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## **Comprehensive Abstract of Sweeping Criminal Justice Reforms Signed into Law**

On February 22, 2021, Governor JB Pritzker signed into law Public Act 101-0652, which includes sweeping criminal justice reforms that will have a significant impact on law enforcement agencies and officers across the state. Many of the reforms take effect July 1, 2021. Our firm's analysis of the impact of the reforms on municipal and community college police departments follows.

## **Amendments to Existing Laws Impacting Police Departments**

While many of the amendments relate to the elimination of bail, bail bonds and conditions of bail in Illinois, several amendments directly impact operations and compliance at law enforcement agencies. These amendments include:

- **Illinois Police Training Act** (50 ILCS 705/1 et seq.), (eff. 7/1/21, unless otherwise noted)

New training requirements for probationary employees under P.A. 101-0652 include:

- *12 hours of hands-on, scenario-based roleplaying;*
- *6 hours of instruction on use of force techniques, including the use of de-escalation techniques to prevent or reduce the need for force;*
- *Specific training on officer safety techniques, including “cover, concealment, and time”; and*
- *6 hours of training focused on high-risk traffic stops.*

Minimum in-service training requirements for permanent police officers now include additional training every three (3) years, including emergency medical response training and certification, crisis intervention training, officer wellness and mental health training, and recognizing implicit bias as well as racial and ethnic sensitivity.

The amendments also require Illinois Law Enforcement Training Standards Board (the “Standards Board”) to adopt additional rules and minimum standards for training relating to “policies and laws regulating the use of force,” de-escalation techniques and high-risk traffic stops. New training requirements under the standards will require at least 30 hours of approved training every three (3) years, with minimum training requirements in each area specified by the amendments.

Further, the Standards Board must develop and approve standards for training and a certification in crisis intervention, which will be developed in collaboration with law enforcement professionals, mental health providers, families, and consumer advocates. Certification in related Crisis Intervention Team Training will include 40 hours of training in the following:

- Basic information about mental illnesses;
- Information about mental health laws and resources;
- Learning from family members of mentally ill individuals and their experiences; and
- De-escalation training and roleplaying related to the same.

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As amended, the Illinois Police Training Act establishes minimum standards for regular mental health screenings for probationary and permanent peace officers. Such screenings are to remain confidential under the amendments.

The amendments also require that police departments notify the Standards Board of any final determination of a willful violation of department or agency policy, official misconduct, or unlawful conduct if an officer resigns during an investigation or after receiving notice of an investigation into *any* felony or sex offense. Departments were previously required only to report investigations of any Class 2 felony or greater.

P.A. 101-0652 also establishes the Officer Professional Conduct Database, which will consist of information that all government agencies, including municipal and community college police departments, are required to provide to the Standards Board. That information includes any final determination of a willful violation of department, agency or Illinois State Police policy, official misconduct, or a violation of law within 10 days, if:

- the determination leads to a suspension of at least 10 days;
- any infraction that would trigger an official or formal investigation under a governmental agency or the Illinois State Police policy;
- there is an allegation of misconduct or regarding truthfulness as to a material fact, bias, or integrity; or
- the officer resigns or retires during an investigation and the officer has been served notice that the officer is under investigation.

With limited exceptions, the information maintained in the database will be considered “confidential by law and privileged.” Importantly, the legislation also establishes a statutory exemption under the Illinois Freedom of Information Act (FOIA) for records contained in the Officer Professional Conduct Database (the exemption takes effect on 1/1/22).

- **Local Records Act** (50 ILCS 205/1 et seq.), (eff. 1/1/23)

Police misconduct records and other records related to complaints, investigations and adjudication of police misconduct must be permanently retained.

- **Peace Officer Decertification** (50 ILCS 705/1 et seq.), (eff. 7/1/21)

In addition to the new training requirements noted above, there are new requirements for the decertification of officers. Under the amendments, the chief executive officer of any governmental agency or department must report any arrest, conviction, finding of guilt, pleas of guilty or pleas of nolo contendere of a law enforcement officer relating to a felony offense to the Standards Board. Similarly, any law enforcement officer is required to report any such arrest, conviction, finding of guilt or plea within 14 days of any such finding, rather than the 30 days previously allowed.

Any felony offense will lead to the automatic decertification of law enforcement officers. Other acts or offenses could lead to the discretionary decertification of officers, including the failure to comply with the affirmative duties established by the amendments through acts or omissions. The chief executive officer of any governmental agency or department must notify the Standards Board within seven (7) days of any such offense.

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Certification and decertification procedures are not subject to limitation under collective bargaining agreements entered into between police departments and representatives of bargaining unit members of the departments.

All law enforcement officers will also be required to submit a verification form acknowledging compliance with the Act every three (3) calendar years and requires such certifications to be maintained by law enforcement agencies.

- **Uniform Peace Officers' Disciplinary Act** (50 ILCS 709/1 et seq.), (eff. 7/1/21)

The Uniform Peace Officers' Disciplinary Act ("UPODA") is amended to streamline disciplinary procedures for peace officers. Specifically, the amendments reduce the notice requirements relating to UPODA, eliminate the requirement that an officer subject to discipline be informed of the name of complainants and officers in charge of the investigation and eliminate the requirement that any complaints regarding misconduct be accompanied by a signed affidavit. Moreover, the ban on affidavits applies to any collective bargaining agreements negotiated by departments following the effective date of the amendments. The Standards Board may also receive and investigate anonymous complaints under the newly amended Act.

- **Law Enforcement Officer-Worn Body Camera Act** (50 ILCS 706/1 et seq.)

When originally enacted, the Law Enforcement Officer-Worn Body Camera Act required any law enforcement agency that employed the use of officer-worn body cameras to comply with the Act. Under P.A. 101-0652, *all* law enforcement agencies must employ the use of body-worn cameras by law enforcement officers under a phased-in approach based on the size of municipalities in which a police department is located:

- Departments in municipalities with greater than 500,000 before 1/1/22.
- Departments in municipalities with between 100,000 and 500,000 before 1/1/23.
- Departments in municipalities with between 50,000 and 100,000 before 1/1/24.
- Departments in municipalities under 50,000 before 1/1/25.

Once implemented, the amendments restrict access to recordings captured through officer-worn body cameras. Only "personnel responsible" for redacting, labeling, or duplicating the recordings are to have access to such recordings. Their access will be limited to those purposes. A recording officer's supervisor under the amendments is also allowed access to the recordings for the purpose of completing incident reports and other documentation. Other officers and administrators may also have access to such recordings for the limited purpose of investigation and training. However, the recording officer has no right to access the recordings under the newly amended Act.

All law enforcement agencies are required to provide an annual report on their use of officer-worn body cameras to the Standards Board by May 1 of each year, and law enforcement agencies that comply with the requirements of the amended Act will receive preference for grant funding through the Law Enforcement Camera Grant Act (50 ILCS 707/1 et seq.) from the Standards Board.

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- **Uniform Crime Reporting Act** (50 ILCS 709 et seq.), (eff. 7/1/21)

All law enforcement agencies are required to submit additional reports to the Department of State Police, including:

- Monthly reports to the Department of State Police relating to any incident where a law enforcement officer was dispatched for the purpose of responding to a person experiencing a mental health crisis, which must include the number of incidents, the level of law enforcement response and the outcome of each incident.
- Monthly reports to the Department of State Police on the use of force, including any action that resulted in the death or serious bodily injury of a person or the discharge of any officer's firearm at or in the direction of a person, which shall be reported to the FBI Use of Force Database.

- **The Illinois Municipal Code** (65 ILCS 5/1 et seq.), (eff. 7/1/21)

Police departments are now prohibited from requesting or receiving specified military equipment from any federal or state military surplus program without publishing notice of the request within 14 days. P.A. 101-0652 imposes similar restrictions on other law enforcement agencies through the State Police Act (20 ILCS 2610/14 et seq.) and the Counties Code (55 ILCS 5/1 et seq.).

- **The Police and Community Relations Improvement Act** (50 ILCS 727/1) (eff. 1/1/23)

Any person may file an anonymous complaint of conduct violating the Illinois Police Training Act to the Standards Board. Upon receipt of such complaint, the Standards Board is required to complete a preliminary review of the allegations to determine whether further investigation is warranted and forward any verifiable evidence to the appropriate authority for determining whether any violations of the Illinois Police Training Act have occurred.

- **The Criminal Code of 2012** (720 ILCS 5/1 et seq.). (eff. 7/1/21, unless otherwise noted)

P.A. 101-0652 includes expansive amendments to the Criminal Code of 2012 that impact policing operations, standards of officer conduct and techniques, and include:

- *Use of Force Requirements*

The use of force in making an arrest is justified only when an officer reasonably believes *based on the totality of circumstances* to be necessary to effect the arrest or to defend himself or another from bodily harm while making the arrest. The totality of the circumstances includes circumstances known to or perceived by the officer at the time of the decision to use force, rather than with the benefit of hindsight. Such judgment will be evaluated from the perspective of a reasonable officer in the same situation and will account for occasions when an officer may be forced to make a quick judgment regarding the use of force.

A similar standard will now be applied to the use of deadly force, except that deadly force is authorized only when an officer reasonably believes, *based on the totality of*

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*circumstances*, that the individual against whom such force is used cannot be apprehended at a later date *and* the individual may cause great bodily harm to another. The person to be arrested must also have *just* committed or attempted to commit a forcible felony involving the infliction of great bodily harm or is attempting escape using a deadly weapon.

Moreover, deadly force may only be used when reasonably necessary in the defense of human life, as determined by the circumstances of each case and if found safe and feasible to a reasonable officer. Use of deadly force is also limited to circumstances where a threat of death or serious bodily injury is “imminent,” meaning a reasonable officer would believe “that a person has the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” It is not merely a fear of future harm, no matter how great the fear and without regard to the likelihood that such harm will occur.

Further, an officer is prohibited against using deadly force against a person based on the danger that the person poses to himself or herself if a reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or other individuals.

When feasible, an officer is required to make reasonable efforts to identify himself or herself as a peace officer and announce that deadly force may be used, unless the officer has reasonable grounds to believe the individual is aware of those facts.

- ***Use of Force Involving Disabled Individuals***

All police departments and law enforcement agencies are encouraged to develop and adopt policies designed to protect individuals with physical, mental health, developmental, or intellectual disabilities, who are significantly more likely to experience greater levels of physical force during police interactions due to the impact of these disabilities on understanding or complying with commands from peace officers.

- ***Prohibited Uses of Force***

Peace officers are also prohibited from:

- Using force as punishment or retaliation;
- Discharging kinetic impact projectiles or non-, less-lethal projectiles in a manner that targets the head, pelvis or back;
- Discharging kinetic impact projectiles indiscriminately into a crowd;
- Using chemical agents or irritants prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order; or
- Using deadly force to prevent the escape of an individual who is in custody, unless necessary to prevent death or great bodily harm to the officer or another person.

- ***Use of Chokeholds and Restraints***

Peace officers are prohibited from using a chokehold or restraint above the shoulders with the risk of positional asphyxiation after the person no longer poses a threat.

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- ***Affirmative Duties to Render Aid***

Peace officers have an affirmative duty to render aid consistent with the officer's training, including the use of AEDs and request emergency medical assistance if necessary.

- ***Newly Established Duties Relating to Officer Misconduct***

Peace officers have an affirmative duty to prevent or stop another peace officer from using unauthorized force or force that exceeds the degree of force permitted, if any, without regard to chain of command. If a peace officer is required to intervene because of another peace officer's misconduct, the intervening peace officer is required to report the intervention to a person designated by the law enforcement entity within five (5) days. The report must include information required by statute. Retaliation against an intervening peace officer is prohibited.

- ***Establishment of Law Enforcement Misconduct***

Acts of law enforcement misconduct (Class 3 Felony) occur when a peace officer acting in the performance of their duty, knowingly or intentionally:

- Misrepresents or fails to provide facts describing an incident in any report or during any investigation regarding the officer's misconduct;
- Withholds any knowledge of misrepresentation of another law enforcement officer from the law enforcement employee's supervisor, investigator or other person or entity tasked with accountability; or
- Fails to comply with law or department policy with respect to officer-worn body cameras.

- **The Attorney General Act** (15 ILCS 205/1 et seq.), (eff. 7/1/21)

Amendments to the Attorney General Act prohibit any "governmental authority," including municipal and community college police departments, from engaging in a pattern or practice of conduct by officers that deprives persons of constitutionally protected rights, privileges, or immunities under state or federal law.

To remedy violations of the newly amended statute, the Attorney General is empowered to take legal action to eliminate the pattern or practice whenever he/she has reasonable cause to believe that a violation of the Act has occurred. Prior to taking legal action, the Act also allows the Attorney General to conduct a preliminary investigation into any alleged violations. Civil penalties of up to \$25,000 per violation may be awarded.

- **Public Officer Prohibited Activities Act** (50 ICLS 105/1 et seq.), (eff. 7/1/21)

Units of local governments, including municipal and community college police departments, are prohibited from retaliating against any employee or contractor who (1) reports an improper government action under the amendments or (2) cooperates with an investigation into such actions by an auditing official as the result of such a report. For purposes of the amendments, an "improper governmental action" is defined as:

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any action by a unit of local government employee, an appointed member of a board, commission, or committee, or an elected official of the unit of local government that is undertaken in violation of a federal, State, or unit of local government law or rule; is an abuse of authority; violates the public's trust or expectation of his or her conduct; is of substantial and specific danger to the public's health or safety; or is a gross waste of public funds.

To receive protection under the amended Act, an employee must make a written report of an improper governmental action to the appropriate auditing official or, if no such auditing official has been elected, appointed, or hired, to the State's Attorney of the county in which the unit of local government is located.

- **Code of Criminal Procedure (725 ILCS 5/1) and Custodial Arrest Statutes** (eff. 7/1/21, unless otherwise noted)

Amends the Code of Criminal Procedure and various statutes relating to custodial arrests, which results in part from the legislation's broader purpose of eliminating monetary bail in favor of pretrial release in Illinois. These changes include:

- restricting any arrest for resisting or obstructing a peace officer, firefighter, or correctional institution employee to those circumstances where there is an underlying offense for which the person was initially subject to arrest (eff. 7/1/23);
- limiting the requirement that individuals subject to arrest be taken "without unnecessary delay before the nearest and most accessible judge in a county" to be charged to only those persons arrested "for an offense for which pretrial release may be denied";
- issuing of a citation in lieu of custodial arrest for individuals accused of traffic and Class B and C criminal misconduct offenses, as well as "petty and business offenses," who pose no obvious threat to the community or present no obvious medical or mental issues that pose a risk to their own safety;
- releasing such persons with a summons to appear before a judge within 21 days;
- requiring prior to the issuance of a no-knock warrant that an officer attest that, prior to entering the location in question, a supervising officer will ensure that each participating officer is assigned a body-worn camera and is complying with statutory requirements for use of officer-worn body cameras;
- requiring prior to the issuance of a no-knock warrant that steps be taken to plan for the presence of children or vulnerable people on-site;
- acting in accordance with a presumption in favor of pretrial release.

A defendant charged with a felony offense who has a warrant in another county in Illinois must be taken to that county within 72 hours of any pretrial release condition or hearing.

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Once a custodial arrest is made, arrestees have the right to three (3) phone calls within three (3) hours of being taken into custody. Individuals taken into custody now also have the right to access their cellular phone to retrieve phone numbers from their phone before it is placed in inventory. Such custodial rights are to be posted in a conspicuous place in any facility where an individual may be taken into police custody.

- **Community Law Enforcement and Other First Responder Partnership for Deflection and Substance Use Disorder Treatment Act (f/k/a) Community Law Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act (5 ILCS 820/1) (eff. 7/1/21)**

The newly titled Act enables first responders to develop and implement deflection programs as co-responders, which are intended as an alternative to traditional case processing, involvement in the criminal justice system and unnecessary admission to emergency rooms. The amendments include additional training in: *Neuroscience of Addiction for Law Enforcement, Medication-Assisted Treatment, Criminogenic Risk-Need for Health and Safety, Why Drug Treatment Works, Eliminating Stigma for People with Substance-Use Disorders and Mental Health, Avoiding Racial Bias in Deflection Program, Promotion of Racial and Gender Equity in Deflection, Working with Community Partnerships, and Deflection in Rural Communities.*

## **New Laws Affecting Police Departments**

P.A. 101-0652 establishes four new statutory provisions: Statewide Use of Force Standardization Act, No Representation without Population Act, Reporting Deaths in Custody Act and Task Force on Constitutional Rights and Remedies Act. Except for the Deaths in Custody Act, these provisions establish statewide efforts to standardize the use of force and other related initiatives. The Task Force on Constitutional Rights and Remedies Act, for example, establishes a task force to develop and propose policies and procedures for reforming constitutional rights and remedies related to policing, including the scope of qualified immunity for peace officers.

The Death in Custody Act (eff. 7/1/21), on the other hand, will have an immediate impact on how law enforcement agencies report and investigate the death of any person in an officer's custody that results from an officer's use of force. If an officer's use of force results in the death of an individual in custody, the supervising police department is required to report facts concerning the death to the Illinois Criminal Justice Information Authority ("ICJIA") within 30 days. When preparing the report, departments and their administrators must make a good faith effort to obtain all relevant facts and circumstances relating to the death. Those facts and circumstances must also be included in the report along with the race, age, and gender of the decedent. Failing to include known or discovered facts when reporting the death to ICJIA is unlawful under the Act. Notably, reports made to the ICJIA are public records for purposes of the Illinois Freedom of Information Act and will be included in an annual report submitted to the Governor and legislature.

The Act also requires that police departments notify the family, next of kin or any person reasonably listed by a decedent as an emergency contact "as soon as possible in a suitable manner giving an accurate factual account of the cause of death and the circumstances surrounding the death in custody." To facilitate the notice required by the Act, each police department is required to designate a staff member to act as a point of contact for those individuals as a "dedicated family liaison officer." The dedicated family liaison officer has an affirmative duty to provide information and findings relating to the investigation with those



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individuals. Such information includes medical records relating to the decedent, which must be disclosed to family members or designated individuals in accordance with State and federal law.

For additional guidance relating to P.A. 101-0652, please contact a Robbins Schwartz attorney.