



ISACo Overview of HB 163 (SFA#2)
Omnibus Criminal Justice and Law Enforcement Legislation
January 7, 2021

The Illinois State Association of Counties (ISACo) is interested in participating in the realization of policies that will increase trust in law enforcement within our communities following the protests and civil unrest that captured the attention of the nation in 2020. ISACo is also supportive of policies that result in effective policing, crime reduction and justice for all Illinois residents.

There is no shortage of policy ideas for improving the effectiveness and impact law enforcement has within our communities. It is also true that earnest people of good faith have differing views about which policies are most effective for achieving safe communities and social justice. For this reason, arriving at a successful outcome on an issue of this magnitude requires the contributions of many voices toward finding common cause and workable solutions.

As with any significant legislation that consists of hundreds of pages of text, Senate Floor Amendment 2 to HB 163 contains some provisions ISACo may be able to support or take no position on. The amendment also includes provisions that we would likely oppose. Unfortunately, including this mix of provisions within an omnibus amendment presents stakeholder groups with an “all or nothing” proposition when evaluating the legislation.

The provisions of most concern to ISACo that we would oppose are as follows:

- Removing various forms of immunity that indemnify law enforcement officers and local governments from certain types of civil litigation. Lawsuits impacting local governments are funded using tax dollars and taxpayers would ultimately pay for the lawsuits. There is also concern that local governments would be required to report judgements and settlements subject to non-disclosure agreements.

- Mandating officer-worn body cameras without providing counties with the funds to cover the full costs associated with the use of this technology. This is an unfunded mandate on counties and their taxpayers and our concern would be alleviated with full funding from the state, federal government or a combination of the two.
- Insertion of penalties involving a reduction in Local Government Distributive Fund (LGDF) revenue for non-compliance with certain provisions of the amendment. LGDF revenue is funding that belongs to local governments and ISACo will oppose legislation that could result in a reduction of this revenue source for any reason. This is an unwelcome precedent for local governments.
- ISACo notes that the Illinois Sheriffs' Association and other law enforcement groups are concerned about the impact several provisions will have on effective policing. ISACo believes that those with law enforcement expertise should be afforded an opportunity to express their concerns in detail prior to the General Assembly voting on the amendment.

The provisions that could possibly be supported by ISACo are as follows:

- Additional training requirements for law enforcement officers along with mental health evaluations.
- Limitations on the use of force and establishing clear intervention protocols to address instances of police misconduct.
- Removing disciplinary provisions from arbitration and collective bargaining agreements.
- While not included within the amendment, ISACo believes a law enforcement officer licensing requirement should be a component of the discussions.

ISACo urges the General Assembly to work with stakeholder groups on the important issue of policing and criminal justice reform toward a bill that we may be able to support.

The following is an overview of the content within HB 163 as amended by Senate Floor Amendment 2. The amendment was filed by State Senator Elgie Sims, Jr. (D-Chicago) on January 5, 2021. The amendment consists of 611 pages. Provisions summarized include a page number where the new or modified language begins within the amendment. Those seeking additional details about one or more provisions are encouraged to consult the actual language of the amendment.

ISACo requests that county officials with concerns or input about the amendment contact Executive Director Joe McCoy at jmccoy@isacoil.org or 217/670-1939.

Content of Senate Floor Amendment 2

Creates the Reporting on Deaths in Custody Act

Requires the Attorney General to create a standardized form to be used for the purpose of collecting information about persons who die in custody of a law enforcement agency, a local or State correction facility or a law enforcement officer. (Page 1)

Eliminates Prison Gerrymandering

Provides that for purposes of reapportionment and redistricting, the General Assembly shall count each incarcerated person as residing at his or her last known place of residence, rather than at the institution of his or her incarceration. (Page 8)

Creates a Right of Action

Eliminates various immunities as a defense against liability for injuries caused by a law enforcement officer and makes the officer liable for legal or equitable relief. Local governments that indemnify their law enforcement officers would have financial liability with the loss of various protections. (Page 8)

Amends the Freedom of Information Act

In a section concerning what information must be furnished by state and local agencies within arrest reports no later than 72 hours after arrest, deletes reference to the “amount of any bail or bond” and replaces it with “conditions of pretrial arrest.” (Page 11)

Amends the State Records Act

Deletes reference to the amount of any bail or bond and replaces it with the conditions of pretrial arrest among the type of information that must be provided to the media for inspection and copying. (Page 13)

Amends the Illinois Public Labor Relations Act

Eliminates the discipline or discharge of peace officers from matters employers cannot be required to bargain over. Provisions within existing contracts that concern bargaining over discipline and discharge of peace officers lapse upon contract renewals or extensions. (Page 17)

Grievance resolutions provisions do not apply to disputes regarding the discipline or discharge of peace officers (Page 18).

In a section concerning matters that require arbitration, expands the number of municipalities not required to arbitrate over residency requirements for peace officers. Current law only

exempts the City of Chicago. The proposed change would exempt every municipality with a population of at least 100,000. (Page 26)

Excludes discipline or discharge of peace officers from matters for which arbitration is required. (Page 27)

Adds a provision stating that, on or after the effective date of the legislation, no collective bargaining agreement applicable to peace officers shall be entered into containing any provision that does not pertain directly to wages or benefits, including discipline. (Page 32)

Amends the Community-Law Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act

Adds language to include “other first responders” to existing references to law enforcement personnel throughout the Act. (Page 33)

Defines “other first responder.” (Page 35)

With respect to planning for deflection programs, requires agreements with participating licensed treatment providers to authorize the release of statistical data to the Illinois Criminal Justice Information Authority as a condition for receiving certain funds. (Page 39)

Includes specific training requirements for law enforcement agencies or other first responder entities that receive funding for deflection programs. (Page 40)

Allows up to 10 percent of appropriated funds to be expended on activities related to knowledge dissemination, training, technical assistance or other similar activities intended to increase practitioner and public awareness of deflection and/or to support its implementation. (Page 41)

Prioritizes funding for deflection programs for communities impacted by the war on drugs, communities that have a police/community relations issue and communities that have a disproportionate lack of access to mental health and drug treatment. (Page 42)

Includes naloxone and related supplies necessary for overdose reversal and treatments necessary to prevent gaps in service delivery between linkage and coverage by other funding sources when otherwise non-reimbursable to the activities eligible for funding under the Act. (Page 43)

Amends the Attorney General Act

Allows the Attorney General to commence a civil action to obtain appropriate equitable and declaratory relief against any government authority engaging in a pattern or practice of conduct by officers that deprives any person of rights, privileges or immunities secured or protected by

the Constitution or federal/state laws. Creates a five-year statute of limitations on initiating such civil actions. Allows for civil penalties not to exceed \$25,000 per violation and not to exceed \$50,000 other civil rights violations within 5 years of the occurrence of the violation that is the basis for the complaint. (Page 44)

Amends the Illinois Identification Card Act

Requires the Secretary of State to track and issue an annual report to the General Assembly detailing the number of permanent Illinois Identification Cards issued to persons presenting verification forms issued by the Department of Juvenile Justice and Department of Corrections. The report shall include comparable data from the previous calendar year and reflect any increases or decreases. (Page 51)

Amends the Department of State Police Law of the Civil Administrative Code of Illinois

Changes references to “amount of any bail or bond” to “conditions of pretrial release” in a section pertaining to information that must be made available to the news media for inspection and copying when an individual is arrested. (Page 58)

Amends the State Police Act

Removes the requirement that someone filing a complaint against a State Police Officer must have a sworn affidavit or any other legal documentation. This issue cannot be included in a collective bargaining agreement. (Page 60)

Adds a section entitled, “Military Equipment Surplus Program” and prohibits the Illinois State Police from requesting or receiving from any military equipment surplus program or purchasing specified equipment. (Page 63)

Amends the Illinois Criminal Justice Information Act

Creates the Pretrial Practices Data Oversight Board to oversee the collection and analysis of data regarding pretrial practices in circuit court systems. Prescribes the make-up and responsibilities of the Board. (Page 65)

Creates a Domestic Violence Pretrial Practices Working Group. Prescribes the make-up and responsibilities of the Board. (Page 69)

Amends the Public Officer Prohibited Activities Act

Prohibits local governments, their agents or another employee from retaliating against an employee or contractor who: 1) reports on an improper governmental action; 2) cooperates with an investigation into an improper governmental action; or 3) testifies in a proceeding or prosecution arising out of an improper governmental action. Defines “improper governmental

action.” Established penalties against abusers for violations and measures that can be taken to remedy victims or retaliation. (Page 70)

Amends the Local Records Act

Changes references to “amount of any bail or bond” to “conditions of pretrial release” in a section pertaining to information that must be made available to the news media for inspection and copying when an individual is arrested. (Page 75). Includes a similar provision within the Campus Security Enhancement Act of 2008. (Page 130)

Police misconduct records must be permanently retained and cannot be destroyed. (Page 77)

Amends the Illinois Police Training Act

Requires the creation of statewide standards for minimum standards regarding regular mental health screenings for probationary and permanent police officers. (Page 79)

Includes any felony (currently Class 2 or greater) or sex offense as a willful violation by a peace officer for which a law enforcement agency must notify the Board of final determination for a database. (Page 79)

Includes State’s Attorney’s among those who have access to the Board’s database of final determinations. (Page 80)

Adds to the curriculum required of probationary police officers to include: 1) at least 12 hours of scenario-based role playing; 2) at least 6 hours of instruction on use of force techniques and de-escalation techniques; 3) officer safety techniques; and 4) at least 6 hours of training focused on high-risk traffic stops. (Page 83)

Adds implicit bias and racial and ethnic sensitivity training every two years for police officers that includes advanced first-aid training and certification, crisis intervention training and officer wellness and mental health to minimum in-service training requirements. (Page 86)

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Requires the Illinois Law Enforcement Training Standards Board to develop and approve a standard curriculum for certified training programs in crisis intervention of at least 40 hours for law enforcement recruits. Also establishes Crisis Intervention Team (CIT) training programs between law enforcement professionals, mental health providers, families and consumer advocates and sets forth the requirements. (Page 88)

Amends the Law Enforcement Officer-Worn Body Camera Act

Mandates the use of officer-worn body cameras. (Page 89)

Penalizes counties and municipalities that do not comply with mandatory use of body cameras with a reduction of LGDF funding at a rate of 20% per year until compliance. (Page 90)

Amends the Uniform Crime Reporting Act

Requires local law enforcement agencies to report crime statistics to the Department of State Police on a monthly basis. (Page 100)

Requires the Department of State Police to participate in the FBI's Use of Force Database. (Page 100)

Beginning on July 1, 2021, requires local law enforcement agencies to report on any incident where a law enforcement officer was dispatched to deal with a person experiencing a mental health crisis or incident. Also requires reporting on any action resulting in the death or serious bodily injury of a person or the discharge of a firearm at or in the direction of a person. (Page 103)

Subjects counties and municipalities not in compliance with the reporting requirements to a reduction in LGDF funding at a rate of 20% per year until the requirements are met. (Page 103)

Amends the Uniform Peace Officers' Disciplinary Act

Removes the requirement that an officer shall be informed about the names of all complainants prior to an administrative proceeding. (Page 104)

Removes the requirement that the officer under investigation shall be informed in writing of the name, rank and unit or command of the officer in charge of the investigation. (Page 104)

Removes the requirement that a person filing a complaint against an officer must have a sworn affidavit or any other legal documentation. (Page 105)

Amends the Police and Community Relations Improvement Act

Mandates that every law enforcement agency shall adopt a written policy outlining the process for the handling of anonymous complaints. (Page 106)

Amends the Counties Code

Adds a section entitled, "Military Equipment Surplus Program" and prohibits a sheriff's department from requesting or receiving from any military equipment surplus program or

purchasing specified equipment. Also restricts Cook County. (Page 107). Includes a similar provision within the Illinois Municipal Code.

In Cook County, specifies that if a court determines that the appointment of a special prosecutor is required, the court shall request the Office of the State's Attorneys Appellate Prosecutor to serve as a special prosecutor if the cause or proceeding is an officer-involved death. (Page 110)

Removes certain fees that goes to county sheriffs related to special bail and bonds. (Page 113)

Amends the Illinois Insurance Code

Changes reference to "forfeited bail" to "violated conditions of pretrial release" throughout the Act.

Amends the Illinois Gambling Act

Changes reference to "forfeited bail" to "violated conditions of pretrial release" throughout the Act.

Amends the Sexual Assault Survivors Emergency Treatment Act

Removes reference to the "Crime Victim Services Division" throughout the Act.

Amends the Illinois Vehicle Code

Changes reference to "forfeiture of any bail" to "conditions of pretrial release" where referenced throughout the Act.

Provides for a restoration of a person's driver's license renewal when the license was suspended, canceled or whose renewal has been prohibited before the effective date of the proposed Act due to the person having failed to pay any fine or penalty for traffic violations, automated traffic law enforcement system violations or abandoned vehicle fees. (Page 203)

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. (Page 233)

Removes language allowing for a person's driving privileges to be suspended for failing to complete a required traffic education program or pay any fine or penalty as a result of a combination of 5 violations of the automated traffic law enforcement system or the speed enforcement system. (Page 245)

Removes language requiring 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 and owing as a result of a combination of 5 violations of the automated traffic law enforcement system or the speed enforcement system. (Page 250)

Removes language allowing for a person's driving privileges to be suspended for not paying or successfully contesting the civil penalties for 5 violations of the automated railroad grade crossing enforcement system. (Page 271)

Amends the Clerks of Courts Act

Removes language allowing the clerk of the court to accept a credit card or debit card for the cash deposit of bail bond fees. (Page 281)

Amends the Attorney Act

Changes reference to "bail" to "terms of pretrial release" where referenced throughout the Act.

Amends the Juvenile Court Act

Changes reference to "amount of bail" to "conditions of pretrial release" where referenced throughout the Act.

Amends the Criminal Code of 2012

In a section authorizing the use of force when making arrests, adds a qualifier that the use is only allowed "based on the totality of the circumstances." (Page 305)

Establishes protocols that must be followed prior to the use of force and restricts the use of force unless certain conditions are met. (Page 305)

Law enforcement agencies are encouraged to adopt and develop policies designed to protect individuals with physical, mental health, developmental or intellectual disabilities who are significantly more likely to experience greater levels of physical force during police interactions. (Page 307)

Prohibits peace officers from using a restraint above the shoulders that carries risk of asphyxiation for the arrestee. (Page 308)

Prohibits peace officers from discharging kinetic impact projectiles and all other non-or less-lethal projectiles in a manner that targets the head, pelvis or back. Prohibits their discharge into a crowd and prohibits use of chemical agents prior to issuing an order for a crowd to disperse. (Page 309)

Adds a section establishing a duty for law enforcement officers to render aid and medical assistance when a person is injured, including as a result of a use of force. (Page 310)

Adds a section establishing a duty for law enforcement officers to intervene to stop another law enforcement officer from using unauthorized force. (Page 311)

Expands upon what is considered a first degree murder during interactions between law enforcement and an arrestee. (Page 312)

Changes reference to “bail bond” to “conditions of pretrial release” where referenced throughout the Act.

Establishes the offense of “law enforcement misconduct” and makes violations a Class 3 felony. (Page 339)

Amends the Code of Criminal Procedure of 1963

Defines “pretrial release” as having the meaning ascribed to bail in Section 9 of Article I of the Illinois Constitution that is non-monetary. (Page 340)

Defines “conditions of pretrial release” as conditions established by the court. (Page 340)

Specifies the rights of those held in police custody. (Page 341)

Establishes what a law enforcement officer must attest to prior to the issuing of a search warrant. (Page 361)

Establishes that a person arrested with or without a warrant for an offense for which pretrial release may be denied shall be taken without unnecessary delay to the nearest and most accessible judge in the county (or region if the county participates in a regional jail authority) and a charge shall be filed. (Page 362)

Provides that law enforcement shall issue citations in lieu of custodial arrest for those accused of certain traffic and criminal misdemeanor offenses if the person poses no obvious threat to the community or who have no obvious medical or mental health issues that pose a risk to their own safety. (Page 363)

An arrested person eligible for pretrial release may be released by an officer without appearing before a judge. The releasing officer shall issue the person a summons to appear within 21 days. (Page 363)

Provides that crime victims shall be given notice by the State’s Attorney’s office of the hearing and shall be informed of their opportunity at this hearing to obtain an order of protection. (Page 365)

Establishes requirements for the hearing where conditions of pretrial release are determined. (Page 365)

Provides that if a defendant is charged with a felony offense but has a warrant in another county, the defendant shall be taken to the county that issued the warrant within 72 hours of the completion of condition or detention hearing. (Page 367)

Abolishes monetary bail and releases defendants on their own recognizance unless the Court makes a written finding as to why less restrictive conditions would not assure safety to the community and assure the defendant's appearance in Court. (Page 371 and Page 373)

Identifies offenses that allow for the denial of pretrial release. (Page 376 and Page 406)

Establishes factors that a court must consider when determining the conditions of pretrial release. (Page 378)

Establishes conditions under which already granted pretrial release can be revoked. (Page 394)

Amends the Unified Code of Corrections

Allows the Illinois Department of Corrections to award up to 180 days of sentence credit for prisoners serving a sentence of incarceration of less than 5 years, and up to 365 days of earned sentence credit for prisoners serving a sentence of 5 years or longer. (Page 489)

Allows prisoners to earn sentence credit for specific behaviors. (Pages 491, 496 and 498)

Requires the Department of Corrections to prescribe rules and regulations governing the restoration of revoked sentence credit. (Page 503)

Establishes what is considered to be "home detention" for purposes of sentencing credit. (Page 527)

Offenders sentenced for a Class 3 or 4 felony, other than certain violent crimes, may not be confined to the penitentiary system but may be assigned to electronic home detention, an adult transition center or another facility or program within the Department of Corrections if the offender has less than 4 months remaining in their sentence accounting for time served. (Page 554)

Reduces penalty criteria for violations of home detention. (Page 561)

Amends the County Jail Act

Changes references to "bail" to "conditions of pretrial release" throughout the Act. (Page 567)

Amends the County Jail Good Behavior Allowance Act

Changes references to “bail” to “conditions of pretrial release” throughout the Act. (Page 565)

Amends the Crime Victims Compensation Act

Increases monetary awards to victims under the Act. (Page 588)