Police to regularly submit use of force information to the FBI National Use of Force Database. Requires all law enforcement agencies to report on use of force to the Department of State Police on a monthly basis beginning July 1, 2021. Also requires law enforcement agencies to report on any incident where an officer was dispatched to deal with a person experiencing a mental health crisis beginning July 1, 2021.

- **Limitations on Use of Force**: Amends the Criminal Code of 2012, adding language regarding when a peace officer is justified in use of force when making an arrest: when the officer believes "based on the totality of the circumstances" that force is necessary to defend himself or another from bodily harm, or when an officer believes that force is necessary to prevent resistance or escape if the officer "reasonably believes the person to be apprehended cannot be apprehended at a later date and is likely to cause great bodily harm to another" and the person "just" committed or attempted a forcible felony involving bodily harm or is attempting to escape by use of a deadly weapon.
    - Prohibits using deadly force against someone based on the danger that person poses to themselves if they do not pose an imminent threat of death or serious bodily injury to the officer or another person. Prohibits using deadly force against someone committing a property offense unless the offense is terrorism or unless deadly force is otherwise authorized by law.
    - In addition to chokeholds, prohibits using restraint above the shoulders with risk of asphyxiation unless deadly force is justified.
    - Law enforcement agencies are encouraged to adopt and develop policies designed to protect individuals with physical, mental health, developmental, or intellectual disabilities.
    - Prohibits discharging kinetic impact projectiles (e.g. rubber bullets) in a manner that targets the head, pelvis or back, discharging firearms or kinetic impact projectiles indiscriminately into a crowd, or using chemical agents or irritants including pepper spray and tear gas prior to issuing an order to disperse, followed by sufficient time and space to allow for compliance with the order to disperse.
    - Regarding use of force to prevent escape, a peace officer who has an arrested person in custody is justified in the use of force, but not deadly force, to prevent escape. Prohibits use of deadly force to prevent escape unless based on the totality of the circumstances, deadly force is necessary to prevent death or great bodily harm to an officer or another person.
    - Creates a duty for all law enforcement officers to render medical aid and assistance as soon as reasonably practical, whether as a result of use of force or otherwise.
    - Creates a duty for a peace officer to intervene to prevent another peace officer from using unauthorized force. The intervening peace officer must report the intervention within 5 days of the incident. Prohibits discipline or retaliation against a peace officer for intervening.

- **Law Enforcement Misconduct**: Amends the Criminal Code of 2012, stating a law enforcement officer commits misconduct when he or she misrepresents facts, withholds knowledge, fails to comply with the officer-worn body camera act, or commits any other act with the intent to avoid culpability or liability for himself or another. Makes law enforcement misconduct a Class 3 felony.

- **Right to Communicate with Attorney and Family in Police Custody**: Amends the Criminal Code of Procedure of 1963 to give people in police custody the right to make three phone calls as soon as possible upon being taken into police custody, but no later than three hours after arrival at the place of custody. Police custody facilities must post a sign with a statement notifying those in custody of their right to make 3 phone calls within 3 hours at no charge and

the phone number of the public defender's office. The phone call to the attorney cannot be monitored, eavesdropped or recorded. People in police custody must be given access to use a telephone via a land line or cell phone to make the phone calls and the ability to retrieve phone numbers contained in their cell phone prior to the phone being placed into inventory.

- **Use of Force in Executing Search Warrants**: Amends the Criminal Code of Procedure of 1963, requiring that prior to executing a no-knock warrant, the officer must attest that a supervising officer will ensure that each participating member is assigned a body worn camera and following body camera procedures prior to entering the location, that steps were taken in planning the search to ensure accuracy and plan for children or other vulnerable people on-site, and if an officer becomes aware the search warrant was executed at an address different from the location listed on the search warrant, that officer will immediately notify a supervisor who will ensure an internal investigation ensues.

- **Constitutional Rights and Remedies**: Creates the Task Force on Constitutional Rights and Remedies Act to develop and propose policies and procedures to review and reform constitutional rights and remedies, including qualified immunity for peace officers (with the Illinois Criminal Justice Information Authority providing administrative support). The Task Force will have one year to submit a report with findings and recommendations to the Governor and General Assembly.

Police Certification and Decertification Procedures

Amends the State Police Act and Illinois Police Training Act to establish new uniform processes for investigation of misconduct by law enforcement and decertification processes, effective January 1, 2022.

- **Illinois State Police Merit Board**: Increases the number of State Police Merit Board members from 5 to 7 and creates other requirements for Board members.

- **Reporting**: Requires the Merit Board to file an annual report to the Governor and General Assembly with information about terminations, cadet tests administered, the number of cadet applicants who failed the background investigation, new certifications from each cadet class, promotional assessments administered and the number of people certified for promotion. Also requires the Merit Board to submit an annual disciplinary data report to the Governor and General Assembly with statistics about the number of complaints received, the number of internal investigations initiated, concluded and pending, the number of Merit Board referrals, the number of officers decertified and the number of investigations that led to a determination of administratively closed, exonerated, not sustained, sustained, and unfounded.

- **Officer Professional Conduct Database (Officer Misconduct Database)**:
    - The Illinois State Police Merit Board will be responsible for reporting all required information in the Officer Misconduct Database.
    - The Merit Board must search the database before certifying any Illinois State Police cadet and the database must be checked before a governmental agency may appoint a law enforcement officer or a person seeking a certification as a law enforcement officer.
    - The database and other documents and information in possession of the Board are confidential and not subject to disclosure under the Freedom of Information Act or subpoena.
    - The database will be accessible to any chief administrative officer of any governmental agency, the Illinois State Police, any county State's Attorney and the Attorney General for the purposes of hiring law enforcement officers.
    - Requires all governmental agencies and the Illinois State Police to notify the Merit Board of any final determination of a willful violation of policy, official misconduct, or violation of law when the determination leads to a suspension of at least 10 days, the infraction triggers an official investigation, there is an allegation of misconduct or regarding truthfulness as to a material fact, bias, or integrity, or the officer resigns or retires during the course of an investigation. Also requires reporting to the Board within 10 days of a final determination, final administrative appeal or a law enforcement officer's resignation, including information regarding the nature of the violation. Upon receiving notification, the Board must notify the law enforcement officer of the report and the officer's right to provide a statement regarding the reported violation.
    - In addition to the Officer Misconduct Database, the Merit Board is required to maintain two public searchable databases: a database of law enforcement officers and a database of all completed investigations

against law enforcement officers related to decertification (this database will not include the names of officers).
    - Requires the Merit Board to submit an annual report to the Governor, Attorney General, President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives beginning on March 1, 2023 with the number of complaints received (including the race, gender, and type of complaints received), the number of investigations initiated and concluded in the preceding year, the number of investigations pending as of the reporting date, the number of hearings held and the number of officers decertified.

- **Illinois Law Enforcement Certification Review Panel**: Amends the Illinois Police Training Act to create an Illinois Law Enforcement Certification Review Panel with 11 members—3 appointed by the Governor and 8 appointed by the Attorney General, with requirements that appointees represent certain groups including law enforcement, State's Attorneys, victims, and the community, as well as training requirements. The Panel and the Merit Board are given the power to suspend, limit, restrict or revoke any certificate, to subpoena any person or entity and documents/records, to order the person to appear to give testimony and to produce evidence, and administer oaths to witnesses.

- **Automatic Termination**: Requires automatic termination of a state police officer convicted of a felony or certain misdemeanors.[1] The Illinois State Police Merit Board must report terminations under this Section to the Officer Misconduct Database.

- **Discretionary Termination**: The Illinois State Police Merit Board may terminate an Illinois State Police officer upon determination that the officer has committed an act that would constitute a felony or misdemeanor that could serve as basis for automatic decertification, used excessive force, failed to comply with the officer's duty to intervene, tampered with dash camera or body camera data or directed another to turn their camera off for purposes of concealing, destroying or altering potential evidence, committed perjury, made a false statement, knowingly tampered with evidence, or engaged in any other conduct while on active duty that involves moral turpitude. The Merit Board must report all terminations under this Section to the Office Misconduct Database.

- **Automatic Decertification**: Creates new procedures for the automatic decertification of law enforcement officers.
    - Expands the review of law enforcement officers by the Board to ensure no officer is certified who has been found guilty or entered a plea of nolo contendere to a felony or specific misdemeanors,[2] in addition to having been convicted or entered a plea of guilty to a felony or certain misdemeanors.
    - Requires the sheriff or chief executive of every governmental agency to report to the Board any arrest, conviction, finding of guilt, plea of guilty, or plea of nolo contendere of any officer regardless of whether the adjudication of guilt or sentence is withheld or not entered, including sentences of supervision, conditional discharge, or first offender probation.
    - Reduces the time period required for law enforcement officers to report to the Board their arrest, conviction, guilty finding or guilty plea from 30 days to 14 days. Any officer who is convicted, found guilty, or entered a plea of guilty, or entered a plea of nolo contendere immediately becomes decertified.

- **Discretionary Decertification**: Creates new procedures for the discretionary decertification of law enforcement officers.
    - The Board has the authority to decertify a full-time or a part-time law enforcement officer upon a determination that the officer has committed a felony or misdemeanor which could serve as basis for automatic decertification, used excessive force, failed to comply with the officer's duty to intervene, tampered with dash camera or body camera data or directed another to turn their camera off for purposes of concealing, destroying or altering potential evidence, committed perjury, made a false statement, knowingly tampered with evidence, or engaged in any unprofessional or unethical conduct.
    - Creates procedures for submitting notice of the violation to the Board (which allows for notice to be submitted confidentially by any person), preliminary review of the alleged violation, investigations, filing of formal complaints with the Certification Review Panel, administrative hearings, final action by the Board and filing for reconsideration of the Board's decision.
    - Prohibits any individual not certified by the Board or whose certified status is inactive from functioning as a law enforcement officer. A law enforcement officer's certification becomes inactive upon termination, resignation, retirement, or separation from the officer's employing governmental agency for any reason. Provides procedures for re-activating a certification.

- **Emergency Order of Suspension**: Allows the Board to immediately suspend a law enforcement officer's certification upon being notified that the officer has been arrested or indicted on any felony charges. The Board must also notify the chief administrator of any governmental agency currently employing the officer.

- **Law Enforcement Compliance Verification**: Requires all law enforcement officers to submit a verification form every three years that confirms compliance, including verification of completion of mandatory training programs, the law enforcement officer's current employment information (including termination of any previous law enforcement or security employment in the three-year period), and a statement verifying that the officer has not committed misconduct.

- **Sheriff Qualifications**: Adds to existing sheriff qualifications (that a sheriff be U.S. citizen, resident of the county for at least one year and not a convicted felon) a requirement to have a certificate attesting to his or her successful completion of the Minimum Standards Basic Law Enforcement Officers Training Course as prescribed by the Illinois Law Enforcement Training Standards Board or a substantially similar training program of another state or the federal government. Sheriffs currently serving on the effective date are exempt.

Pretrial Reforms

The following pretrial provisions take effect January 1, 2023, unless otherwise noted.

- **Abolishment of Cash Bail**: The Code of Criminal Procedure of 1963 is amended to abolish the requirement of posting monetary bail on or after January 1, 2023. Revisions are made to multiple statutes to replace references to "bail" and "conditions of bail" with "pretrial release" and "conditions of pretrial release." Removes language from the Counties Code to eliminate sheriffs' fees related to taking special bail and from the Clerks of Courts Act regarding credit card or debit card payment of bail bond fees.

- **Pretrial Data Collection**: Calls for the Administrative Office of the Illinois Courts (AOIC) to convene a Pretrial Practices Data Oversight Board under the Administrative Director to oversee the collection and analysis of pretrial practices data in circuit court systems. The Oversight Board will identify existing data collection processes in local jurisdictions, gather and maintain records from local criminal justice agencies, identify resources needed to systematically collect and report pretrial data, develop a plan to implement data collection processes and publish reports on the AOIC website. The Board must develop a strategy to collect quarterly, county-level data on the following topics: arrests and charges; outcomes of pretrial hearings and pretrial conditions; information about the detained jail population and average length of stay for pretrial defendants; information about electronic monitoring programs; discharge data; rearrests of individuals released pretrial; failure to appear rates; and information on validated risk assessment tools used in each jurisdiction and comparisons of judges' release/detention decisions to risk assessment scores of individuals. Effective July 1, 2021.

- **Domestic Violence Pretrial Practices Working Group**: Amends the Illinois Criminal Justice Authority Act to create a Domestic Violence Pretrial Practices Working Group convened by ICJIA to research current practices in pretrial domestic violence courts throughout Illinois. The Working Group is required to meet quarterly, issue a preliminary report within 15 months, and issue a final report with recommendations for evidence-based improvements to court procedures within 15 months of the preliminary report. Effective July 1, 2021.

- **Notice to Crime Victims**: Crime victims shall be given notice by the State's Attorney's office of the defendant's initial pretrial hearing and be informed of their opportunity to obtain an order of protection at the hearing.

- **Violation of Conditions**: Amends the Criminal Code of 2012 to make a violation of conditions of pretrial release a Class A misdemeanor if the underlying offense was a felony and a Class C misdemeanor if the underlying offense was a misdemeanor. Previously the violation would have been the next lower class offense.

- **Arrest and Release from Law Enforcement Custody**: Amends Article 109 of the Code of Criminal Procedure of 1963 to add the following provisions.
    - Requires law enforcement to issue a citation in lieu of custodial arrest for traffic offenses, Class B and C misdemeanor offenses or petty and business offenses in which the person poses no obvious threat to the community or another person and who have no medical or mental health issues that pose a risk to their own safety. Those released on citation must be scheduled into court within 21 days.

- Allows law enforcement officers to release a person arrested for an offense for which pretrial release may not be denied without appearing before a judge, with a summons to appear in court within 21 days. Creates a presumption in favor of pretrial release by the arresting officer.
- Requires that upon initial appearance before the court, the defendant be released or, upon verified petition of the State, that a detention hearing be set.
- Requires the person charged to be present in person at the hearing at which conditions of pretrial release are determined unless there is a safety risk to the person appearing in court or the accused waives the right to be present in person.
- Requires that defense counsel be given adequate opportunity to confer with the defendant prior to any hearing in which conditions of release or the detention are considered, with a physical accommodation made to facilitate attorney/client consultation.
- Requires that when a defendant charged with a felony has a warrant in another Illinois county, the defendant be taken to the county that issued the warrant within 72 hours of completion of the initial hearing.

- **Pretrial Release Procedures**: Amends Article 110 of the Code of Criminal Procedure of 1963 to add the following provisions regarding pretrial release.
  - **Release on Own Recognizance**: Creates a presumption to release a defendant on personal recognizance on the condition that the defendant attends all required court proceedings, does not commit any criminal offense and complies with all terms of pretrial release. Additional conditions of release shall be set only when it is determined that they are necessary to assure the defendant's appearance in court, assure the defendant does not commit any criminal offense, and complies with all conditions of pretrial release. Detention only shall be imposed when it is determined that the defendant poses a specific, real and present threat to a person, or has a high likelihood of willful flight. If the court decides to detain the defendant, the court must make a written finding as to why less restrictive conditions would not assure safety to the community and the defendant's appearance in court. At each subsequent court hearing, the judge must find that continued detention or conditions imposed are necessary to avoid a specific, real and present threat to any person or willful flight from prosecution.
  - **Options for warrant alternatives**: Establishes procedures for when a defendant fails to comply with any pretrial release condition. The court may issue an order to show cause as to why the defendant's pretrial release should not be revoked. A certified copy of the order must be served upon the person at least 48 hours in advance of the scheduled hearing. If the person does not appear at the hearing to show cause, the court may issue an arrest warrant. Allows the warrant to modify any previously imposed conditions rather than revoking pretrial release or issuing a warrant. Prevents the court from recording a failure to appear until the defendant fails to appear at the hearing to show cause. Prevents a non-appearance in court cured by an appearance at the hearing to show cause from being considered as evidence of the defendant's future likelihood of failing to appear.
  - **Pretrial Release**: Pretrial release may only be denied when a person is charged with an offense that qualifies for denial of pretrial release (as defined in 725 ILCS 5/110-6.1) or when the defendant has a high likelihood of willful flight, and after the court has held a detention hearing.
  - **Determining Conditions of Release**: Establishes procedures for determining conditions of pretrial release, including the factors the court is required to take into account (including the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's history and characteristics and the risks that would be posed by the defendant's release). Allows the court to use a validated risk assessment tool to aid in determination of appropriate conditions of release, but risk assessment tools may not be used as the sole basis to deny pretrial release. Requires that the defendant's counsel be provided with the scoring system of the risk assessment tool. The defendant has the right to challenge the validity of a risk assessment tool used and present evidence relevant to the challenge. If a defendant remains in pretrial detention after having been ordered released with pretrial conditions, the court must hold a hearing to determine the reason for continued detention. Requires the court to appoint a public defender or licensed attorney to represent the defendant prior to their first appearance.
  - **Electronic Monitoring and Home Confinement as a Condition of Release**: Electronic monitoring, GPS monitoring or home confinement can only be imposed as a condition of pretrial release if no less restrictive condition or combination of conditions of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person(s) from imminent threat of serious physical harm. If the court imposes electronic monitoring, GPS monitoring or home confinement, the court must state in the record the basis for its finding. Requires that defendants receive custodial credit for each day on a home confinement or electronic monitoring program. The court must determine every 60 days if no less restrictive condition or combination of conditions of release would reasonably ensure the defendant's

appearance at later hearings or protect an identifiable person from threat of serious physical harm. If the court finds that there are less restrictive conditions of release, the court must order that the condition be removed.

- **Revocation of pretrial release and modification of conditions of pretrial release**: When a defendant is granted pretrial release, pretrial release may only be revoked if the defendant is charged with a detainable felony (as defined in 725 ILCS 5/110-6.1) or if the defendant is charged with a new felony or Class A misdemeanor. Establishes procedures for revocation of pretrial release. Allows the State to file a verified petition for revocation of pretrial release when the defendant is charged with a subsequent felony or class A misdemeanor offense while on pretrial release. Requires the State to file a verified petition for revocation of pretrial release when a defendant on pretrial release is charged with a violation of an order of protection and the subject of the order of protection is the same person as the victim in the underlying matter. Allows the court to revoke the defendant's pretrial release if it finds clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or class A misdemeanor. Allows the court to modify conditions of pretrial release in lieu of revocation. Allows the court to remove previously set conditions of pretrial release. The court may only add or increase conditions of pretrial release at a hearing, in a warrant issued, or upon motion from the state. Regarding contact with victims or witnesses, the court is prohibited from removing a previously set condition regulating contact with a victim or witness unless the subject of the condition has been given notice of the hearing.
- **Sanctions for violations of conditions of pretrial release**: Authorizes the State to request a hearing for sanctions after a defendant fails to appear or is arrested for an offense other than a felony or class A misdemeanor. In order to impose sanctions, the court must find by clear and convincing evidence that the defendant violated a term of their pretrial release, had actual knowledge that their action would violate a court order, willfully violated the court order and the violation was not due to a lack of access to financial monetary resources. Sanctions may include a verbal or written admonishment from the court, imprisonment in the county jail for up to 30 days, a fine of up to $200 or a modification of the defendant's pretrial conditions.
- **Denial of Pretrial Release**: Establishes the process and criteria under which a defendant may be denied pretrial release (725 ILCS 5/110-6.1). Upon verified petition by the State, the court must hold a hearing at which it may deny the defendant pretrial release if:
    - The defendant is charged with a forcible felony for which a sentence of imprisonment without probation, periodic imprisonment or conditional discharge is required by law upon conviction, and the defendant's release poses a specific, real and present threat to any person or the community;
    - The defendant is charged with stalking or aggravated stalking and the defendant's release poses a real and present threat to the physical safety of a victim of the alleged offense;
    - The defendant is charged with domestic battery or aggravated domestic battery and the defendant's release poses a real and present threat to the physical safety of any person(s);
    - The defendant is charged with a sex offense (excluding public indecency, adultery, fornication and bigamy) and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of any person(s);
    - The defendant is charged with certain violations under the Criminal Code of 2012[3] and the defendant's release poses a real and present threat to the physical safety of any specifically identifiable person(s); or
    - The person has a high likelihood of willful flight to avoid prosecution and is charged with a non-probationable[4] forcible felony, stalking or aggravated stalking, domestic battery or aggravated domestic battery, a sex offense (excluding public indecency, adultery, fornication and bigamy), or a felony other than a Class 4 felony.

The detention hearing process requires the court to hold a hearing immediately upon the filing of the petition by the State, unless a continuance is requested. If a continuance is requested, the hearing must be held within 48 hours of the defendant's first appearance if the defendant is charged with a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 felony or misdemeanor offense. The Court can deny or grant the request for continuance, and retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing. The State bears the burden of proving by clear and convincing evidence that the defendant committed an offense that qualifies for pretrial detention, that the defendant poses a real and present threat to the safety of a specific, identifiable person and that no condition or combination of conditions can mitigate the risk

of releasing the defendant to a person's safety or the defendant's risk of willful flight. Establishes procedures for conduct of the detention hearing.

Prison and Sentencing Reforms

- **Prison Gerrymandering**: Creates the No Representation Without Population Act, which provides for a process of using prison inmates' most recent known address prior to incarceration for purposes of redistricting legislative districts. Requires the Illinois Department of Corrections to collect and maintain electronic records of the legal residence and demographic data for each person in custody and provide a report to the State Board of Elections each year when the federal decennial census is taken with de-identified inmate data (effective January 1, 2025). The data cannot be used in the distribution of any state or federal aid.

- **Reporting of Deaths in Custody**: Creates the Reporting of Deaths in Custody Act, which creates a process and procedures for investigating and reporting deaths that occur in the custody of any law enforcement agency or correctional facility as a result of a peace officer's use of force. Reports must be submitted to the Illinois Criminal Justice Information Authority (ICJIA). Includes requirements for ICJIA to post the information collected to its website on a quarterly basis and issue a public annual report evaluating trends on deaths in custody. Also includes requirements for notifying the person's family.

- **Sentence Credits**: Amends the Unified Code of Corrections to allow the Illinois Department of Corrections Director to award up to 180 days of earned sentence credit for prisoners serving a sentence of less than 5 years, and up to 365 days of earned sentence credit for prisoners serving a sentence of 5 years or longer. Previously only up to 180 days of earned sentence credit could be granted for any sentence term. Allows prisoners to earn sentence credits for participation in certain programs including substance abuse programs, correctional industry assignments, educational programs, work-release programs, behavior modification programs, life skills courses, re-entry planning, self-improvement programs, volunteer work, work assignments, or obtaining an associate degree while in custody. Requires the Department of Corrections to prescribe rules and regulations for revoking and restoration of sentence credits.

- **Sentencing/Mandatory Minimums**: Amends the Unified Code of Corrections to require the court, when imposing a sentence for a Class 3 or 4 felony, to indicate in the sentencing order whether the defendant has 4 or more or fewer than 4 months remaining on his or her sentence accounting for time served. When an offender is sentenced for a Class 3 or 4 felony and has less than 4 months remaining on his or her sentence, they cannot be confined in prison but may be assigned to electronic home detention, an adult transition center, or another facility or program within the Department of Corrections. When imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; if the court finds that the defendant does not pose a risk to public safety; and if the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment.

- **Mandatory Supervised Release Terms:** Amends the Unified Code of Corrections to revise the terms of mandatory supervised release for certain offenses. Reduces the mandatory supervised release term for a Class X felony (excluding a number of offenses identified in 730 ILCS 5/3-6-3 requiring 85% of the sentence to be served) from 3 years to 18 months. Offenses of predatory criminal sexual assault of a child, aggravated criminal sexual assault, and criminal sexual assault, if they were committed on or before December 12, 2005, will carry a term of 3 years of mandatory supervised release. Reduces the mandatory supervised release term for a Class 1 or Class 2 felony (except for criminal sexual assault) from 2 years to 12 months. Prohibits (with exceptions for certain offenses) mandatory supervised release from being imposed for a Class 3 or Class 4 felony unless the Prisoner Review Board determines it is necessary based on a validated risk and needs assessment.
- **Habitual Criminal:** Amends the definition of habitual criminal in the Unified Code of Corrections by adding that the person's first offense must have been committed when he or she was 21 years of age or older. Also adds "forcible" to a provision stating that when a defendant over the age of 21 years is convicted of a Class 1 or Class 2 forcible felony after two prior convictions of a Class 1 or Class 2 forcible felony, the defendant shall be sentenced as a Class X offender.

- **Felony-Murder Law:** Amends the Criminal Code of 2012, clarifying that in order to be charged with first degree murder when committing a forcible felony other than second degree murder in which another individual dies, the person or another participant acting with them must have caused the death.

- **Credit for Time in Custody**: Amends the Unified Code of Corrections to clarify how home confinement is defined for purposes of sentencing credit for time in custody. Directs that home detention includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or movement. Electronic monitoring is not required for home detention to be considered custodial for purposes of sentencing credit. Removes language prohibiting an offender from receiving credit for time spent in home detention when serving a term of imprisonment for an offense that is ineligible for probation.

- **Electronic Monitoring**: Amends Article 8A of the Unified Code of Corrections regarding electronic monitoring and home detention. Adds that approved absences from the home shall include purchasing groceries, food, or other basic necessities. Requires that anyone ordered to home confinement, with or without electronic monitoring, be provided with open movement spread out over no fewer than two days per week. Requires that in order for someone to be guilty of an escape or violation of a condition of an electronic monitoring or home detention program, the person must remain in violation for at least 48 hours.

- **Eligibility for Programs Restricted by Felony Background**: Amends the Unified Code of Corrections to require that convictions entered prior to the effective date of the Act for certain drug offenses be treated as a Class A misdemeanor for the purposes of evaluating a defendant's eligibility for programs of qualified probation, impact incarceration, or any other diversion, deflection, probation, or other program for which felony background or delinquency background is a factor in determining eligibility.

- **Pregnant Prisoners**: Amends the Counties Code, Unified Code of Corrections and County Jail Act to require training on the medical and mental health care issues applicable to pregnant prisoners. Also requires educational programing for pregnant prisoners. Requires that for 72 hours after the birth of an infant by a prisoner, the infant be allowed to remain with the prisoner and that the prisoner have access to any nutritional or hygiene-related products necessary to care for the infant. Prohibits placing a pregnant prisoner or a prisoner who gave birth during the preceding 30 days in administrative segregation unless the corrections director believes there is safety risk.

Other Provisions

- **Crime Victims Compensation**: Amends the Crime Victims Compensation Act.
    - Amends the definition of victim to include children of a person killed or injured and the definition of relative to include anyone living in the household who holds a relationship with the killed or injured that is substantially similar to that of a parent, spouse, or child. Removes language indicating the child or stepchild must be unmarried and under 18.
    - Increases the pecuniary loss limit for the cost of transport for deceased victims from $7,500 to $10,000 and for the cost of funeral and burial in the case of dismemberment or desecration of a body from $7,500 to $10,000. Also increases the limit for eligible loss of earnings or support the victim may receive from $1,250 per month to $2,400 per month.
    - Adds that a victim's criminal history or felony status shall not automatically prevent their compensation. Removes a provision that a person convicted of a felony cannot receive compensation until they are discharged from probation, parole or mandatory supervised release (but retains a provision that prohibits providing compensation to a victim while the victim is held in a correctional institution).
    - Requires the Attorney General to investigate all claims and present an investigatory report and a draft award determination to the Court of Claims for a review period of 28 business days, and provide the applicant with a compensation determination letter upon conclusion of the review by the Court of Claims.
    - Increases the time limit within which an applicant may apply for compensation from within 2 years of the occurrence of the crime to within 5 years, and increases the time limit within which a person entitled to compensation who is under 18 years of age or under other legal disability can file an application. The Attorney General and the Court of Claims may accept an application presented after the time limit if a good cause for a delay is determined.
    - Removes a provision stating a person is entitled to compensation if the injury or death of the victim was not substantially attributable to his own wrongful act and was not substantially provoked by the victim.
    - Adds factors the Attorney General and Court of Claims may consider in determining whether cooperation is reasonable including the victim's age, physical condition, psychological state, cultural or linguistic

barriers and compelling health and safety concerns, including a reasonable fear of retaliation or harm.

- **Traffic Fines**: Amends the Illinois Vehicle Code, requiring the Secretary of State to rescind the suspension, cancellation, or prohibition of the renewal of a person's driver's license due to their having failed to pay a fine or penalty for traffic violations, automated traffic law enforcement system violations, or abandoned vehicle fees. Removes the ability of counties and municipalities to have rendered as a judgement in Circuit Court an unpaid fine or penalty associated with a person's violation of five or more automated traffic law violations or automated speed system violations. Removes language allowing for a person's driving privileges to be suspended for failing to complete a required traffic education program or pay a fine or penalty as a result of a combination of 5 violations of the automated traffic law enforcement system or the speed enforcement system. Removes the requirement for counties and municipalities to make a certified report to the Secretary of State whenever a vehicle owner failed to pay any fine or penalty due as a result of a combination of 5 automated traffic law or speed enforcement system violations. Removes language allowing for a person's driving privileges to be suspended for not paying or successfully contesting the civil penalty resulting from 5 violations of the automated railroad grade crossing enforcement system.

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[1] Misdemeanors that qualify for automatic termination are: criminal sexual abuse; indecent solicitation of a child; indecent solicitation of an adult; solicitation to meet a child; sexual exploitation of a child; prostitution; solicitation of a sexual act; public indecency; aggravated assault; domestic battery; interfering with the reporting of domestic violence; theft; deceptive practices; false personation; transmission of obscene messages; harassment by telephone; harassment through electronic communications; keeping a gambling place; offering a bribe; offenses affecting governmental functions such as resisting or obstructing a peace officer, escape/aiding escape, perjury, interfering with judicial process, harassment or jurors or witnesses, tampering with public records, official misconduct, bribery, etc.; harassment of representatives for a child, jurors, witnesses and others; simulating legal process; possession of another's credit, debit, or identification card; manufacture or delivery of cannabis; and delivery of cannabis on school grounds.

[2] The list of misdemeanors that qualify for automatic decertification is expanded to include: indecent solicitation of an adult; solicitation to meet a child; solicitation of a sexual act; public indecency; domestic battery; interfering with the reporting of domestic violence; transmission of obscene messages; harassment by telephone; and harassment through electronic communications. Misdemeanors that already qualified for automatic decertification include: criminal sexual abuse; indecent solicitation of a child; sexual exploitation of a child; prostitution; aggravated assault; theft; deceptive practices; false personation; keeping a gambling place; offering a bribe; offenses affecting governmental functions possession of another's credit, debit, or identification card; manufacture or delivery of cannabis; and delivery of cannabis on school grounds.

[3] The violations specified in this section include the following offenses: aggravated discharge of a firearm; aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm; reckless discharge of a firearm; armed habitual criminal; manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon's breath shotgun shells, bolo shells or flechette shells; unlawful sale or delivery of firearms; unlawful sale or delivery of firearms on the premises of any school; unlawful sale of firearms by liquor license; unlawful purchase of a firearm; gunrunning; firearms trafficking; involuntary servitude; involuntary sexual servitude of a minor; trafficking in persons; unlawful use or possession of weapons by felons or persons in the custody of the Department of Corrections facilities; aggravated unlawful use of a weapon; and aggravated possession of a stolen firearm.

[4] An offense in which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction.

Summary of Amendments to Public Act 101-0652, the SAFE-T Act

The Illinois General Assembly passed a series of amendments during veto session in early December to the SAFE-T (Safety, Accountability, Fairness and Equity – Today) Act, the criminal justice omnibus law enacted in early 2021. The SAFE-T Act (Public Act 101-0652) was originally passed by the Illinois General Assembly in January 2021 and signed by Governor Pritzker in February 2021. Two subsequent rounds of amendments were passed in June 2021 and January 2022. (Public Acts 102-28 and 102-694)

The most recent amendments were passed by the Illinois House and Senate on Dec. 1, 2022, and signed by Governor Pritzker on Dec. 6, 2022, into Public Act 102-1104. The vast majority of the amendments were part of House Bill 1095, Senate Amendment 1. A few additional changes were included in House Bill 1095, Senate Amendment 2. The amendments are extensive, so the following summary highlights some of the key components. For additional details on the pretrial components, see the flowcharts and implementation guidance documents on the Illinois Supreme Court Pretrial Implementation Task Force website.

PART B

Public Act 102-1104

SAFE-T Act Trailer Bill #3.

In late November, 2022, lawmakers made changes to the SAFE-T Act to try and get more support from Republicans, but ultimately still faced a lawsuit from half of Illinois' elected state's attorneys.

The key issue sheriffs and state's attorneys posed was the "dangerousness" standard when it came to holding someone in jail before their trial. Prior to the amendment, opponents of the SAFE-T Act said the language would make it very difficult to prove someone was dangerous enough to keep in prison, even alleging that people accused of second degree murder would be back on the streets before their trial. Democrats looked to address this in the amendment by significantly widening the definition of "dangerous" to include being a threat to a named person, or the community at large.

Winnebago County State's Attorney J Hanley has been the closest of our five area state's attorneys to not joining the lawsuit, even saying he can understand some cases for eliminating cash bail in Illinois, but ultimately believed the law did violate the state's constitution.

Now, Hanley and other state's attorneys will need to figure out how to pay for several mandates included in this portion of the SAFE-T Act, which will cost Winnebago County millions in added labor costs.

Breaking Down the Bill:

With a month before the Pretrial Fairness piece of the SAFE-T Act starts, lawmakers are trying to fix the issues raised about the law.

68th District Representative Dave Vella, who represents parts of Rockford, Belivdere and other areas of the Stateline, says he and a handful of other lawmakers worked with law enforcement, state's attorneys, criminal reform advocates and more to find middle ground for a trailer bill.

That trailer bill went to the senate floor on Wednesday with three major changes which Vella wanted to point out:

Implementation Time: To address fears of overwhelming courts and large shifts of prison population, the trailer bill gives courts 90 days after the first of the year to reevaluate everyone who should be jailed and people who should be released pretrial.

Dangerousness Standard Language: Opponents of the Pretrial Fairness Act raised concerns over the standard of pertinent danger when it came to whether someone would be released pretrial. When a case comes to the court, two factors determine the amount of bond set: the chance of a person running away, and if they pose a threat to the community. In the original language of the Pretrial Fairness Act, some believed that the wording would force prosecutors to prove that a person causes a threat to a specific, named person to jail them before their trial. The trailer bill clarifies the language to say 'person/persons/or the community' to widen the scope.

What Crimes Demand Pretrial Jailing: Opponents of the Pretrial Fairness Act had issues with what crimes might not require people to be held in jail before pretrial release with the most commonly used being second-degree murder. Vella says the trailer bill responds to this by adding language which requires a person to be held in jail before their trial if they're charged with a crime that wouldn't allow probation if the person was convicted.

What's Next?

Time is ticking for this bill to get to the finish line. The senate needs to pass the trailer bill, then head to the house for passage before Thursday's session ends. The bigger question is whether or not lawmakers try to amend this trailer bill, which could take too much time to pass by the end of Thursday.

Even if the amendment passes, there's still the matter of the lawsuits from state's attorneys. That case starts on Wednesday, December 7 in Kankakee with a decision expected by December 15.

December 2022 Veto Session Amendments to the SAFE-T Act

Pretrial Release

P.A. 102-1104 defines “pretrial release” as having the meaning ascribed to bail in Section 9 of Article I of the Illinois Constitution where the sureties provided are nonmonetary in nature. (725 ILCS 5/102-6) It also adds language stating that all persons charged with an offense shall be eligible for pretrial release before conviction, and at all pretrial hearings, the prosecution shall have the burden to prove by clear and convincing evidence that any condition of release is necessary. (725 ILCS 5/102-2)

Determining Conditions of Release

The amendments standardize language throughout to consistently apply the following standard for pretrial detention based on whether a defendant presents a safety threat: “Real and present threat to the safety of any person or the community, based on the specific, articulable facts of the case.”

The amendments make several changes to the procedures for the court to determine conditions of pretrial release:

- It allows the court to take into account additional factors when setting release conditions for those charged with violent offenses related to domestic and intimate partner violence such as domestic battery, violations of an order of protection and stalking. (725 ILCS5/110-5(a)(6) and (7))
- When using a risk assessment tool to aid its determination of appropriate conditions of release, the defendant's counsel shall be provided with the information and scoring system of the risk assessment tool used to arrive at the determination and the defendant has the right to challenge the validity of a risk assessment tool. (725 ILCS 110-5(b)
- The conditions of release imposed shall be the least restrictive conditions or combination of conditions necessary to reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community. (725 ILCS 5/110-5(c))
- If a person remains in pretrial detention 48 hours after being ordered released, the court must hold a hearing to determine the reason for continued detention. (725 ILCS 5/110-5(e))
- At each subsequent appearance of the defendant before the court, the judge must find that the current conditions imposed are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person and the compliance of the defendant with all the conditions of pretrial release. (725 ILCS 5/110-5(f-5))
- The State and defendants may appeal court orders imposing conditions of pretrial release. (725 ILCS 5/110-5(k))
- Decisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to make a condition or detention decision. (725 ILCS 5/110-6.1(f)(7))
- Risk assessment tools cannot not be used as the sole basis to deny pretrial release. (725 ILCS 5/110-6.1(f)(7))
- Conditions cannot mandate rehabilitative services unless directly tied to the risk of pretrial misconduct. Additionally, conditions of supervision cannot include punitive measures such as community service work or restitution. (725 ILCS 5/110-10(b))
- The defendant must receive verbal and written notification of conditions of pretrial release and future court dates, including the date, time and location of court. (725 ILCS 5/110-10(b)

Initial Appearance

The amendment adds a 48-hour requirement, which specifies that after a person is arrested for an offense for which pretrial release may be denied, they must be taken to appear before a judge within 48 hours (725 ILCS 5/109-1).

Procedures for Person Arrested with an Outstanding Warrant in Another County

The amendments in P.A. 102-1104 change the provisions dealing with people arrested for a new offense but who have an outstanding warrant in another county (725 ILCS 5/109-2). A requirement to bring the defendant back to the county with the outstanding warrant within 72 hours is removed, and instead the county that arrested the person will hold the person and bring them before a judge for a detention hearing. After the court in the arresting county has determined whether the person will be released or detained, the arresting county must contact the sheriff in the county with the outstanding warrant to notify them of the arrest. Within five days of a detention order, the county with the outstanding warrant must either transport the defendant back to that county or the warrant will be quashed. If no action is taken within five days, the defendant will be released from custody on the warrant, and the judge in the arresting county will set conditions of release and release them for an appearance before the court named in the warrant. The county that issued the warrant may hold the hearing remotely. These provisions only apply to warrants issued within the State of Illinois.

Options for Summons Rather than Warrants in Violations of Release Conditions

Language in 725 ILCS 5/110-3 is revised regarding options for warrant alternatives when a person on pretrial release fails to comply with a condition of release, with the goal of relying on summonses rather than warrants to ensure the appearance of the defendant in court whenever possible. Upon failure to comply with any condition of pretrial release, the court may, on its own motion or upon motion from the State, issue a summons or warrant for the person’s arrest. If the person appears in court on the date

assigned or within 48 hours of being served the summons, whichever is later, then they shall *not* be recorded in the official docket as having failed to appear on the initial missed court date. However, if a person fails to appear in court on the date listed on the summons, the court may issue a warrant for the person's arrest. The amendment also prohibits the court from using a failure to appear in court that was resolved by an appearance in response to a summons as evidence of future likelihood of appearance in court.

Revocation of Pretrial Release

If someone is released on a felony or class A misdemeanor, and the person commits a new felony or class A misdemeanor while on pretrial release, they are subject to revocation of pretrial release and entitled to a hearing. The revocation hearing must occur within 72 hours of the filing of the State's petition or the court's motion for revocation. The defendant is entitled to representation by defense counsel and an opportunity to be heard regarding the violation and evidence in mitigation. If a defendant was released on a Class B or C misdemeanor or any lower offense, and is charged with a felony or a Class A misdemeanor while on pretrial release, the pretrial release may not be revoked but the court may impose sanctions. However, the state can file a petition seeking detention in any eligible circumstance. (725 ILCS 5/110-6)

Offenses Eligible for Pretrial Detention

The list of offenses that are detainable pretrial (725 ILCS 5/110-6.1) has been expanded to include the following:

- All non-forcible felonies that are not eligible for probation, if the defendant's release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;
- All forcible felonies, if the defendant's release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case. This includes: treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement;
- The list of detainable offenses under 725 ILCS 5/110-6.1(a)(6) (which already included several gun-related offenses) is expanded to include: reckless homicide, involuntary manslaughter, residential burglary, child abduction, child endangerment, hate crimes, aggravated unlawful restraint, threatening a public official and aggravated battery with a deadly weapon other than by discharge of a firearm;
- A new section (725 ILCS 5/110-6.1(a)(6.5)) is added to include several offenses related to aggravated driving under the influence and animal cruelty; and
- Any attempt to commit the aforementioned charges if the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case (725 ILCS 5/110-6.1(a)(7)).

Certain sex offenses are removed from the list of detainable offenses: prostitution, solicitation of a sexual act, patronizing a prostitute and obscenity.

For non-forcible, non-probationable felonies, certain drug offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act can only be detained if the court proves that the defendant meets all of the criteria pertaining to both public safety risk **and** a risk of not appearing in court. (725 ILCS 5/110-6.1(e)(4))

The amendments also require the court to make a written finding summarizing the court's reasons for the decision to deny the defendant pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or prevent the defendant's willful flight from prosecution. (725 ILCS 5/110-6.1(h))

Willful Flight

"Willful flight" is defined as intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution. The amendment also removes language that previously said "simple past non-appearance in court alone is not evidence of future intent to evade prosecution." (725 ILCS 5/110-1(f))

Custodial Credit for GPS Monitoring

The court may give custodial credit to a defendant for each day the defendant was subjected to GPS monitoring without home confinement or electronic monitoring without home confinement. (725 ILCS 110-5(h))

Escape from Electronic Monitoring

The amendment removes language from the SAFE-T Act that previously required someone to be in violation of electronic monitoring for 48 hours in order for it to be considered an escape and instead states that a person "knowingly escapes or leaves from the geographic boundaries of an electronic monitoring or home detention program with the intent to evade prosecution." Anyone charged with a felony who escapes according to this revised criterion is guilty of a class 3 felony, and anyone charged with a misdemeanor who escapes is guilty of a class B misdemeanor. (730 ILCS 5/5-8A-4.1)

New language is also added to 730 ILCS 5/5-8A-4.15 to state that anyone charged with a felony or misdemeanor who knowingly and intentionally violates a condition of electronic monitoring or home detention without notification to the proper authority is subject to sanctions; and a person who violates a condition of the electronic monitoring or home detention program by knowingly and intentionally removing, disabling, destroying or circumventing the operation of an approved electronic monitoring device shall be subject to penalties for escape under Section 5-8A-4.1.

Remote Court Appearances

Language included in the SAFE-T Act previously required a defendant to appear in court in person. However, P.A. 102-1104 incorporates new language that allows a defendant to appear remotely via the use of a two-way audio-visual communication system if the person in custody waives the right to be present physically in court, if the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court, or if the chief judge of the circuit orders use of that system due to operational challenges in conducting the hearing in person. The chief judge is required to document the operational challenges and create a plan to address the challenges through reasonable efforts, which must be presented and approved by the Administrative Office of the Illinois Courts every six months.

Amendments in P.A. 102-1104 also add provisions for the defense counsel to be able to consult with the defendant during remote hearings. In hearings conducted via a two-way audio-visual communication system, the consultation may not be recorded and must be undertaken in consistency with constitutional protections.

Release from Law Enforcement Custody with Citation

One of the major points of contention with the SAFE-T Act was a provision regarding release and citation by law enforcement. The SAFE-T Act included a requirement for law enforcement to issue a citation in lieu of custodial arrest for traffic offenses, Class B and C misdemeanor offenses, or petty and business offenses in which the person poses no obvious threat to the community or another person and has no medical or mental health issues that pose a risk to their own safety. Those released on citation were to be scheduled into court within 21 days. SAFE-T Act opponents took issue with this provision, arguing that it restricted police officers' ability to remove and arrest people accused of criminal trespassing. While the original language in the SAFE-T Act still allowed police to make an arrest if the person posed a public safety risk, it was viewed as constraining.

The amendment to this section of statute changes the language to clarify that law enforcement must issue a citation for those accused of any offense that is not a felony or Class A misdemeanor, unless the officer reasonably believes the accused poses a threat to the community or any person; an arrest is necessary because the criminal activity persists after the issuance of a citation; or the accused has an obvious medical or mental health issue that poses a risk to their safety. Additional language was added to clarify that: "Nothing in this Section requires arrest in the case of Class A misdemeanor and felony offenses, or otherwise limits existing law enforcement discretion to decline to effect a custodial arrest." However, the amendment removes language regarding law enforcement issuing the person a summons to appear in court within 21 days.

Procedures for Existing Pretrial Cases as of January 1, 2023

P.A. 102-1104 clarifies questions about whether the SAFE-T Act is retroactive or not, and what should happen to people who are either in custody or released on cash bail on the effective date of January 1, 2023, through the addition of a new section, 725 ILCS 5/110-7.5.

Anyone on pretrial release as of January 1, 2023, will be allowed to remain on pretrial release. However, the State's Attorney can file a verified petition for detention or a petition for revocation or sanctions.

Anyone in pretrial custody on January 1, 2023, is entitled to a release hearing according to the following schedule:

- Hearings for defendants charged with any of the detainable offenses based on posing a threat to public safety must be held within 90 days of the defense counsel's motion for reconsideration of pretrial release conditions;
- Hearings for defendants considered to be flight risks must be heard within 60 days of the motion for reconsideration of release conditions; and
- Hearings for defendants charged with non-detainable offenses must be held within seven days of the motion for reconsideration.

Regarding cash bail payments, any bail deposited as of January 1, 2023 will go through the existing process that circuit court clerks have for processing of bail payments.

Creation of a Public Defender Grant Program

The amendments add a new section to the Counties Code (55 ILCS 5/3-4014) to create a public defender grant program established by the Administrative Office of the Illinois Courts, subject to appropriation, for counties with a population of three million or less (this effectively excludes Cook County). The grant program has the purpose of training and hiring attorneys on contract to assist the county public defender in pretrial detention hearings. Additionally, the amendment creates a new state special purpose fund, the Public Defender Fund, to provide funding to counties for public defenders and public defender services.

The amendments also expand 55 ILCS 5/3-4013 to add language requiring the Public Defender Quality Defense Task Force to provide recommendations to the General Assembly and Governor on legislation to provide for an effective statewide public defender system by December 31, 2023.

Body Worn Cameras

The amendment makes several changes to the statutes dealing with police body-worn camera requirements:

- Extends the implementation deadline for body-worn cameras by police for municipalities or counties with a population between 100,000-500,000 from January 1, 2023, to July 1, 2023. (50 ILCS 706/10-15(b-5)
- Requires recordings made with an officer-worn body camera to be kept after the 90-day storage period if the recording officer believes it may have evidentiary value in a criminal prosecution. (50 ILCS 706/10-20)
- Adds language to definition of "Community caretaking function" to clarify that this excludes law enforcement-related encounters or activities. (50 ILCS 706/10-10)
- Adds language to definition of "Law enforcement-related encounters or activities" to clarify that this does not include participating in training in a classroom setting or is only in the presence of another law enforcement officer or officers while not performing any other law enforcement-related activity. (50 ILCS 706/10-10)
- Allows grants under this Section to be used to offset data storage costs for officer-worn body cameras. (50 ILCS 707/10)

Mandatory Supervised Release

The amendments in P.A. 102-1104 make some changes regarding mandatory supervised release: For class 3 and 4 felonies, 6 months of mandatory supervised release will be imposed (rather than no mandatory supervised release). The Prisoner Review Board must conduct a discretionary discharge review no later than 45 days after the onset of the term of mandatory supervised release. (730 ILCS 5/5-8-1(d)(3))

PART C

Local court officials sound the alarm on potential costs of Pretrial Fairness Act

"From the time that we accept a case, and that person's arrested, to the time that they appear in that court room whether it be on a Saturday a Sunday a Monday or a Tuesday is going to radically change within our office and there's going to be more responsibilities in those first 48 hours ultimately culminating with a court room that will have to be staffed seven days a week," Hanley said.

Weekend court will mean staffing attorneys, judges, bailiffs, court reporters, translators and corrections officers an extra two days a week, and attempting to hire more of each job. However, the state provided no funding to go along with the law, posing a financial hurdle that Chief Deputy Circuit Clerk Tom Lawson says he's still trying to figure out.

"I can only speak for my budget, but it's going to be a shot in the dark this year. I plan on missing based on things that change from when I submit my budget and where we end up January 1," Lawson said. "That is the first time I've said since I've been here."

The courts will also lose a revenue source by cash bail ending. However, 17th Judicial Circuit Court Trial Court Administrator Tom Jakeway says it will be nearly impossible to know the financial and staffing needs until January.

"Identifying things like how many courtrooms do we need to operate on the weekend?" Jakeway said. "How many attorneys do I need from the State's attorney's office and the public defender's office? We're working through and distilling those things down."

The anticipated cost from the area's courts will be better known after budgets are submitted later this month.