Changes in Law Effective 07/01/21

CHANGES IN THE LAW EFFECTIVE 07/01/21

(Per HB 3653 SA 2, as amended by HB 3443)

CHANGES TO THE ATTORNEY GENERAL ACT – NEW PATTERN AND PRACTICE

Gives the Attorney General the right to conduct investigations of and file lawsuits against governmental agencies that engage in a pattern or practice of violations of constitutional rights. The AG has the right to require law enforcement officers to file sworn statements, to depose LEOs and to issue subpoenas and conduct hearings. The AG can seek injunctive or declaratory relief, or penalties up to 25g per violation or 50g if there have been prior violations.

CHANGES TO DEFLECTION AND SUBSTANCE ABUSE DISORDER TREATMENT ACT

Now includes other first responders and co-responders as defined in the Act. Expands requirements for deflection to include the avoidance of unnecessary admission to emergency departments. Encourages approaches that incorporate behavioral health, peer or social work professionals at the scene. Requires an agreement with participating treatment providers that authorizes the release of statistical data to the Illinois Criminal Justice Information Authority.

Allows for the appropriation of funds to law enforcement or other first responder entities for knowledge dissemination, training, technical assistance, etc. Agencies receiving funding must provide training in Neuroscience and 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 Racial and Gender Equity in Deflection, Working with Community Partnerships, and Deflection in Rural Communities.

Funding is to be prioritized for communities that have been impacted by the war on drugs, that have a police/community relations issue, and that have disproportionate lack of access to mental health and drug treatment. Activities eligible for funding now include naxolone and other supplies for overdose reversal and treatment necessary to prevent gaps in service.

CHANGES TO THE ILLINOIS CRIMINAL JUSTICE REFORM ACT – DATA COLLECTION

Creates an oversight board to oversee the collection and analysis of data regarding pretrial practices in the circuit court systems.

Creates a working group to research and issue a report on current practices in pretrial domestic violence courts throughout Illinois.

CHANGES TO PUBLIC OFFICER PROHIBITED ACTIVITIES ACT – WHISTLEBLOWERS

Prohibits a local government from retaliating against an employee or contractor who reports improper governmental action, cooperates with an investigation related to a report of improper governmental action, or testifies in a proceeding or prosecution arising out of an improper governmental action.

Auditing officials shall create a complaint process and processes and procedures for investigating reports of improper governmental action. Lays out remedies for persons who experience retaliation. Persons who engage in retaliation can be subject to fines and other penalties.

CHANGES TO THE LOCAL RECORDS ACT – POLICE MISCONDUCT RECORDS

All public records and nonpublic records related to complaints, investigations, and adjudications of police misconduct shall be permanently retained.

CHANGES TO UPODA – NO SWORN AFFIDAVITS

Prohibits requirement that a complaint be supported by a sworn affidavit or any other legal documentation. The ban on an affidavit requirement applies to any CBA entered into after 7/1/21.

OTHER CHANGES TO UPODA

Removes requirements that an officer be informed of the name of the complainant, and the name, rank and unit or command of officer in charge of the investigation before an interrogation.

CHANGES TO BODY WORN CAMERAS – IMPLEMENTATION AND REVIEW

Requires all law enforcement agencies, including state agencies, to employ the use of BWCs. Court security officers, states attorney investigators and attorney general investigators are excluded. Creates a schedule of implementation based on size of municipality. Provides that BWCs may be turned off when worn inside a correctional facility, courthouse or Department of Revenue facility.

A law enforcement officer cannot have access to his BWC footage, or the BWC footage of another officer prior to completing reports when: 1. an officer is involved in or is a witness to a use of deadly force incident or a use of force incident that causes great bodily harm; or 2. is ordered to write a report in response to or during the investigation of a misconduct complaint against the officer. In those instances, the involved officers must write a report before viewing the footage. Then, the officer can review footage and write a supplemental report. The supplemental report must document the access to the footage.

Allows for the deletion of non-law enforcement related encounters. There must be written documentation if BWC footage is altered, erased or destroyed prior to the required 90-day storage period.

CHANGES TO THE ILLINOIS POLICE TRAINING ACT – MENTAL HEALTH SCREENING

Illinois Law Enforcement Training Standards Board has the authority to establish statewide minimum standards for mental health screenings for probationary and permanent police officers.

CHANGES TO UNIFORM CRIME REPORTING ACT – REPORTING INCIDENTS INVOLVING MENTAL HEALTH

Requires law enforcement agencies to report monthly to the Illinois State Police any incident where an officer was dispatched to deal with a person experiencing a mental health crisis. Also requires agencies to report on use of force incidents, including any action resulting in death or serious bodily injury, as well as any discharge of a firearm. Mental health crisis is defined as “when a person’s behavior puts them at risk of hurting themselves or others or prevents them from being able to care for themselves”.

CHANGES TO UNIFORM CRIME REPORTING ACT – FBI DATABASE

Departments shall participate in and submit information re: use of force incidents to the FBI National Use of Force Database.

CHANGES RE: THE ACQUISITION OF MILITARY ITEMS

Limits the ability to acquire or maintain certain military equipment. (bayonet, grenade launcher, tracked armored vehicle, weaponized aircraft, vessel or vehicle, as defined in the law).

CHANGES TO THE VEHICLE CODE – REMOVAL OF CERTAIN SUSPENSIONS

Secretary of State must rescind the suspension, cancellation, or prohibition of renewal of a person’s driver’s license that has been suspended, cancelled, or whose renewal has been prohibited before the effective date of the Act due to the person having failed to pay a fine or penalty for traffic violations, automated traffic violations or abandoned vehicle fees.

Removes option for suspending a person’s driver’s license for failing to pay fines or penalties for 5 or more automated speed enforcement systems or automated traffic law violations.

CHANGES TO USE OF FORCE – CONSIDERATIONS

Amends the criminal code provisions regarding peace officer’s use of force and requires consideration of the “totality of the circumstances” when assessing whether to use force. Defines “totality of circumstances” as “including but not limited to the proximity in time of the use of force to the commission of a forcible felony, and the reasonable feasibility of safely apprehending a subject at a later time”.

CHANGES TO USE OF FORCE – TO PREVENT ESCAPE

Adds language that a peace officer is justified in using force likely to cause death or great bodily harm when he reasonably believes that the person to be arrested is likely to cause great bodily harm to another and the person to be arrested has committed a forcible felony.

Adds language that a peace officer is not justified in using force likely to cause death or great bodily harm when there is no longer an imminent threat of great bodily harm to the officer or another.

CHANGES TO USE OF FORCE – PROHIBITION ON CHOKEHOLDS

Peace officers shall not use restraint above the shoulders with risk of asphyxiation in performance of their duties or in order to prevent the destruction of evidence. Chokeholds do not include any holding involving contact with the neck that is not intended to reduce the intake of air such as a headlock.

CHANGES RE: USE OF KINETIC IMPACT OR OTHER LESS LETHAL PROJECTILES – PROHIBITIONS

Prohibits discharge of kinetic impact projectiles and all other non or less lethal projectiles that target the head neck, groin, anterior pelvis or back.

Prohibits the discharge of conducted electrical weapons that target the head, chest, neck, groin or anterior pelvis.

CHANGES RE: USE OF PEPPER SPRAY OR TEAR GAS– WARNING REQUIRED

Provides that prior to the use of chemical agents or irritants for crowd control, an order to disperse must be issued in a sufficient manner to allow for it to be heard and repeated if necessary, followed by sufficient time and space to allow compliance, unless providing such time and space would unduly place an officer or another person at risk of death or great bodily harm.

CREATION OF A DUTY TO RENDER AID

Creates a duty to, as soon as reasonably practical, determine if a person is injured, and to render medical aid and assistance, consistent with training, and request medical assistance if necessary. “Render aid and assistance” includes performing emergency life-saving procedures, the making of arrangements for carrying a person to a physician, hospital, etc., if it is apparent that treatment is necessary or treatment is requested.

CREATION OF A DUTY TO INTERVENE

Imposes a duty on a peace officer who has an opportunity to intervene to prevent or stop another officer in his presence from using unauthorized force or force that exceeds the degree of force permitted, without regard to chain of command. The intervening officer must report the intervention. Members of law enforcement shall not discipline or retaliate against the intervening officer.

Legislative intent was added to clarify that an officer would have to be aware of the unauthorized use of force and have a reasonable opportunity to intervene for there to be a duty to intervene.

CREATION OF THE CLASS 3 FELONY OF LAW ENFORCEMENT MISCONDUCT

Creates the class 3 felony of law enforcement misconduct, which is committed if an officer knowingly and intentionally, with the intent to prevent the apprehension or obstruct the prosecution or defense of any person, 1. knowingly and intentionally mispresents or fails to provide material facts describing an incident in any report or during any investigation regarding the law enforcement employee’s conduct; 2. knowingly and intentionally withholds knowledge of the material misrepresentations of another law enforcement officer; or 3. knowingly and intentionally fails to comply with certain subsections of the BWC Act.

CHANGES RE: NO KNOCK WARRANTS

Prior to a warrant being issued, an officer must attest that: 1. prior to entering the location described in the search warrant, a supervising officer will ensure that each participating member is assigned a BWC and is following policies and procedures according to the BWC Act; 2. the supervising officer verified the subject address listed on the warrant for accuracy and planned for children or other vulnerable persons on site; and 3. if an officer becomes aware the search warrant was executed at the wrong residence, that member will immediately notify a supervisor and an internal investigation or informal inquiry will ensue.

CHANGES RE: HANDLING OF PREGNANT PRISONERS

Requires that correction officials receive training related to pregnant prisoners. Education materials shall be provided by the Illinois Department of Health and that information is then to be provided to pregnant prisoners. Provides post-partum protections for prisoners, including a 72-hour period for a mother to spend with the infant. Generally requires mothers to be provided care unique to pre-natal and post-natal issues.

CHANGES RE: THE CRIME VICTIMS COMPENSATION ACT

Gives the Attorney General jurisdiction over claims for compensation. Expands the definition of victim. Increases maximum recovery. States that a victim with a history of a felony shall not be automatically excluded, however, someone being held in a correctional facility is not entitled to compensation.

Lays out an investigatory, review and award process. Lists factors to consider when determining whether a victim has been cooperative.

CHANGES RE: QUALIFIED IMMUNITY TASK FORCE

Extends the deadline for reporting findings and recommendations to the General Assembly and the Governor to October 31, 2021