Illinois Sentencing Policy Advisory Council

Kathryn Saltmarsh
Executive Director
217-558-4749
Kathy.Saltmarsh@Illinois.gov

# HOUSE BILL 3653, AS ENROLLED
## INSUFFICIENT DATA TO SUPPORT A FULL FISCAL IMPACT ANALYSIS

### BRIEF SUMMARY OF ENROLLED BILL

**NOTE**: THIS IS A BRIEF SUMMARY OF THE CONTENTS OF HB3653 AS ENROLLED. THE NUMBERS INCLUDED ARE PRELIMINARY AND THE SUMMARIES ARE SPAC'S READING OF THE ENROLLED LANGUAGE. IMPLEMENTATION AND INTERPRETATION BY CRIMINAL JUSTICE PRACTITIONERS MAY DIFFER FROM SPAC'S READING AND SUMMARIES.

This summary explains the major components of House Bill 3653, as amended and enrolled (HB3653). **Please note that the summaries below paraphrase the enrolled language. Please refer to the enrolled text for the exact language that includes additional details, exceptions, and clarifications.** The full explanation of the numbers calculated below are available upon request. The highlighted provisions pertain specifically to the sentenced population.

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### Statewide Use of Force Standardization, p. 1:

- States the intent of the General Assembly to establish statewide use of force standards by January 1, 2022.

### Prisoner Representation Reform, p. 1:

- Reforms where prisoners are counted for the 2030 Census and future federal decennial censuses. The Department of Corrections and federal detention facilities will report to the State Board of Elections where prisoners previously lived and that information will be used for redistricting purposes.
- Effective date: January 1, 2025.

### Deaths in Custody, p. 6:

- Sets reporting requirements for when a person dies while in custody of a law enforcement agency, a local or State correctional facility, or a peace officer. The Illinois Criminal Justice Information Authority receives the reports and publishes trends and summaries of deaths in custody.
- Effective date: July 1, 2021.

### Task Force on Constitutional Rights, p. 12:

- Creates a task force to develop and propose policies and procedures to review and reform constitutional rights and remedies, including qualified immunity issues for law enforcement. The Task Force disbands by January 1, 2022.

### Bail Reform, pp. 15, 64, 96, 116, 245, 275, 279, 307, 331, 357, 414, 539, 547, 576:

- Abolishes cash bail (*i.e.*, pretrial release conditioned on financial payment to county to guarantee return for trial). Many statutory changes are replacing references to bail with pretrial release or conditions of pretrial release. Removes fees for processing bail.
- Requires willful flight rather than past non-appearance alone to evidence future intent to evade prosecution.
- Sets eligibility for release based on certain offenses (forcible felonies, stalking offenses, victim of abuse was family or household member, domestic battery, sex offenses, and other offenses with a real and present risk to a specifically identified person or persons) and a high likelihood of willful flight, after hearing, and requires judge to create written finding on why less restrictive conditions are insufficient to ensure appearance in court.
- Changes the offense of violation of terms of pretrial release from one class lower than the original charged offense to a Class A misdemeanor (Class C misdemeanor for misdemeanor pretrial violation).
- Permits use of a validated risk assessment tool but prohibits the tool to be the sole basis for denying pretrial release.
- May only revoke pretrial release when the person is charged with a detainable offense, another felony or Class A misdemeanor, or a violation of an order of protection. Court must consider facts after a hearing where person has defense counsel to determine revocation.
- Effective date: January 1, 2023.

## Police Union Disputes, p. 20:

- Excludes residency requirements from collective bargaining topics for police officers for cities larger than 100,000 residents instead of the current law's 1 million-resident threshold.
- Effective date: July 1, 2021.

## Community Deflection from Criminal Justice System, p. 33:

- Expands who is eligible to respond and redirect people suffering from opioid use disorders or overdoses from arrest and unnecessary admission to emergency departments to treatment services. Includes naloxone authorization for those authorized under this law.
- Establishes training requirements for those receiving funding for services under the amended deflection law. Permits 10% of appropriated funds to go towards knowledge dissemination, training, and technical assistance, including public awareness efforts.
- Effective date: July 1, 2021.

## Pattern or Practice of Constitutional Misconduct Investigations, p. 43:

- Authorizes the Illinois Attorney General to instigate investigations and lawsuits – filed in Cook or Sangamon Counties – and enforce settlements to ensure no pattern or practice of misconduct by officers that deprives any person of their rights.
- Effective date: July 1, 2021.

## Law Enforcement Complaints, pp. 49, 58, 66, 68, 93:

- Removes the requirement that complaints against officers must identify the complainant and must be by a sworn affidavit. The affidavit requirement ban applies only to collective bargaining agreements entered after the reform's effective date. Removes the sharing of the name of the person, rank, or unit in charge of an investigation.
- Prohibits local governments from retailing against someone who reports improper governmental actions, including police misconduct.
- Requires the permanent retention of police misconduct records.
- Requires reporting all officer resignations relating to any felony or sex offense incident rather than just Class 2 or greater felony offense. Authorizes state's attorneys to access termination or resignation data.
- Effective date: July 1, 2021.

## Military Surplus Program Prohibition, pp. 52, 112:

- Prohibits law enforcement from requesting or receiving any military equipment surplus program or purchasing: tracked armored vehicles; weaponized aircraft, vessels, or vehicles; .50 caliber firearms or ammunition; grenade launchers; or bayonets. Requires publishing any purchase, request, or receipt of equipment through any military purchasing program.
- Effective date: July 1, 2021.

## Pretrial Data Collection Oversight Board, p. 53:

- Convenes an oversight board to oversee the gathering and analysis of statewide pretrial data. Lists required reporting elements.
- Effective date: July 1, 2021.

## Domestic Violence Pretrial Practices Working Group, p. 57:

- Convenes a working group to review and report on current practices in pretrial domestic violence courts and suggest evidence-based improvements to court procedures.
- Effective date: July 1, 2021.

## Law Enforcement Training, pp. 68:

- Requires the Law Enforcement Training and Standards Board (ILETSB) to establish minimum standards for regular, confidential mental health screenings.
- Requires crisis intervention training in police officer training schools. Requires at least 12 hours of scenario-based role-playing, 6 hours of use-of-force techniques and de-escalation techniques, officer safety techniques such as taking cover, and 6 hours of training focused on high-risk traffic stops.
- Adds implicit bias and racial and ethnic sensitivity training as part of in-service training every 3 years.
- Adds crisis intervention training and emergency medical response training as part of annual certifications for officers.
- Specifies mandatory, 3-year training on use of force and updates crisis intervention team training programs.
- Effective date: July 1, 2021.

## Law Enforcement Body Cameras, pp. 78:

- Sets deadlines for when all law enforcement must use body cams; smaller municipalities have later deadlines.
  Defines who may access, review, edit, or delete body camera footage. Agencies in compliance have preference in state grant opportunities from ILETSB.
- Effective date: July 1, 2021.

## Uniform Crime Reporting, p. 89:

- Updates State Police crime reporting to monthly rather than annually. Mandates the state participate in the FBI's National Use of Force Database.
- Requires law enforcement to report to the State Police any use of force incident or any incident where police are dispatched to respond to mental health crisis or incident. Effective July 1, 2021.
- Mandates the State Police report to the Department of Revenue in addition to ILETSB any noncompliance with reporting. Preference for state grants given to agencies in compliance.
- Effective date: July 1, 2021.

## Revocation of Driver's License due to Unpaid Fines, pp. 189:

- Secretary of State shall reverse suspension, cancellation, or prohibition of renewal due to unpaid fines or penalties for traffic violations, automatic traffic enforcement system violations, or abandoned vehicle fees. Prohibits the suspension or cancellation provisions for only failing to pay fines or penalties for speed cameras, red-light cameras, or other automated enforcement systems.
- Effective date: July 1, 2021.

## Resisting Arrest, p. 273:

- Requires this offense to accompany another criminal offense that led to the resisting charge.
- Resisting arrest charges per year: **10,000**
- Resisting arrest convictions per year: **300**
- **20% of arrests for resisting arrest did not have another charge at the time of arrest**.
- SPAC is unable to determine if these arrests would change outcomes as a result of the reform.
- Numbers above are an average of the number of counts at arrest or conviction from the last three fiscal years.
- Effective date: July 1, 2021.

## Peace Officer Use of Force, p. 283, 288:

- Requires that the reasonableness of a peace officer's use of force must be assessed based on the totality of the circumstances, including that the officer reasonably believes the person cannot be apprehended later, the person is likely to cause great bodily harm to another, and that the prior forcible felony was just committed.
- Adds that the officer must identify him- or herself where feasible, must assess whether imminent danger is present, and cannot use force for property offenses unless otherwise authorized by law.
- Prohibits the use of force to prevent escape unless, based on totality of circumstances, it is necessary to prevent death or great bodily harm.
- Permits deadly force only when reasonably necessary in defense of human life. Permits deadly force to prevent escape only when, based on the totality of the circumstances, deadly force is necessary to prevent death or great bodily harm.
- Applies to anyone or any agent authorized by law enforcement offices.
- Requires law enforcement to provide medical aid and assistance consistent with training and request emergency medical assistance if necessary.
- Affirmative duty to intervene to prevent or stop another peace officer from any unauthorized use of force or excessive force. Requires reporting of these instances and protects the reporting officer from retaliation.
- Effective date: July 1, 2021.

## Chokehold and Crowd Control Techniques by Peace Officers, p. 287:

- Expands and clarifies rules about chokeholds and any restraints above the shoulders that risks asphyxiation.
- Prohibits the use of force as punishment or retaliation, send kinetic impact projectiles indiscriminately into crowds, or use chemical agents/irritants without warning a crowd and allowing time and space to comply.
- Effective date: July 1, 2021.

## Felony Murder, p. 291:

- Limits felony murder to deaths committed when a forcible felony leads to death caused by oneself or another participant to the forcible felony. Previously, felony murder included any death stemming from a forcible felony, regardless of cause of death.
- Below are the average annual admissions to prison for murder. Likely only 720 ILCS 5/9-1(a)(3) would be affected:
  - 720 ILCS 5/9-1(a)(1): 127 admissions
  - 720 ILCS 5/9-1(a)(2): 23 admissions
  - **720 ILCS 5/9-1(a)(3): 12 admissions**
  - 720 ICLS 5/9-1(a): 5 admissions
- Numbers above are an average of admissions from the last three fiscal years
- Effective date: July 1, 2021.

## Law Enforcement Misconduct, p. 306:

- Creates Class 3 felony for law enforcement officer misconduct, defined as misrepresenting or failing to provide facts, withholding knowledge of misrepresentations, and failing to comply with body-cam laws.
- SPAC is unable to determine how many misconduct cases would be charged, prosecuted, or convicted.
- Effective date: July 1, 2021.

## Release from Custody After Arrest, p. 326:

- Classes B or C misdemeanors or traffic, petty, or businesses offenses receive citation in lieu of custodial arrest. Establishes rights to contact defense attorney prior to pretrial release hearing. For arrest warrants from another county, requires transfer within 72 hours.
- Effective date: July 1, 2021.

## Electronic Monitoring on Pretrial, pp. 355, 388, 519, 532:

- If imposing electronic monitoring or GPS monitoring during pretrial, rewards custodial credit to count towards eventual sentence length. Limits monitoring length to 60 days and requires further hearing.
- Permits counties to impose an approved monitoring device for people charged with drug or alcohol offenses but does not mandate it, as under prior law.
- Sentencing provision: Provides pretrial custodial credit for home detention, electronic monitoring, or home curfews that restrict movement for 12 hours or more per day.
- SPAC is unable to determine how many people could receive credits or how many would be awarded.
- Requires certain activities to be approved for absences from the home, including requiring that at minimum the person be able to leave the premises for 48 hours per week.
- Effective date: July 1, 2021.

## Electronic Monitoring, Escape, p. 538:

- For the Class 3 felony of Escape, a person must be in violation of electronic monitoring for at least 48 hours.
- Escape arrest charges per year: **489**
- Prison admissions per year: **94**
- **95% of prison admissions are from Cook County.**
- SPAC is unable to determine what percent of these arrests or admissions involved a 48-hour violation or greater.
- Numbers above are an average of the number of arrests and prison admissions from the last three fiscal years.
- Effective date: July 1, 2021.

## Treatment While in Custody, p. 409:

- Requires medical treatment without unreasonable delay if the need for the treatment is apparent.
- Effective date: July 1, 2021.

## Right to Communicate in Police or Pretrial Custody, p. 410:

- Establishes the right to free communication with family and with attorney of defendant's choice within three hours after arrival at the first place of custody. Permits up to three phone calls and includes right to retrieve phone numbers from contact list in cell phone prior. Right renews at each transfer to new custodial setting.
- Requires custodial settings to have signage explaining this new rule and include number of public defender or attorney to represent people in custody.
- Effective date: July 1, 2021.

## Execution of Search Warrants, p. 412:

- Sets requirements for entering a location described by a search warrant, including using of body cameras, verifying the location, and preparing for children or vulnerable people.
- Requires supervisor to a search warrant executed in the incorrect location to ensure an internal investigation occurs.
- Effective date: July 1, 2021.

## Earned Sentence Credits, pp. 484, 497:

- Permits IDOC to award an additional 185, up to 365 days, for those with sentences of 5 years or longer, subject to the limitations of 730 ILCS 5/3-6-3(a)(4.7).
- Eligibility may be based upon programming participation in addition to risk assessment, and commitment to rehabilitation.
- Requires IDOC to create a sanctions matrix for revoking sentence credits. Permits IDOC to fully restore sentence credits, subject to newly promulgated rules and regulations. Removes the Prisoner Review Board (PRB) from oversight of credit restoration processes.
- Eligible admissions for the 180-day credits: **10,000 (2% subject to TIS restrictions)**
- Eligible admissions for the 365-day credits: **4,300 (25% subject to TIS restrictions)**
- Numbers above are an average of admissions from the last three fiscal years.
- Effective date: July 1, 2021.

## Programming Sentence Credits, p. 486:

- Adds work-release and adult transition centers and programs to rehabilitation programming that can earn credit for earlier release subject to the limitations of 730 ILCS 5/3-6-3(a)(4.7).
- Increases programming credits to one day per day of engagement with the program instead of a multiplier applied to good behavior credits.
- Requires the accounting for credits after a person is placed on a waiting list but transferred for non-disciplinary reasons. Requires prorated credits to be awarded when programming is not completed but due to illness, disability, transfer, lockdown or another reason outside the prisoner's control.
- Effective date: July 1, 2021.

## Associate's Degree Sentence Credits, p. 492:

- Adds an additional 120 days of sentence credit for any prisoner who obtains an associate's degree for the first time during pretrial or IDOC custody, including degrees earned prior to the effective date, subject to the limitations of 730 ILCS 5/3-6-3(a)(4.7).
- From 2016 to 2019:
  - An average of about **7,630 people** participated in Associates Degree programming.
  - An average of about **220 people** received Associates Degrees each year.
- SPAC is unable to identify who received a degree and is not under TIS and thus cannot estimate the impact.

## Self-Improvement, Volunteer, Work Assignment Sentence Credits, p. 494:

- Adds ½ day credit for every day participating in self-improvement programs, volunteer work, or work assignments that are not otherwise eligible for programming credits.
- SPAC is unable to identify what percent of people in prison participate in self-improvement, volunteer work, or work assignments.

## Prohibit Use of Prison for Felons with Short Lengths of Stay, pp. 512 and 530:

- Prohibits admission to a prison facility for people projected to stay in prison for four months and authorizes IDOC to divert to other custody options.
- From 2018 to 2020, SPAC analysis identified on average **740 people per year** who had a projected 4 months remaining on their sentence.
- Effective date: July 1, 2021.

## Habitual Criminal (Three Strikes), p. 515:

- For repeat Class X felons, counts only offenses that occurred after the age of 21.
- Limits the third strike sentence enhancement for repeat Class 1 or Class 2 felons to forcible felonies that occurred after the age of 21.
- From 2018 to 2020, SPAC analysis of criminal history data identified about **480 convictions and sentences** per year to prison that qualified under the habitual criminal statute.
- **21% of those admissions would still be eligible** for habitual criminal penalties under the new law.
- Effective date: July 1, 2021.

## Programming Eligibility, p. 521:

- For rehabilitative programs that restrict participation due to criminal history, controlled substance and methamphetamine offenses of less than …. or 3 grams, respectively, are counted as Class A misdemeanors rather than the offense classification at the time of the prior conviction.
- SPAC was unable to estimate how many people might gain eligibility for rehabilitative programming.
- Effective date: July 1, 2021.

## Mandatory Supervised Release, p. 526:

- Decreases the supervision length for most offenses, except for first-degree murder, some sex offenses, domestic violence offenses, and crimes subject to the TIS requirements. Requires the PRB to set the term necessary, based on risk assessment and information provided by IDOC.
- From 2018 to 2020, an average of **15,690 people** would potentially have shorter MSR terms. Below are the average number of people leaving prison that would be subject to 730 ILCS 5/5-8-1(d)'s MSR paragraphs (#):
  (1) 270 people remain on 3-year MSR terms.
  (1.5) **1,090** people with Class X felonies have 1.5-year terms instead of the current 3 years.
  (2) **6,100** people with Class 1 or 2 felonies have 1-year terms instead of the current 2 years.
  (3) **8,500** people with Class 3 or 4 felonies have no MSR term unless imposed by the PRB.
  (4) 330 people with sex offenses remain in the category receiving 3-year to natural life MSR terms.
  (6) 570 people with domestic battery offenses remain on 4-year MSR terms.
  (7) 600 people subject to 85% TIS restrictions remain on the current MSR terms:
  - 420 people with Class X: 3 years
  - 150 people with Class 1 or 2: 2 years
  - 25 people with Class 3 or 4: 1 year
- Some offenses would fall under multiple paragraphs, particularly between Paragraphs (1), (4), (6) and (7). The numbers presented above are based on the first release from prison and do not include people leaving after a technical violation readmission.
- Effective date: July 1, 2021.

## Expand Probation Eligibility, p. 543:

- Expands eligibility for Veterans Court Treatment and Mental Health Court Treatment Act to include nonprobationable offenses.
- SPAC was unable to estimate how many people might be diverted to treatment courts under this expansion of eligibility.
- Effective date: July 1, 2021.

## Crime Victims Compensation Act Reforms, p. 558:

- Clarifies that victim may include a child or anyone living in the household who has a relationship similar to that of a parent, spouse, or child of a person killed or injured. Removes the age cut off for "child."
- Increases the award amount to a maximum of $10,000 for burial and transport, from $7,500.
- Increases the maximum loss of future earnings and support to a potential of $2,400 per month, up from $1,250 per month.
- Changes law so that a victim's criminal history or felony status does not automatically prevent compensation. Victim's held in a correctional institution are not eligible.
- Increases the time period for victim compensation to five years from the occurrence of the crime. Both the Attorney General and the Court of Claims may accept a claim for compensation.
- For victims of sex offenses, adds compensation for medical care in addition to sexual assault evidence collection.
- For victims of sex offenses, removes requirement that victim prove that the victim did not provoke the offense.
- Applies to actions commenced or pending on or after January 1, 2021.

## Pregnant Female Prisoners, p. 586:

- Requires additional officer training related to pregnant prisoners for county and state departments of corrections.
- Requires educational programming for pregnant prisoners.
- Sets requirements on post-partum recovery for those held in county and state custody. Prohibits administrative segregation for those who are pregnant or just gave birth. Requires access to nutritional and hygiene-related products necessary to the care for the infant.

## Mandatory Minimum Prison Sentence Escape Valve, p. 604:

- Permits a court to sentence probation, conditional discharge, or a lesser term of imprisonment for nonprobationable crimes when (1) the offense involves drug use or possession, retail theft, or driving on a revoked license due to financial obligations crime, (2) there is no public safety risk, and (3) the interest of justice requires it.
- Under current law, there are no nonprobationable retail theft offenses and SPAC was unable to identify nonprobationable financially-based driving offenses.
- Eligible drug possession arrests per year: **63**
- Eligible drug possession admissions per year: **8**
- Numbers above are an average of the number of nonprobationable arrests and prison admissions from the last three fiscal years.
- Please note that the above analysis included only three Class X meth offenses that had mandatory minimums for drug use or possession.
- Effective date: July 1, 2021.

## Law Enforcement Open Meetings and FOIA, pp. 612, 669:

- Protects confidentiality of deliberations of the ILETSB, the Certification Review Panel, and the State Police Merit Board's certification and decertification.
- Exempts from FOIA records held in the Officer Professional Conduct Database, except for summary data without personally identifiable information, except as permitted by Section 9.4 of the Illinois Police Training Act, mentioned below.
- Creates a Law Enforcement Certification Panel to review law enforcement schools across the state and ensure appropriate standards.
- Requires reporting of any final determination of a willful violation of office policy, official misconduct, or violation of the law within 10 days if the suspension is at least 10 days, involves a formal investigation, alleges misconduct or truthfulness, or the officer resigns/retires during an investigation.
- Data must be accessible to the State's Attorney and the Attorney General and be available as required under *Brady v. Maryland* or *Giglio v. United States*.
- Data must be accessible to the chief administrative officer for purposes of any law enforcement hiring.
- Data are not accessible under any subpoena or civil discovery except for in regulatory or legal action against the Board.
- Requires a publicly available, searchable database of law enforcement officers that includes officers' agency, certification and status, and any sustained complaint of misconduct that results in decertification.
- Requires a publicly available, searchable database of anonymous completed investigations related to decertification and include demographic information of witnesses and victims (as mentioned above in the FOIA section).
- Effective date: January 1, 2022.

## Indemnification and Personnel Code Classifications, pp. 645, 678:

- Members of the Certification Review Panel are "employees" under the State Employee Indemnification Act. The panel is indemnified
- Employees of the Illinois State Police Merit Board are exempted from the Personnel Code.
- Effective date: January 1, 2022.

## State Police Merit Board, p. 652:

- Expands board to 7 people from 5, sets term length and qualifications, including recusal rules.
- Requires publishing of the standards and qualifications for each rank, including Cadet, of State Police and establishes the background check criteria for Cadets.
- Requires certain elements in the annual report, including disciplinary data.
- Effective date: January 1, 2022.

## Automatic and Discretionary Termination of Law Enforcement, pp. 683:

- Reorganizes the complaint and processing of complaints against law enforcement officers, including the establishment of procedures to ensure investigation, due process for officers, and the appeal procedures.
- Establishes an emergency order of suspension for arrests or indictments on felony charges.
- Effective date: January 1, 2022.

## Data Sources:

- Criminal History Record Information, July 2018 - June 2020
- Illinois Department of Corrections data, FY2018 - FY2020 and the active case management system
- Illinois Department of Corrections Annual Report