IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT, MCHENRY COUNTY, ILLINOIS

PATRICK KENNEALLY, in his official capacity as McHenry County State's Attorney, and on behalf PEOPLE OF THE STATE OF ILLINOIS Plaintiffs, v. KWAME RAOUL, in his official capacity as Illinois Attorney General, and Governor J.B. Pritzker, in his official capacity as Governor of the State of Illinois Defendants	)	Case No.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Patrick Kenneally, State's Attorney of McHenry County, on behalf of himself as the McHenry County State's Attorney and the People of McHenry County brings this Complaint for Declaratory Judgement pursuant to 735 ILCS 5/2-701 and Injunctive Relief, and alleges as follows:

Introduction:

HB 3653 was a 764-page, ideologically decadent, and typo-ridden bill passed in the predawn hours of the 2020 COVID lame-duck session by the super-majority in the Illinois Senate approximately one hour after it was finalized and made available for review. The entire process of enacting HB 3653 was plotted to mute to the maximum extent procedurally possible transparency, compromise, and any meaningful deliberation.

To many in law enforcement and many Illinoisans, the sudden and unexpected enactment of HB 3653 was a political ambush. An ambush orchestrated by a dogmatic group of legislators in league with equally dogmatic and PR savvy NGOs dedicated to

the well-being of one constituency – criminal defendants. In fact, it appears as though the bill's passing was merely the *quid pro quo* this group of legislators required in exchange for supporting the last gasp efforts of Michael Madigan to retain the Illinois House speakership.

The bill felled, in a matter of hours, structural principles of bail that had been deliberately developed over the course of centuries. Principles to effectuate, to the extent possible, important yet competing interests – a defendant's presumption of innocence against the court's interest in the fair, safe, and orderly administration of justice.

Perhaps owing to the "wrecking ball" and haphazard way in which it was passed, HB 3653 goes too far constitutionally. First, HB 3653 fails to confine itself to a single subject, in violation of Article IV, §8 of the Illinois Constitution. Second, HB 3653 unconstitutionally trenches upon the separate powers of the judiciary that is preeminent in the arena of bail and pretrial release, thereby violating Article II, §1 of the Illinois Constitution. Third, HB 3653 violates Crime Victim's Rights as protected in Article I, §8 of the Illinois Constitution.

PARTIES

1. Plaintiff Patrick Kenneally is the duly elected State's Attorney of McHenry County, Illinois, who has the authority to commence and prosecute all actions, suits, indictments, and prosecutions, civil and criminal, in the circuit court for the county, in which the people of the State or county may be concerned pursuant to 55 ILCS 5/3-9005(a)(1). In addition to the statutory powers afforded the McHenry County State's Attorney, he is vested with common law and constitutional authority analogous and largely coincident to the Illinois Attorney General and which includes the duty to represent the people in matters affected with a public interest.

2. Defendant Kwame Raoul is the duly elected Attorney General of the State of Illinois, and Defendant J.B. Pritzker is the duly elected Governor of the State of Illinois.

FACTS RELEVANT TO ALL CAUSES OF ACTION

A. A Brief History of Bail Before HB 3653:

3. Our modern bail system can be traced to medieval England when the formalized justice system began to emerge to settle disputes and wrongs previously redressed through feuds, outlawry, or "hue and cry.[1]" This nascent justice system deemed crimes private affairs, such that one party sued another for a monetary penalty.[2] An inborn defect of this system was the danger that the accused might flee prior to full adjudication to avoid paying the likely unaffordable penalty.[3] Jails at the time were considered too "costly and troublesome" for regular use.[4] In due course, a system developed whereby the defendant, to secure release, was required to find another person or persons (i.e. sureties) to guarantee both the appearance of the accused at the legal proceedings and payment of the penalty (i.e. bail) if the defendant absconded.[5]
4. In the 12th and 13th centuries, the English Parliament began passing laws to standardize the setting of bail, which varied from county officialdom to officialdom and was, therefore, subject to abuse.[6] One such law was the

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[1] TIMOTHY R. SCHNACKE, MICHAEL R. JONES, & CLAIRE M.B. BROOKER, PRETRIAL JUSTICE INSTITUTE, THIS HISTORY OF BAIL AND PRETRIAL RELEASE (2010). Hue and Cry is the old Common Law mode of pursuing 'with horn and voice,' persons suspected of a felony, or having inflicted a wound from which death is likely to ensue. JOSEPH CHITTY, A PRACTICAL TREATISE ON THE CRIMINAL LAW 26 (2d ed 1826). All were obliged to purse the criminal when the hue and cry was raised. WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 294 (7th ed. 1956).
[2] SCHNACKE, *supra* note 1, at 1.
[3] *Id.* at 2-3.
[4] *Id.*
[5] *Id.*
[6] *Id.* at 3. County sheriffs responsible for setting bail at the time "widely abused" this power by extorting money "from individuals entitled to release without charge" and accepting bribes from those not otherwise entitled to bail. *U.S. v. Evans,* 430 A. 2d 1321 (D.C. Dist. 1980).

Statute of Westminster, passed in 1275.[7] The Statute of Westminster created three criteria to govern bailability: 1) the nature of the offense; 2) the probability of conviction; and 3) the criminal history of the accused.[8]

5. Another major English innovation in bail was provoked by crown-loyal judges setting impossibly high bails for enemies of the King whose denial of bail could not otherwise be justified.[9] In response, Parliament established in 1628 a "petition of right," which was merely a statutory recognition of the practice "anciently" afforded men to have a higher court review bail and grant bail even in those "forbidden" cases.[10] In 1689, Parliament enacted, with the consent of William and Mary, the English Bill of Rights.[11] Therein, Parliament declared that "excessive bail ought not be required."[12]
6. In colonial America, the liberalization of bail law accelerated. In 1641, the Massachusetts Body of Liberties deviated sharply from English tradition by essentially enshrining bail as a right:

> No mans person shall be restrained or imprisoned by any Authority what so ever, before the Law hath sentenced him thereto, If he can put in sufficient secritie, bayle or mainprise, for his appearance, and good behavior in the meane time, unlesse it be Crimes Capital, and Contempts in open Court and in such cases where some expresse act of Court doth allow it.[13]

7. Having been influenced by Massachusetts, the Pennsylvania Constitution of 1682 guaranteed that "all prisoners shall be Bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption

[7] Schnacke, *supra* note 1, at 3.
[8] *Id.*
[9] *Id.* at 4.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

great."[14] This language became the model for nearly every state constitution adopted after 1776, including Illinois. *Id.* at 5. While the United States Constitution does not have a provision guaranteeing bail, Article VII of the Eighth Amendment to the Bill of Rights provides, "excessive bail shall not be required."

8. These forceful constitutional protections that in practice secured the release of most charged with a crime coupled with a vast, unpopulated frontier fostered the growth of a profession unique to the United States and that thrived in Illinois for well over a century – the bail bondsmen. As explained by one historian:

> First, unlike English law, the Judiciary Act of 1789 and the constitutions of most states provided for an absolute right to have bail set except in capital cases. Second, the absence of close friends and neighbors in frontier America would have made it very difficult for the court to find an acceptable personal custodian for many defendants, and third, the vast unsettled American frontier provided a ready sanctuary for any defendant wanting to flee.[15]

9. Like Pennsylvania's original constitution, Article VIII, §13 of the Illinois Constitution of 1818 provides that "all persons shall be bailable by sufficient sureties,[16] unless for capital offences, where the proof is evident or the presumption great…" This language was recapitulated in the 1848,[17] 1870,[18]

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[14] *Id.*
[15] *Id.* at 6.
[16] Through the early part of the 20th century, the term "sufficient sureties" meant those people primarily liable for the payment of the defendant's bail should he not comply with the terms of his recognizance. *See Smart v. Carson,* 50 Ill. 195 (1869); *People ex rel. Boenert v. Barret*, 202 Ill. 287 (1903); *Estate of Ramsay v. People,* 197 Ill. 572 (1902).
[17] IL Const. art. VIII, §13 (1848).
[18] IL Const. art. II, §7 (1870).

and 1970[19] Illinois Constitutions. In 1986, Article 1, § 9 of the Illinois Constitution was amended to its current form:

> All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person…

10. As an important sidebar, bail in the United States is the compromise solution to the question of what should be done while a defendant exists in this interstitial state where charges have been initiated against a defendant on probable cause, but the defendant is presumed innocent and has not been adjudicated guilty.[20] In other words, bail seeks to balance the practicalities of judicial administration against the enlargement of the ideals of due process and liberty.[21] As stated by the United States Supreme Court:

> The practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment

[19] IL Const. art. I, §9 (1970).
[20] *See United States v. Stack,* 342 U.S. 1, 8 (1951).
[21] *Id.*

while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense…

Admission to bail always involves a risk that the accused will take flight. That is a calculated risk which the law takes as the price of our system of justice.[22]

11. Originally, bail decisions in Illinois belonged to justices of the peace.[23] Section 17 of the Act defining the powers and duties of the justice of the peace, passed by the First General Assembly, provides:

> That it shall be lawful for any justice of the peace, upon oath being made before him, that any person hath committed, or that there are just grounds to suspect that he or she hath committed any criminal offence within his county, to issue his warrant to arrest the person so charged, and to enquire into said charge, and commit the person so charged to jail, or bail, or discharge him according the proof that may be adduced, and to the law arising thereupon: Provided however, that said justices shall have no power to admit to bail, or mainprize any person or person charged with threat, murder, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, or suspicion thereof, or with any crime punishable with death, or burning in the hand or elsewhere. And in all cases where the said justices shall admit to bail or mainprize, they shall recognize the party bound, to appear on the first day of the next succeeding session of the circuit

[22] *Id.*

[23] Prior to 1970, justices of the peace were elected in each county to sit with the county judge and had jurisdiction over civil cases involving not more than $100, forcible entry and detainer, and criminal cases of assaults, battery, affrays, and the sale of deceased persons' real estate. *See* DAVID F. ROLEWICK, ADM. OFF. OF IL CTS., A SHORT HISTORY OF THE ILLINOIS JUDICIAL SYSTEMS 10 (1976), *available at* https://www.ojp.gov/pdffiles1/Digitization/64349NCJRS.pdf.

court, in the county in which the transaction may happen, there to remain until discharged by said court, and in all cases where the justices of the peace shall commit the person or person charged to jail, or admit him or her to bail or mainprize…

12. In 1870, the General Assembly passed a new constitution that divided Illinois into seven supreme court districts corresponding with seven supreme court justices, created appellate courts, and divided the State into 17 judicial circuits with original jurisdiction in all cases of law and equity.[24]
13. In 1874, a commission tasked with revising Illinois laws submitted for enactment Chapter 38, which contained the bulk of the penal provisions. Chapter 38 was passed by the Illinois legislature and became informally referred to as the "criminal code." The criminal code, mirroring the Constitution, also provided that "all persons shall be bailable before conviction except for capital offenses where the proof is evident or the presumption great."[25]
14. Under the criminal code, bail was to be set by a judge or justice of the peace "[i]f it appears that an offense has been committed, and that there is probable cause to believe the prisoner guilty and if the offense is bailable."[26] If the prisoner offers sufficient bail, "it shall be taken and the prisoner discharged, but if no sufficient bail is offered, or the offense is not bailable by the judge or justice, the prisoner shall be committed to jail for trial."[27] In setting bail, the court could hold a bail hearing and "…examine the bail, on oath, touching their sufficiency and may receive other evidence for or against the same, in

[24] *Id.* at 11. Additionally, the Illinois Constitution provided for justices of the peace and provided for county courts in each county with comparable jurisdiction with justices of the peace and in all cases of appeals from justices of the peace. *Id.*
[25] Illinois Criminal Code of 1874, Chapter 38 of the Illinois Statutes, §294 (current version at 725 ILCS 5/110-4 *et al.*)
[26] *Id.* at §362.
[27] *Id.*

such manner as he may deem proper."[28] Prior to release, a "recognizance" (i.e. bail bond of sorts) is "taken" and "so conditioned as to bind the accused or witness personally to appear at the court having jurisdiction of the offense, on the first day of the next term thereof…"[29]

15. In the event of a failure to appear, "the court shall declare such recognizance forfeited, and the clerk of the court shall thereupon issue a *sciare facias* (i.e. summons and rule to show cause) against such person and his sureties, returnable on the first day of the next term of the court, to show cause why such judgment should not be rendered against such person and his sureties for the amount of the recognizance…"[30] At any time prior to forfeiture, however, the sureties, which were almost invariably bail bondsmen may arrest or cause the sheriff to arrest the defendant and surrender him to the "sheriff of the county where the principal is required to appear."[31]
16. In 1963, the General Assembly enacted Article 10 of the Code of Criminal Procedure governing bail that, though extensively amended over the years and now further by HB 3653, is still in effect today. According to the Illinois Supreme Court, the "central purpose" in enacting Article 10 was to "severely restrict the activities of professional bail bondsmen who customarily collected 10% of the amount of the bond as a fee in all cases.[32] This created the perverse incentive whereby "the pecuniary loss deterrent…was simply not working in a system where payment of a bond premium was required without regard to performance of conditions."[33] In addition, legislators sought "to reduce the cost of liberty to arrested persons awaiting trial."[34]

[28] *Id*. at §300.
[29] *Id*. at §297.
[30] *Id*. at §310.
[31] *Id*. at §305-307.
[32] *Schilb v. Kuebel,* 46 Ill. 2d 538, 544 (1970).
[33] *Id*.
[34] *Id*.

17. Article 10 departed from the 19th-century bail scheme in many important ways:

- §110-2 provided for the release of an accused on his own recognizance.
- §110-3 provided that the court could issue a warrant for the defendant's arrest upon a failure to comply with any of the conditions of bail.
- §110-4 provided that all defendants not facing the death penalty were bailable.
- §110-5 provided that the court should set bail at an amount sufficient to assure the defendant's compliance with the conditions of bail and in a way that is "not oppressive," "commensurate with the nature of the offense charged," and considerate of the defendant's "past criminal acts and conduct."
- §110-6 provided that the court could increase or decrease the amount of bail on either motion of the party, an increase being justified upon "facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail bond."
- §110-7 provided that a defendant be released upon posting 10% of the bail amount and that said amount shall be returned to the defendant, less 10% of the amount deposited (i.e. 1% of bail), at the end of the case should the defendant be discharged. Upon failure to comply with a condition of release, §110-7 provides that bail be forfeited and notice of the forfeiture be mailed to the accused at his last known address.
- §110-9 provided that peace officers may take bail on behalf of the court when it has already been set by a judge.
- §110-10 provided that in addition to appearing for all court dates, the defendant's bail is conditioned upon him not leaving the state and submitting himself to the "orders and process of the court."

18. Article 10 was codified as 725 ILCS 5/110-1 *et seq*. in 1993. Prior to the enactment of HB 3653, chapter 110-1 *et seq*. and other related sections had been considerably augmented to meet the modern realities of recidivist crime and community safety while attentive to the vulnerabilities of the indigent:
    - §102-6 defined bail as "the amount of money set by the court which is required to be obligated and secured as provided by law for the release of a person in custody in order that he will appear before the court in which his appearance may be required and that he will comply with such conditions as set forth in the bail bond."[35]
    - §109-1 provided that a person arrested be taken to a judge without "unnecessary delay" for the determination of bail.
    - §110-1 stated that "sureties" "encompasses the monetary and nonmonetary requirements set by the court as conditions for release either before or after conviction."[36]
    - §110-2 was supplemented to include language requiring that monetary bail should only be used when "the court determines that no other conditions of release will assure the defendant's appearance in court and that he would not be a danger to any person in the community."
    - §110-3 was supplemented with the provision that a defendant who is arrested on a warrant for failure to appear with a condition of bond shall not be bailable unless he shows by a preponderance of evidence that his failure to appear was not intentional.
    - §110-4 was supplemented with additional non-bailable offenses, specifically offenses for which the defendant is facing life imprisonment, a mandatory department of corrections sentence, or a

[35] A "bail bond," though not defined statutorily, is a "written promise" secured by the bail deposit required in §110-7 or cash, stocks, bonds, and real estate as set forth in §110-8. *See* BLACK'S LAW DICTIONARY (9th ed. 2009).
[36] Strangely, however, the term "sureties" is never used in §110 in this sense.

felony offense coupled with a court determination that defendant poses a "real and present" threat to "the physical safety of another."

- §110-5 was significantly supplemented to require the court to consider a catalogue of factors in determining bail and the conditions of release. A small survey of these considerations include the defendant's employment history, the nature and circumstances of the offense, whether the offense involved corruption of a public official, whether the defendant possessed or used an explosive or metal piercing ammunition during the commission of the offense, and whether the crime involved bigotry. Added in this section was also the presumption in favor of non-monetary bail.
- §110-6 and §110-6.1 were dramatically revised to set forth detailed procedures by which the court can deny, increase, decrease, amend conditions, or revoke bond. Generally, the court can increase bail or amend or alter conditions upon a violation of any of the previous conditions set; revoke bail when a defendant is on bail for a felony or domestic related offense and is charged with a forcible or Class 2 or greater drug related felony offense; and deny bail in cases where natural life may be imposed or in non-probationable felony offenses and stalking cases where the proof is evident or presumption great that the defendant committed the offense and the defendant poses a real and present threat to the physical safety of any person or persons irrespective of the conditions imposed.
- §110-10 was significantly revised to impart the court with broad discretion to impose a wide-ranging assortment of conditions of release on the defendant, including, but not limited to, firearms surrenders, psychological evaluations, reporting requirements, stay-away conditions, drug treatment, work or course study conditions,

requirements that a defendant live in a particular facility, electronic monitoring, and drug testing.

B. Summary of HB 3653's Provisions Regarding Bail:

19. The law as passed and currently constituted:

- Amends §102-6 to provide, "'[p]retrial release has the meaning ascribed to bail in Section 9 of Article I of the Illinois Constitution that is non-monetary."[37]
- Amends §109-1 to provide that only arrestees charged with a §110-6.1 (see below) offense be brought before a judge for a bond hearing. Further amended to require law enforcement to issue a citation in lieu of custodial arrest for petty offenses and Class B and C misdemeanors to those charged "who pose no obvious threat to the community or any person, or who have no obvious medical or mental health issues that pose a risk to their own safety." Further amended to give police officers discretion to release an arrestee charged with a non-§110-6.1 offense in lieu of bringing him to jail or before a judge.[38]

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[37] For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, the term "bail" used as a noun does not appear in the Illinois Constitution, only "bailable" used as an adjective. It is unintelligible for "bailable," used as an adjective, to have a meaning that is "non-monetary."

[38] For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, this section is silent as to when and how a defendant charged with a non-§110-6.1 offense and not otherwise released by the police has his case scheduled in front of a judge for determination of pretrial release. This section is silent further on whether or even how a defendant charged with a non-§110-6.1 offense can be made subject to conditions of release.

§109-2(a) as amended by HB 3653, governing the arrest of defendants in another county, is comparably problematic. It provides:

> "any person arrested in a county other than the one in which a warrant for his arrest was issued shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or, if no additional delay is created, before the nearest and most accessible judge in the county from which the warrant was issued. Upon arrival in the county in which the warrant issued, the status of the arrested person's release status shall be determined by the release revocation process described in Section 110-6."

Is a defendant arrested in another county not subject to pretrial release pursuant to §109-1 by law enforcement officers? What happens if there is "additional delay," can the judge in the other county set pretrial release conditions or does the defendant need to be transferred to the county from which the warrant was issued?

- Creates section §110-1.5, which provides, "[o]n or after January 1, 2023, the requirement of posting monetary bail is abolished…"
- Amends §110-2 to create the presumption that a defendant should be released on his own recognizance without conditions. Conditions may only be imposed if the court determines 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."[39]
- Amends §110-3 to preclude a judge from issuing a warrant for a defendant who fails to appear or violates a condition of bond, irrespective of the nature or severity of the violation, without first serving the defendant with a rule to show cause and, subsequently, the defendant failing to appear at the rule to show cause hearing. Amends

[39] For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, compare the following two provisions:

- §110-2(c): "Detention shall only 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."
- §110-6.1(a): "Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release only if…specific factors are met going well beyond a defendant's threat level or willful flight."
- §110-4(a): "Pretrial release may only be denied when a person is charged with an offense listed in Section 110-6.1 or when the defendant has a high likelihood of willful flight, and after the court has held a hearing under Section 110-6.1."
- §110-4(b)"A person seeking pretrial release who is charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed shall not be eligible for release pretrial until a hearing is held wherein such person has the burden of demonstrating that the proof of his guilt is not evident and the presumption is not great."
- §110-6.1(e)(2): "All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that …the defendant poses a real and present threat to the safety of a specific, identifiable person…"

For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, compare:

- §110-2(b): Additional conditions of release, including those highlighted above, 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."
- §110-5: 'In determining which or conditions of pretrial release, if any, which will reasonably assure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release, the court shall, on the basis of available information, take into account…"

§110-3(d) to preclude the court from recording a failure to appear or considering a failure to appear in a later proceeding unless a defendant fails to appear at the hearing to show cause.[40]

- Amends §110-6 to preclude a judge from revoking a defendant's pretrial release unless:

1) "the defendant was on pretrial release for a class A misdemeanor or greater offense and is arrested for a subsequent class A misdemeanor or greater offense;

or

1a) the defendant was on pretrial release for an offense involving a victim and is arrested for a violation of an order of protection that belongs to the same victim in the underlying criminal case;

and

2) the court finds by "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."[41]

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[40] For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, consider §110-3(c) as amended that provides, "[t]he contents of such a warrant shall be the same as required for an arrest warrant issued upon complaint and may modify any previously imposed condition placed upon the person, rather than revoking pretrial release or issuing a warrant for the person…" Seemingly and unintelligibly, a warrant may be issued, the contents of the warrant being that a warrant is not issued."

[41] For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, consider §110-6(b)(3) as amended:

> "upon the filing of the petition [to revoke], the court shall order the transfer of the defendant and the application to the court before which the previous felony matter is pending. The defendant shall be held without bond pending transfer to and a hearing before such court…In no event shall the time between the filing of the state's petition for revocation and the defendant's appearance before the court before which the previous matter is pending exceed 72 hours.

Regarding the first sentence, where should the case be transferred if the previous matter is not a felony (i.e. a Class A misdemeanor or other misdemeanor offense involving a victim who's order of protection is subsequently violated)? With regard to the ensuing sentences, what if a police officer releases the defendant on the subsequent Class A or felony offense pursuant to §109(a)(3) or the petition for

For all other violations of release conditions, the court is prohibited from revoking bond, irrespective of the number of violations or their nature or severity. Rather, for all other violations, a judge's only response is statutorily prescribed "sanctions," which range from a verbal admonishment to 30 days in jail, after the state has filed a verified petition requesting a hearing and after proving that the violation was willful and the defendant had actual knowledge that her action would violate a court order.

- Amends §110-6.1 to narrow a judge's discretion to deny pretrial release only:

  1) upon verified petition by the State;

  2) if the defendant is charged with a non-probational forcible felony, stalking, domestic violence related offense, sex offense, certain felony firearm offenses, and certain human trafficking related offenses; and

  3) if the defendant poses a "real and present threat" to "a specific, identifiable person or persons."

or

  1) upon verified petition of the State;

  2) if the defendant is charged with a class 3 felony and greater offense; and

revocation is not filed at the defendant's first court appearance on the subsequent offense after being taken into custody and the defendant is released?

3) if the defendant "has a high likelihood of willful flight to avoid prosecution."[42, 43]

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[42] To point out the unworkable incoherence and contradictory provisions of HB 3653, consider:

- 110-6.1(b): If the charged offense is a felony, the Court shall hold a hearing pursuant to 109-3 of this Code to determine whether there is probable cause the defendant has committed an offense, unless a grand jury has returned a true bill of indictment against the defendant."
- 110-6.1(c): A petition may be filed without prior notice to the defendant at the first appearance before a judge or within 20 calendar days…Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested.
- §109-3(B) Every person in custody in this State for the alleged commission of a felony shall receive either a preliminary examination as provide in this section or an indictment by Grand Jury within 30 days from the date he or she was taken into custody.

In cases where the State files a petition to deny pretrial release at a defendant's first court appearance (within 48 hours), how can the State be expected to be prepared to "immediately" conduct a preliminary hearing? These sections would also seem to foreclose the scheduling of a grand jury indictment in nearly all cases wherein the state files a motion to deny pretrial release.

[43] Consider the fictional defendant, Pat, charged with his eighth DUI, multiple counts of DUI Death, multiple counts of Aggravated Battery, Possession With Intent to Deliver, and Drug-Induced Homicide. The charges arose after Pat, who was drunk at the time, crashed into a mini-van and killed a family of six on his way to another bar. Pat attempted to flee the fiery crash on foot. He was confronted by a good Samaritan who, though on her way home from picking up her infant son at childcare, had pulled over after witnessing Pat run the red-light and crash. When the good Samaritan attempted to prevent Pat from fleeing the scene on foot, he bludgeoned her with the claw end of a hammer leaving her face permanently disfigured.

Fortunately, an off-duty police officer observed the incident and approached Pat at gunpoint. To the horror of the bleeding and barely conscious good Samaritan, Pat ran and opened the side door of her car and put the hammer to the sleeping infant's head, telling the police officer to back off and put the gun down. After several tense minutes, the officer was able to convince Pat to drop the hammer and move away from the infant. When attempting to arrest Pat, Pat began to fight. During the fight, Pat punched the officer multiple times in the face and nearly got possession of the officer's gun. Pat was ultimately subdued by responding backup officers after a ten-minute life-or-death struggle that left the police officer with a broken nose, concussion, and ongoing PTSD. While in the police car, Pat confessed that his attack of the good Samaritan was racially motivated. In the back of Pat's car, police found 5,000 fentanyl pills stamped to look like Tylenol and the corpse of Pat's girlfriend who was determined to have overdosed on the pills Pat had provided.

Pat's extensive criminal history includes having spent 25 years in the Illinois Department of Corrections for First Degree Murder, 15 years for Aggravated Sexual Assault, and five years for Aggravated Animal Cruelty. At the time of his arrest, Pat was on mandatory supervised release for the Aggravated Sexual Assault charge and Aggravated Animal Cruelty.

At his first court appearance, Pat informs the judge of his admiration of and allegiance to various terror organizations. Pat discloses that he is unemployed, has no dependents, and has been diagnosed with "Intermittent Explosive Disorder," characterized by recurrent behavioral outbursts representing a failure to control aggressive impulses as manifested by either destruction of property or physical assaults. Pat continues by lamenting that he knows he's going down for this and would just prefer to stay in jail so he can begin racking up credit that can be applied to any future Illinois Department of Corrections (IDOC) sentence. Pat concludes by stating, "I love drinking and driving too much to ever stop and anyway, at this point, what else do I have to lose."

C. A Brief Political History of HB 3653:

20. HB 3653's origins were years in the making.

21. In 2013, the press noticed and amplified the fact that the Cook County Jail had recently earned the dubious distinction of becoming the largest correctional facility in America.[44] Sheriff Dart, County Board Chair Preckwinkle, and Chief Judge Evans, all old political hats, sought to blame

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Pat's mother, who Pat lives with, also testified. She testified that while she loves Pat dearly and could never kick him out, she's terrified of him as he is often violent, bullies her into giving him money, and is constantly harassing her. She testified further that the continuous badgering and worry about where he is and what he is doing and to whom exacerbates her Type II diabetes such that that she has slipped into two diabetic comas in the last two months. She testified further that Pat is an alcoholic and opiate addict who refuses to get help, though she and the court system have tried countless times. She pleaded with the judge to keep Pat in jail, saying that it would be, far and away, the best thing for him at this point.

While setting the conditions of pretrial release, Pat interjects that he has no intention of following any of them. The judge, having no other recourse under HB 3653, admits Pat to pretrial release. Pat informs the corrections officer as he is being led to the jail exit that his next two stops are to the hardware store for another hammer and then the bar.

Despite the conditions of his pretrial release set by the judge, which include electronic monitoring and house arrest, Pat continues to drink, frequent bars he is prohibited from visiting, and continues to shop at the grocery store where the good Samaritan works. In violation of other conditions, Pat refuses to obtain an alcohol evaluation or counseling, refuses to undergo psychiatric treatment, has begun stockpiling ammonium nitrate, and is regularly a no-show at his court dates. In addition, while on pretrial release, Pat has been charged with Assault, Drunken Disorderly Conduct, Window-Peeping, Luring a Minor, and Criminal Trespass. Pursuant to HB 3653, Pat was not arrested for these offenses but rather was given a citation.

Pat has no phone number and refuses to disclose a residence to the court. Pat has a long and well-documented history of seeking to evade service. In fact, he was just "cited" by police for Obstructing Service of Process. Despite this, Pat recently got drunk and showed up to court after forgetting about his boycott of the "unconstitutional and un-American" court proceedings against him as a "sovereign citizen." In accordance with HB 3653, he was "sanctioned" by the court for violating the terms of his release and served the maximum of 15 days in jail.

Since his release, no one has been able to contact Pat. Unbeknownst to Pat, the GPS ankle tracker service was deactivated because Pat never paid the service fees. In accordance with HB 3653, the Sheriff's Office has sent multiple process servers with rules to show cause to ring his doorbell at his last known address, but no one answered, and the petitions were returned "not served." Under HB 3653, the court has no authority to revoke Pat's pretrial release or even issue a warrant for his arrest.

Though the tale of Pat is rank hyperbole, his actions are well-represented by any number of criminal defendants to one degree or another whose cases are currently pending before the 22nd Judicial Circuit. Tragically, however, the impotent legal response of the courts laboring under HB 3653 in the face of a dangerous, non-compliant, and unruly defendant like Pat is no exaggeration.

[44] Sy Mukerjee, *How Chicago's Cook County Jail Became America's Largest Mental Health Care Provider*, THINK PROGRESS, July 12, 2013, *available at* https://archive.thinkprogress.org/how-chicagos-cook-county-jail-became-america-s-largest-mental-health-care-provider-278ab360edd2/.

each other for the overcrowding crisis.[45] The bad press, however, did provoke an initial response.

22. Judge Evans asked the Illinois Supreme Court to review the Cook County Circuit Court's pretrial programs and operations.[46] In 2014, the Illinois Supreme Court issued a report that included 28 technical recommendations for judges and court administration.[47] That same year, County Board Chair Preckwinkle, at Sheriff Dart's acquiescence, took over and expanded eligibility for the federally overseen Administrative Release Program that allowed the sheriff to release jailed defendants on electronic monitoring.[48] Lastly, in 2015, Chief Judge Evans adopted a new risk assessment tool that "analyzes objective data related to a defendant's criminal history and current charge to generate a risk-assessment score that reliably predicts whether a defendant will commit another crime, commit a violent crime, or fail to appear in court if he or she is released before trial."[49] These initial changes, however, were more adjustments than an overhaul.
23. In 2016, Kim Foxx, County Chair Preckwinkle's chief-of-staff, was elected Cook County State's Attorney. During her campaign, she described Cook County's system that relied on monetary bail as "out of whack."[50] One of her

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[45] Hal Dardick, *Preckwinkle Presses to Expand Jail's Pretrial Release Program*, CHICAGO TRIBUNE, January 1, 2014, *available at* https://www.chicagotribune.com/news/ct-xpm-2014-01-01-ct-cook-jail-release-met-20140101-story.html.

[46] IL SUP. CT. ADMIN. OFFICE OF IL CTS.. CIR. CT. OF COOK COUNTY PRETRIAL OPERATIONAL REVIEW (2014) *available at* https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/325e2bb4-1e02-4e96-87e8-9ffdf1c92fe8/Pretrial_Operational_Review_Report.pdf.

[47] *Id.*

[48] Steve Schmadeke, *Agreement Calls for Preckwinkle to Oversee Effort to Ease Jail Overcrowding*, CHI. TRIB., March 6, 2014, *available at* https://www.chicagotribune.com/news/breaking/chi-agreement-calls-for-preckwinkle-to-oversee-effort-to-ease-jail-overcrowding-20140306-story.html.

[49] Statement for Chief Judge Timothy C. Evans, October 24, 2016 *available at* https://www.cookcountycourt.org/MEDIA/View-Press-Release/articleid/2485/dnnprintmode/true/mid/889?SkinSrc=[G]Skins%2F_default%2FNo+Skin&ContainerSrc=[G]Containers%2F_default%2FNo+Container

[50] Charles Straight & Otis Moss III, *Ending the Cash-Bail System Is a Promising Step*, CHI. TRIB., June 15, 2017 *available at* https://www.chicagotribune.com/opinion/commentary/ct-cook-county-jail-cash-bail-20170615-story.html.

first initiatives was to begin releasing defendants held on misdemeanors and low-level felonies pretrial. *Id.*

24. Shortly after Foxx was elected, a number of "community groups" who had organized under the auspices of the "Coalition to End Money Bond" sued various judges and the Cook County Sheriff's Office, alleging that failing to consider a defendant's ability to pay or offer alternatives to monetary bail was a violation of state statutes and the due process and equal protection clauses.[51] The lawsuit, though summarily dismissed,[52] seemed to have had its intended public relations and political effect. In 2017, the Illinois legislature passed the Bail Reform Act, which created the presumption in favor of release without monetary bond.[53] One month later, Chief Judge Evans issued General Order 18.8A, which prohibited judges in Cook County from setting cash bail in amounts beyond what defendants could afford.[54]
25. By the end of 2017, the combination of the Bail Reform Act, expansion of the Administrative Release Program, the State's Attorney's Office release initiatives, and General Order 18.8A had reduced Cook County's Jail population by 40%.[55] This still was not enough for many.[56] Critics

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[51] BLUHM LEGAL CLINIC, MACARTHUR JUSTICE CENTER, LAWSUIT ALLEGES COOK COUNTY JUDGES ROUTINELY SET CASH BAIL AT UNAFFORDABLE LEVELS, DEPRIVING ARRESTEES OF CONSTITUTIONAL RIGHT TO PRETRIAL LIBERTY, *available at* https://www.law.northwestern.edu/legalclinic/macarthur/projects/treatment/cashbail.html.

[52] Order Granting Section 2-619.1 Motion to Dismiss, *Robinson v. Martin*, 16 CH 13587, *available at* https://www.macarthurjustice.org/wp-content/uploads/2018/07/Robinson-v.-Martin-Dismissal.pdf.

[53] S.B. 2034, 100th Gen. Assemb. (IL 2017) *available at* https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=SB&DocNum=2034&GAID=14&LegID=&SpecSess=&Session.

[54] OFFICE OF THE CHIEF JUDGE, CIRCUIT COURT OF COOK COUNTY, GENERAL ORDER NO. 18.8A – PROCEDURES FOR BAIL HEARING AND PRETRIAL RELEASE (July 17, 2017), *available at* https://www.cookcountycourt.org/Manage/Division-Orders/View-Division-Order/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release

[55] OFFICE OF THE CHIEF JUDGE, CIRCUIT COURT OF COOK COUNTY ILLINOIS, BAIL REFORM IN COOK COUNTY, AN EXAMINATION OF GENERAL ORDER 18.8A AND BAIL IN FELONY CASES, (May 2019) *available at* https://www.cookcountycourt.org/Portals/0/Statistics/Bail%20Reform/Bail%20Reform%20Report%20FINAL%20-%20%20Published%2005.9.19.pdf.

[56] THE COALITION TO END MONEY BOND, MONITORING COOK COUNTY' CENTRAL BOND COURT: A COMMUNITY COURTWATCHING INITIATIVE (2017), *available at* https://endmoneybond.org/wp-content/uploads/2019/09/courtwatching-report_coalition-to-end-money-bond_final_2-25-18.pdf.

complained that bail determinations varied widely depending on the judge, some of whom appeared to be disregarding G.O. 18.8A, and that monetary bonds for minorities tended to be higher.[57] Predictably, calls began to redound for ending monetary bail.[58]

26. In February of 2017, Representative Christian Mitchell,[59] now Deputy Governor, introduced HB 3421, legislation that would have ended cash bail and that was advanced in collaboration with various activist organizations.[60] Rep. Justin Slaughter[61] was one of the House sponsors to HB 3421.[62] HB 3421, which shared many similarities with HB 3653, was ultimately referred to the Rules Committee, controlled by Speaker Madigan, where it died.[63]
27. 2019 and early 2020 was a time for reflection, empirically and otherwise, on the prior years of bail reform. A 2018 Loyola University of Chicago study

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[57] *Id.*; INJUSTICE WATCH, UNEQUAL TREATMENT: A SERIES, JAIL ROULETTE: COOK COUNTIES ARBITRARY BOND COURT SYSTEM (November 19, 2016), *available at* https://www.injusticewatch.org/interactives/unequal-treatment/#:~:text=Unequal%20Treatment%3A%20An%20Injustice%20Watch%20Series&text=A%20team%20of%2014%20Injustice,stages%20of%20the%20justice%20system.

[58] *Id.*

[59] Christian Mitchell represented legislative district 26, located entirely in Cook County. Representative Christian L. Mitchell-Biography, ILLINOIS GENERAL ASSEMBLE, https://www.ilga.gov/house/rep.asp?GA=100&MemberID=2423, (last visited July 243 2022). Christian Mitchell is a member of the Black Caucus. The Illinois Legislative Black Caucus, founded in 1968, stands for the progression of the African-American community by promoting education, health and welfare, minority business enterprise, job creation, consumer education and criminal justice reform. ILLINOIS LEGISLATIVE BLACK CAUCUS, https://www.ilbcf.org/about, (last visited July 23, 2022).

[60] Sharyln Grace, *Legislation Introduced to Eliminate Monetary Bond in Illinois*, CHICAGO APPLESEED CENTER FOR FAIR COURTS February 10, 2017, *available at* https://www.chicagoappleseed.org/2017/02/10/legislation-introduced-to-eliminate-monetary-bond-in-illinois/.

[61] Rep. Slaughter is also a member of the Black Caucus.

[62] Illinois General Assembly, https://www.ilga.gov/legislation/billstatus.asp?DocNum=3421&GAID=14&GA=100&DocTypeID=HB&LegID=105192&SessionID=91, (last visited July 23, 2022)

[63] *Id.* In Illinois, any bill introduced in the House automatically goes to the Rules Committee, which is meant to sort bills and send them to the appropriate committee by subject. The House Speaker, who has unfettered authority to appoint committee chairs and substitute committee members, has control over the proceedings of the Rules Committee and can ensure that bills are not assigned out, thereby languishing and dying from inactivity. TED DABROWSK & JOE TABOR, ILLINOIS POLICY INSTITUTE, MADIGAN'S RULES: HOW ILLINOIS GIVES ITS HOUSE SPEAKER POWER TO MANIPULATE AND CONTROL THE LEGISLATIVE PROCESS, (2017), *available at* https://www.illinoispolicy.org/reports/madigans-rules-how-illinois-gives-its-house-speaker-power-to-manipulate-and-control-the-legislative-process/.

found that in the six months succeeding GO 18.8A and the Bail Reform Act, I-Bonds or release on recognizances increased from 26% to 57%. Despite this significant increase, however, the number of defendants released pretrial only increased from 77% to 81%. The study found further that "failures to appear" increased from 17% to 20%. Lastly, the study found further that there did not appear to be a statistically significant increase in crime.[64]

28. In 2018, the Cook County Circuit Court published a study examining the impact of GO 18.8A. It found that in the 15 months after GO 18.8A and the Bail Reform Act went into effect (the "after period"), the jail population decreased by 16% and the number of I-Bonds increased significantly when compared to the preceding 15 months (the "before period). It also, however, found an increase in the number of no bond detention orders in the "after period," which increased from 267 to 2,192. Lastly, the study found, that GO 18.8A had not led to an increase in crime by released defendants.[65]
29. An independent study by authors not affiliated with Illinois bail reform efforts, however, reached strikingly different conclusions.[66] After reviewing the circuit court's study, two University of Utah professors, one a professor of law and the other of statistics, published a devastating critique. Specifically, the authors seized on the glaring statistical deficiencies in the circuit court's analysis of whether there was an increase in crime by defendants out on bail.[67] In correcting for the statistical defects by just analyzing the "subset of

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[64] Don Stemen & David Olson, *Dollars and Sense in Cook County, Examining the Impact of General Order 18.8A on Felony Bond Court Decisions, Pretrial Rlease and Crime*, SAFETY & JUSTICE, November 19, 2020, *available at* https://safetyandjusticechallenge.org/resources/dollars-and-sense-in-cook-county/.

[65] *Supra* note 55.

[66] Paul Cassell & Richard Fowles, *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*, UTAH LAW DIGITAL COMMONS (2020), *available at* https://dc.law.utah.edu/scholarship/194/.

[67] *Id.* The authors noted that the circuit court study failed to account for a number of confounding variables such as: 1) the hundreds of new police officers deployed "after G.O 18.8A and Bail Reform Act period" that were not in service in the "before period;" 2) the fact that the "after period" included three more high crime months (i.e. summer months) than the "before period;" and 3) the fact that "before period" involved a group of defendants who were released for an average of 154 days compared to

crimes committed by pretrial releasees," the authors concluded that GO 18.8A and the Bail Reform Act had, in fact, increased the amount of crime generally by pretrial releasees by 45% and violent crime by 33%.

30. A Chicago Tribune investigation following up on the University of Utah study revealed that 21 defendants released on bail in the "after period" were charged with murder.[68] The circuit court's study claimed there were only three.

31. On February 15, 2019, HB 3653 was filed in the House. As introduced, HB 3653 was seven pages in length and had nothing to do with criminal justice reform. Rather, HB 3653 merely required the Illinois Department of Corrections to provide voting information to inmates.[69]

32. On February 26, 2019, the Coalition to End Money Bond held a rally at the Springfield Capitol. The group was joined by Representatives Justin Slaughter and Carol Ammons and Senators Robert Peters and Elgie Sims.[70]

33. On April 3, 2019, HB 3653 was passed by the House and sent to the Senate where it sat undisturbed in the Assignments Committee, the Senate's version of Rules Committee.[71]

34. In January of 2020, the General Assembly was adjourned due to COVID-19. In March of 2020, the General Assembly suspended all ongoing committee sessions and operations. On May 20, 2020, the Illinois General Assembly

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defendants in the "after period" who were released for a period of 243 days, thereby giving them more time to commit crime. *Id.*

[68] David Jackson, et al., *Bail Reform Analysis by Cook County Chief Judge Based on Flawed Data, Undercounts New Murder Charges,* CHI. TRIB., FEB. 13, 2020, *available at* https://www.chicagotribune.com/investigations/ct-cook-county-bail-bond-reform-tim-evans-20200213-tkodxevlyvcp7k66q2v2ahboi4-story.html.

[69] ILLINOIS GENERAL ASSEMBLY, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3653&GAID=15&DocTypeID=HB&SessionID=108&GA=101, (last visited July 23, 2022).

[70] END MONEY BOND, https://endmoneybond.org/2020/02/26/250-people-from-across-illinois-lobby-and-rally-for-an-end-to-money-bond-and-for-pretrial-justice-reforms/, (last visited July 24, 2022). Representatives Ammons and Senators Peters and Sims are all members of the Black Caucus.

[71] *Supra* note 69.

reconvened for three days to pass the state budget and a handful of other bills, then adjourned indefinitely.

35. In April of 2020, the Illinois Supreme Court Commission on Pretrial Practices, made up of a diverse group of stakeholders,[72] was formed to "provide guidance and recommendations regarding comprehensive pretrial reform in the Illinois criminal justice system."[73] With respect to eliminating cash bail, the Commission concluded:

> However, as the Commission has observed throughout the course of its work, far too many jurisdictions in Illinois lack an adequate framework to allow for effective evidence-based pretrial decision-making and pretrial supervision…[S]imply eliminating cash bail at the outset, without first implanting meaningful reforms and dedicating adequate resources to allow evidence-based risk assessment and supervision would be premature.[74]

Though the Commission did not recommend eliminating cash bail, it did offer a number of suggested improvements, including allowing officers to issue citations in lieu of arrest for class B and C misdemeanors, permitting denial of bail only in cases involving "violent" offenses, and creating a statewide risk assessment tool.[75]

36. On May 25, 2020, George Floyd was murdered by a police officer in Minnesota. The cellphone footage depicting a Minneapolis police officer cruelly kneeling on Floyd's neck was akin to a political and cultural nuclear

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[72] Commission membership included Justice Ann Burke of the Illinois Supreme Court, Senator Elgie Sims, and Judge Timothy Evans.

[73] ILLINOIS SUPREME COURT COMMISSION ON PRETRIAL PRACTICES, FINAL REPORT, (April 2020), *available at* https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/227a0374-1909-4a7b-83e3-c63cdf61476e/Illinois%20Supreme%20Court%20Commission%20on%20Pretrial%20Practices%20Final%20Report%20-%20April%202020.pdf

[74] *Id.* at 18.

[75] *Id.*

bomb. In its wake, a new cynicism and outrage over police and the justice system took hold and outcries for drastic reform measures, such as "defund the police," began to gain traction.

37. In July of 2020, a federal court filing by the U.S. Attorney's Office revealed that an FBI investigation into ComEd for a "years-long bribery scheme" involving jobs, vendor subcontracts, and payments to Madigan's political allies was closing in on Speaker Madigan.[76]

38. On October 6, 2020, the Governor, in a politically astute response to the increasingly subversive mood, set out seven principles in a press release to "guide us on a path of repairing the historic harm caused by our justice system, especially in Black and Brown communities."[77] The first of these principles was the "end of the cash bail system and limiting pretrial detention to only those who are a threat to public safety."[78] In the press release, the Governor thanked the "Black Caucus and organizations and advocates across the state [that had brought] Illinois to this point."

39. On November 20, 2020, 18 of the 74 Illinois House Democrats announced that they would not back Madigan for speaker at the start of the new legislative session on January 13, 2021, leaving him short of the 60 votes he needed to retain the speakership. These defectors cited the ongoing ComEd investigation and suspicion surrounding Madigan.[79]

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[76] Brian Cassella, *Federal Investigation Draws Closer to Madigan as ComEd Will Pay $200 Million Fine in Alleged Bribery Scheme; Pritzker Says Speaker 'Must Resign' if Allegations True*, CHI. TRIB., July 18, 2020, *available at* https://www.chicagotribune.com/politics/ct-comed-madigan-investigation-fine-20200717-y6w2givqzrcyvafyjny7fjw434-story.html. A July court filing revealed that Madigan and an associate were alleged to have "sought to obtain from Com Ed jobs, vendors subcontracts, and monetary payments associated with those jobs and subcontracts for various associates of Public Official A." *Id.*

[77] PRESS RELEASE GOVERNOR PRITIZKER, GOV. PRITZKER PROPOSES PRINCICIPLES TO BUILD A MORE EQUITABLE CRIMINAL JUSTICE SYSTEM, *available at* https://www.iml.org/file.cfm?key=19997.

[78] *Id.*

[79] *18 Illinois House Democrats Say They Won't Back Madigan for Speaker*, NBC CHICAGO, November 20, 2020, *available at* https://www.nbcchicago.com/news/local/chicago-politics/18-illinois-house-democrats-say-they-wont-back-madigan-for-speaker/2376880/.

40. On December 9, 2020, however, the 22-member Black Caucus struck a deal with Madigan, announcing their support of his speakership. This political maneuver effectively denied any other democrat from securing the 60 votes they would need to oust Madigan and bought Madigan time to force further negotiations.[80] In a statement, the Black caucus stated, "[a]fter analysis, we believe our caucus is in a more advantageous position under the leadership of Speaker Madigan to deliver on our priorities."[81]
41. On December 30, 2020, Madigan and Illinois Senate leaders informed legislators that it intended to hold a lame-duck session that would last from January 8 through January 13, 2021, making it the first time since May the legislature would convene.[82] As reported, legislators were not informed of the legislative proposals they would be considering.[83] Three days prior to the start of lame-duck session, Rep. Tim Butler, R-Springfield, assessed:

> House Speaker Mike Madigan is keeping things pretty close to the vest. We are just a few days out and we just don't know. I had members of the majority party, Democrats, calling me to see what I had heard about session. They thought I might know because I represent Springfield. That's pretty telling when members of the party in control don't have a clue.

42. On January 10, 2021, Senator Sims affixed a 604-page amendment to HB 3653 that, in addition to sweeping changes to law enforcement operations,

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[80] *Illinois House Black Caucus Backs Madigan*, NBC CHICAGO, December 10, 2020, *available at* https://www.nbcchicago.com/news/local/chicago-politics/illinois-house-black-caucus-backs-madigan-for-speaker/2391517/

[81] *Id.*

[82] Dean Olsen, *Illinois House Schedules 'Lame Duck' Session for Jan. 8-13; Senate May Do the Same*, STATE JOURNAL-REGISTER, December 30, 2020 https://www.sj-r.com/story/news/2020/12/30/illinois-house-plans-lame-duck-session-jan-8-senate-may-do-same/4093974001/

[83] Scott Reader, *Commentary: Legislative Leaders' Silence on Silence on Lame-Duck Session Leaves Most in the Dark*, STATE JOURNAL-REGISTER, *available at* https://www.sj-r.com/story/opinion/2021/01/05/illinois-lame-duck-legislative-session-shrouded-mystery/4136674001/.

conduct, and use of force, also included the bulk of the bail modification provisions.[84] At 3:00 a.m. on January 13, 2021, HB 3653 was amended again by Senator Sims, becoming 764-pages in length.[85]

43. During the debate in the Senate at approximately 4:30 a.m., it became clear that Senator Sims, the chief sponsor, did not himself have sufficient time to apprehend the particulars of his own bill, specifically the types of offenses that were and were not eligible for pretrial detention. He and Senator McClure engaged in the following colloquy:

> **Senator McClure**: Thank you, Mr. President. Senator Sims, we just got this, as you know, a very short time ago, so I am literally still going through this as we are speaking. So some of the questions are really not gotcha questions. I am really trying to ascertain what's in the bill. The first question as I'm going through this is looking at now the number of crimes where a person cannot be held on any bail, they'd have to be released-an – and correct if I'm wrong on any of these: residential burglary, witness intimidation, animal cruelty, animal torture, financial exploitation of elderly, aggravated battery to a child, robbery, aggravated battery to a senior citizen.
>
> **Senator Sims**: So, Senator McClure, under those provisions that you're talking about, those are – those are elements and crimes that a judge would look at when – in the – in denial of pretrial release. So I think you have that backwards. The judge looks at. So under the Pretrial Fairness Act, which is a portion of this bill, the judge looks at the totality of the

[84] S.B. 3653, 101th Gen. Assemb. (IL 2021) (amendment proposed January 10, 2021), *available at* https://www.ilga.gov/legislation/101/HB/10100HB3653sam001.htm.
[85] S.B. 3653, 101th Gen. Assemb. (IL 2021) (amendment proposed January 13, 2021) https://www.ilga.gov/legislation/101/HB/10100HB3653sam002.htm.

> circumstances, and those are crimes that a judge would look at and would – would pay heightened – heightened attention to in – in making those determinations of the whether or not release would be granted.[86]

44. At 5:00 a.m., having had a little more than an hour to read the Bill, HB 3653 was called for a vote in the Senate by the Democratic super-majority and passed.[87]

45. That same morning, HB 3653 was sent to the House, its chief House sponsor was changed to Rep. Slaughter, and assigned to the Rules Committee.[88] It immediately passed out of the Rules Committee and received exactly the 60 votes needed to pass in the House, again, after less than an hour of debate.[89]

D. McHenry County - A Perspective From a County Other Than Cook

46. A look at the McHenry County Jail reveals that HB 3653 was entirely unnecessary and will needlessly encumber the freedom of defendants with burdensome bail conditions.

47. On July 15, 2022, there were 3,714 defendants facing charges in McHenry County on misdemeanors or felonies. Only 146 defendants or 3% were being held pre-trial. In other words, 97% of defendants in McHenry County had been released pretrial on bail or a personal recognizance bond. Of the 146 defendants in custody, 115 were charged with offenses for which they were subject to being held under HB 3653, either pursuant to §110-6.1 or §110-6. Of the 31 remaining defendants, please see the table below:[90]

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[86] 101th Gen. Assemb., 98th Leg. Day, 88-89 (Jan. 12, 2021), https://www.ilga.gov/Senate/transcripts/Strans101/10100098.pdf.

[87] ILLINOIS GENERAL ASSEMBLY, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3653&GAID=15&DocTypeID=HB&SessionID=108&GA=101 (last visited July 23, 2022).

[88] *Id.*

[89] Raymon Troncoso, *Lame Duck Look Back: How the Black Caucus Passed Criminal Justice Reform*, CAPITAL NEWS, January 21, 2021, *available at* https://www.capitolnewsillinois.com/NEWS/lame-duck-look-back-how-the-black-caucus-passed-criminal-justice-reform.

[90]

Defendant	Most Serious Charge	Class	Days in Custody	# Prior Arrests	Court Supervision at Time of Arrest & Other Notes	Employed?	Children?
Jane Doe #1	POSS. PRESC. FORM	4	14	0	Posted on 7/18	Y	0
John Doe #1	MFG/DEL CS	X	35	3		N	0
John Doe #2	METH POSS	3	10	15	Probation. Rearrested on a FTA warrant. 3 prior arrests for "bail jumping" in WI.	N	0
John Doe #3	RESIST PO	A	3	4	Posted 7/18	N	0
John Doe #4	ANIM ABUSE	3	1	3	Supervision DUI. Posted 7/18.	N	0
John Doe #5	AGG DUI (4)	2	19	17	Probation	Y	0
John Doe #6	MFG/DEL CS	1	24	10	Probation for MNF/DEL CS	N	0

John Doe #7	AGG BAT PO	2	30	12	Conditional discharge	N	0
John Doe #8	MFG/DEL COCAINE	1	24	1	Bond is $3,000, $300 to post	Y	0
John Doe #9	AGG ROB	1	170	5		N	0
John Doe #10	DRUG IND HOM	X	127	16	MSR	U/K	U/K
John Doe #11	BURG	2	24	8	Probation	Y	0
John Doe #12	AGG BATT	3	159	11	Probation	Y	0
Jane Doe #2	DRUG IND HOM	X	182	16	n/a	U/K	U/K
Jane Doe #3	POSS CS	4	6	6	n/a	N	5
Jane Doe #4	AGG BATT	3	73	2	Pending drug charge in another county	N	4
John Doe #13	MFG/DEL CS	X	23	44		N	4
John Doe #14	DRUG IND HOM	X	295	6		Y	0
John Doe #15	AGG DUI (5)	1	15	8	Rearrested on FTA warrant. Before rearrest, the	U/K	U/K

					SCRAM device indicated positive for alcohol 20 times.		
John Doe #16	DRUG IND HOM	X	28	2		U/K	U/K
John Doe #17	FORG & POSS CS	3	51	6	2 FTA warrants and bond increased after 5 failed drug screens	U/K	U/K
John Doe #18	MFG/DEL METH	X	45	1		Y	1
John Doe #19	DRUG IND HOM	X	53	3		N	0
John Doe #20	MFG/DEL COCAINE	X	189	10		Y	0
John Doe #21	DRUG IND HOM	X	92	25		N	4
John Doe #22	Child Abduction	4	5	0	Posted on 7/18	U/K	U/K
John Doe #23	AGG DUI (5)	1	71	13		U/K	U/K
John Doe #24	AGG BATT	2	38	8		N	0

John Doe #25	ROB	2	90	5	Recently released on from IDOC on murder conviction	U/K	U/K
John Doe #26	MFG/DEL COCAINE	X	169	22	Removed on immigration form US twice	U/K	U/K
John Doe #27	AGG DUI (4)	2	23	11	Rearrested on a FTA warrant	U/K	U/K

48. As discussed, when a defendant fails to appear or violates conditions of bond under §110-6 as amended by HB 3653, the court must issue a rule to show cause along with a summons in an effort to arrange for the defendant's appearance in court. In the first six months of 2022, problematically, 43% of all summons were returned "not served" in McHenry County. These include the summons for State witnesses, who are generally cooperative and have provided phone numbers and other contact information. When attempting to serve defendants with summonses, service failed in over 50% of attempts.
49. In McHenry County, summonses are generally served by retired police officers working for the Sheriff's Office. The summons is issued with an address and, if available, other contact information. If unable to contact the person to be served, the process servers will drive to her house and attempt to make contact by knocking on the door or ringing the doorbell. The process servers have no authority to enter a residence to serve a summons.
50. Electronic monitoring (EM) uses radio waves that communicate between a worn monitoring device and a secondary stationary device with a limited, set range. The secondary device will alert when the worn device strays too far away (i.e. outside the house). This type of monitoring is used to ensure

compliance with house arrest or curfews. In McHenry County, the probation department contracts with outside vendors to provide the equipment and monitoring. EM is set up for "next day notify" to the probation department. Accordingly, if someone is not present in a designated area at designated times, no one is immediately notified or responding. In 2021, it cost a defendant, unless otherwise ordered by the court, $8.50 per day for the equipment and service. That same year, the average number of days a defendant was on EM was 206 days. As such, on average, EM in 2021 cost a defendant $1,700 or the equivalent of a $17,000 bond.

51. Global positioning satellite (GPS) monitoring uses satellites to monitor the location of a defendant equipped with a monitoring device. Exclusion zones can be set so that the device alerts when a defendant enters an area from which he is excluded. In the event of a violation into an exclusion zone, law enforcement and any other parties designated by the court are immediately notified. In McHenry County, the probation department contracts with outside vendors to provide the GPS equipment and monitoring. In 2021, it costs a defendant, unless otherwise ordered by the court, $525 to install the GPS device and $15 per day for the monitoring service. That same year, the average number of days a defendant was on GPS monitoring was 311 days. As such, on average, GPS monitoring in 2021 cost the average defendant $5,190 or the equivalent of a $51,000 bond.

52. A continuous alcohol monitoring (CAM) device, affixed to the ankle, monitors and measures alcohol consumption in real time throughout the day. In the event of a positive alcohol screen, the result is reported to the probation department, but there is no immediate response from law enforcement or probation. In 2021, it costs a defendant, unless otherwise ordered by the court, $525 to install a CAM device and $15 per day for the monitoring service. That same year, the average number of days a defendant was on CAM monitoring was 300 days. As such, on average, GPS monitoring in 2021

cost the average defendant $5,025 or the equivalent of a $50,000 bond. There are currently no feasible and otherwise reliable continuous drug monitoring devices allowing for remote tracking of drug use.

53. In 2021, a drug and alcohol screen cost a defendant, unless otherwise ordered by the court, $13.83.

54. In McHenry County, adherence to and support and fulfillment of the Illinois Constitution by its law enforcement, court system, and other government officials and institutions is a matter of public interest. The enactment and implementation of HB 3653, the terms of which must observed, abided by, and enforced by McHenry County officials, impairs this interest because HB 3653 is unconstitutional.

55. In McHenry County, the orderly administration of the criminal justice system and public safety are matters within the public interest.

E. HB 3653 Other Than Bail Reform:

56. The following is a chart of all 764-pages of HB 3653, the laws it enacted or amended and a summary of the provisions:[91]

Statute	**Section(s) Amended**	**Summary**
HB 3653		Enacted a Statewide Use of Force Standardization Act, setting forth legislative intent to establish statewide use of force standards for law enforcement agencies.
HB 3653		Enacted the Taskforce on Constitutional Rights and Remedies Act (CRRA) to develop and propose policies and

[91] In creating the chart, we relied on and borrowed extensively from the summary provided by the Institute for Illinois' Fiscal Sustainability. SUMMARY OF PROVISIONS IN ILLINOIS HOUSE BILL 3653 (Feb. 15, 2021), *available at* https://www.civicfed.org/iifs/blog/summary-provisions-illinois-house-bill-3653-criminal-justice-omnibus-bill.

		procedures "to review and reform constitutional rights and remedies, including qualified immunity for peace officers."[92]
HB 3653		Enacted the No Representation Without Population Act creating a process of using a prison inmate's most recent known address prior to incarceration for purposes of redistricting legislative districts. Specifically, within 30 days after the effect date and each year of the federal census, IDOC must provide the Illinois State Board of Elections (ISBE) with the race and last known address of all persons. ISBE shall request the same from in-state federal facilities. ISBE shall prepare redistricting population data to reflect incarcerated persons at their last known addresses. This data shall be the basis of the legislative and representative districts. Also includes provisions ensuring that prisoners, with known or unknown addresses, are not represented in areas where the prison in which they reside is located.
HB 3653		Enacted the Reporting of Deaths in Custody Act creating a process for investigating and reporting in custody deaths as a result of a peace officer's use of force.
Public Labor Relations Act	5 ILCS 315/14	Amended as to arbitration on peace officers on residency requirements, reducing the size of a municipalities eligible for arbitration regarding residency requirements.
Community-Law	5 ILCS 820/*et seq*.	Amended by adding "Other First Responder" language to develop and implement collaborative deflection programs

[92] For the purpose of pointing out the unworkable incoherence, contradictory provisions, and careless draftsmanship of HB 3653, qualified immunity is not a constitutional "right or remedy." Rather, qualified immunity is a court doctrine that protects public officials from lawsuits alleging that an official violated a plaintiff's rights. *See Harlow v. Fitzgerald,* 457 U.S. 800 (1982). Moreover, as a federal legal doctrine established by the United States Supreme Court, qualified immunity cannot simply be abolished by state legislation.

Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act		for substance use treatment and other services. Adds funding and training requirements. Allows for funding eligibility for naloxone and related overdose reversal supplies and treatment.
Attorney General Act	15 ILCS 205/*et seq*.	Amended to authorize the AG 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.
State Police Act	20 ILCS 2610/3	Increases the number of State Police Merit Board members from 5 to 7 and creates other requirements for Board members. Requires the Merit Board to review all ISP Cadet applicants. 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, etc. Requires the Merit Board to submit an annual disciplinary data report to the Governor and General Assembly. Requires the termination of Illinois State Police Officers for the commission of various offenses and allows for discretionary termination in cases involving failure to intervene, excessive force, false statements, fabricating with evidence, or various forms of unbecoming conduct.
State Police Act	20 ILCS 2610/14	Amended to allow a complaint against a police officer to be filed without a sworn affidavit or other legal documentation.

State Police Act; Counties Code; Municipal Code	20 ILCS 2610/17(c); 55 ILCS 5/3-6041; 65 ILCS 5/11-5.1-2	Amended to forbid law enforcement from purchasing, requesting or receiving the following military equipment: tracked armored vehicles, weaponized aircraft or vehicles, .50-caliber or higher firearms and ammunition, grenade launchers, or bayonets.
State Police Act, Police Training Act	20 ILCS 2610/46; 50 ILCS 705/9.2	Makes the Merit Board responsible for reporting all required information in the Officer Misconduct Database. Requires the Merit Board to search the database before certifying any law enforcement officer. Makes the database accessible to any chief administrative officer of any governmental agency and others. Requires agencies, in certain circumstances, to notify the Merit Board of any final determination of a willful violation of policy, official misconduct, or violation of law on the part of an officer. Requires the Merit Board 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. Requires the Merit Board to submit an annual report.
Illinois Criminal Justice Information Act	20 ILCS 3930/7.7	Requires the (AOIC) to convene a Pretrial Practices Data Oversight Board to oversee the collection and analysis of pretrial practices data in circuit court systems and publishing of reports. 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.
Illinois Criminal Justice Authority Act	20 ILCS 3930/7.8	Amended to create a Domestic Violence Pretrial Practices Working Group convened by ICJIA to research current practices in pretrial domestic violence courts throughout Illinois.
Public Officer Prohibited Activities Act	50 ILCS 150/4.1	Amended to prohibit local government employees or any agent from retaliating against an employee or contractor who reports an improper governmental action, cooperates with an investigation, or testifies in a proceeding or prosecution. Retaliatory actions are subject to a penalty of between $500 and $5,000, suspension without pay, demotion, discharge, and civil or criminal prosecution. Improper government action includes violations of the law, abuses of authority, violations of the public trust, the creation of a substantial and specific danger to the public's health or safety, and a gross waste of public funds. To invoke the protection, the whistleblower must make a written report to the auditing official (i.e. person in charge of receiving and investigating complaints of misconduct, inefficiency, or waste), who must establish written processes for managing and investigating complaints.
Local Records Act	50 ILCS 205/25	Amended to require that all public and nonpublic records related to complaints, investigations, and adjudications of police misconduct be permanently retained.

Police Training Act	50 ILCS 705/et seq.	Amended to create an Illinois Law Enforcement Certification Review Panel with 11 members from various representative backgrounds and imparts certain powers. Creates new procedures for the automatic decertification of law enforcement officers. Expands the review of law enforcement officers to ensure no officer is certified who has been found guilty of certain offenses. Creates reporting requirements for any arrest or finding of guilt of any officer. Reduces the time period required for law enforcement officers to report their arrest, or finding of guilt. Requires immediate decertification of any officer who is convicted or found guilty. Allows the Board to immediately suspend a law enforcement officer's certification upon being notified that the officer has been arrested or indicted. Creates new procedures for the discretionary decertification of law enforcement officers. Requires all law enforcement officers to submit a verification form every three years that confirms compliance, including verification of completion of mandatory training programs, etc.
Police Training Act	50 ILCS 705/6	Amended 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.
Police Training Act	50 ILCS 705/6.2	Amended 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.
Police Training Act	50 ILCS 705/7, 10.6, 10.17	Amended to require crisis intervention training for probationary police officers. Requires implicit bias and racial and ethnic sensitivity training as part of minimum in-service training. Requires training on emergency medical response, crisis intervention training, and officer wellness and mental health to be completed as part of minimum in-service training. 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 including on use of force and de-escalation techniques.
Law Enforcement Officer-Worn Body Camera Act	50 ILCS 706/10-15, 10-25	Amended 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. 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.
Uniform Crime Reporting Act	50 ILCS 709/*et seq.*	Amended 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, and requires new reporting criteria such as mental

		health and firearm discharge responses. Requires law enforcement to report use of force instances to ISP and ISP to report said information to the FBI.
Uniform Peace Officers' Disciplinary Act	50 ILCS 725/*et seq*.	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. Dispatches with requirement that law enforcement complaints be supported by affidavit or any other legal documentation.
Police and Community Relations Improvement Act	50 ILCS 727/*et seq*.	Amended 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. 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.
55 ILCS 3/6001.3		Adds to existing sheriff qualifications the requirement of having a certificate attesting to his or her successful completion of the Minimum Standards Basic Law Enforcement Officers Training Course.
Vehicle Code	625 ILCS 5/6-209.1; 625 ILCS 5/11-208.8; &	Amended to require 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. Removes the ability of

	208.9; 625 ILCS 5/11-1201.1	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.
Criminal Code	720 ILCS 5/31-1	Amended to prohibits a police officer from arresting a person for resisting an officer unless there was an underlying offense for which the person was subject to arrest.
Criminal Code	720 ILCS 5/7 *et seq.*	Amended to add language that a police officer may use force in effecting an arrest only 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. Prohibits using restraint above the shoulders. Restricts circumstances under which discharging kinetic impact projectiles or irritants may be fired. 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. Creates a duty for all law enforcement officers to render medical aid and assistance as soon as reasonably practical. Creates a duty for a peace officer to intervene to prevent another peace officer from using unauthorized force.
Criminal Code	720 ILCS 5/9-1	Amended to clarify that to be charged with first degree murder when committing a forcible felony the person or another participant acting with them must have caused the death.
Criminal Code	720 ILCS 5/33-9	Amended to create the charge of Law Enforcement Misconduct committed when a law enforcement officer 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.
Code of Criminal Procedure	725 ILCS 5/103-3	Amended to give people in custody the right to make three phone calls as soon as possible, but no later than three hours after arrival at the place of custody. Requires police custody

		facilities to 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.
Code of Criminal Procedure	725 ILCS 5/108-8	Amended to require 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 the officer will immediately notify a supervisor who will ensure an internal investigation ensues.
Code of Corrections	730 ILCS 5/3-6-3	Amended to allow IDOC 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. Allows prisoners to earn sentence credits for participation in certain programs, including substance abuse programs, correctional industry assignments, etc. Requires IDOC to prescribe rules and regulations for revoking and restoration of sentence credits.
Code of Corrections	730 ILCS 5/4-17; 730 ILCS	Amended 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

	5/5-6-3.8; 730 ILCS 5/5-4-1	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 IDOC. 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.
Code of Corrections	730 ILCS 5/5-8-1	Amended to revise the terms of mandatory supervised release for certain offenses. Reduces the mandatory supervised release term for a Class X felony (excluding 85% sentences) from 3 years to 18 months. 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.
Code of Corrections	730 ILCS 5/5-4.5-95	Amends the definition of habitual criminal by requiring the first offense to have been committed when the subject was 21

		years of age or older and requires that all qualifying offenses be "forcible" offenses.
Code of Corrections	730 ILCS 5/5-4.5-100	Clarifies the definition of home confinement for purposes of credit, must include restrictions on liberty, such as curfews restriction movement for 12 hours or more per day or electronic monitoring that restricts travel or movement.
Code of Corrections	730 ILCS 5/5-8A-2, 8A-4	Amended to add that approved absences from the home shall include purchasing groceries, food, or other 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 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.
Crime Victims Compensation Act	740 ILCS 45/*et seq*.	Amended 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 like that of a parent, spouse, or child. Increases the pecuniary loss limit for the cost of transport for deceased victims and for the cost of funeral and burial in the case of dismemberment or desecration of a body. Also increases the limit for eligible loss of earnings or support the victim may receive. Adds that a victim's criminal history or felony status shall not automatically prevent their compensation. 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. 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. Adds factors the Attorney General and Court of Claims may consider in determining whether cooperation is reasonable.
Code of Corrections, County Jail Act, Counties Code,	730 ILCS 5/3-6-7.1 *et seq.*; 730 ILCS 125/17 *et seq.;* 55 ILCS 5/3-15003.7, *et seq.*	Amended to require training for corrections officers 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, with exceptions, placing a pregnant prisoner or a prisoner who gave birth during the preceding 30 days in administrative segregation.

57. The McHenry County State's Attorney's Office is one of the auditing officials of all governmental offices within McHenry County.
58. The McHenry County State's Attorney's Office requires additional staff and resources to comply with HB 3653.

COUNT I
Declaratory Judgement

59. Plaintiff reincorporates and re-alleges paragraphs 1-66 "Facts Common to All Causes of Action," as if fully set forth herein.

60. The single-subject clause of the Illinois Constitution provides, "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Ill. Const., Art. I, §8(d).

61. HB 3653 violates the single-subject clause of the Illinois Constitution.

62. Article II, §1 of the Illinois Constitution provides, "The legislative, executive, and judicial branches are separate. No branch shall exercise powers properly belonging to another."

63. HB 3653 violates Article II, §1 of the Illinois Constitution.

64. Article I, §8 of the Illinois Constitution provides:

> a) Crime victims, as defined by law, shall have the following rights:
> 1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment intimidation, and abuse throughout the justice process…
> 8) The right to be reasonably protected from the accused throughout the criminal justice process…
> 9) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.

65. HB 3653 violates Article I, §8 of the Illinois Constitution.

66. An actual controversy exists between Plaintiff and the State of Illinois pursuant to 735 ILCS 5/2-701 regarding the constitutionality of HB 3653.

WHEREFORE, Plaintiff requests declaratory judgment in its favor finding that HB 3653 violates Article IV §8, Article II §1, and Article I §8 of the Illinois Constitution and declare the law null and void.

COUT II
Request for Injunctive Relief

67. Plaintiff reincorporates and re-alleges paragraphs 1-66 "Facts Common to All Causes of Action," as if fully set forth herein.

68. Plaintiff has a clear and ascertainable right to be free from unconstitutional legislation and that right is in need of protection.

69. Plaintiff has no adequate remedy at law.

70. Plaintiff will suffer an irreparable harm in violation of the Illinois Constitution if an injunction is not granted and HB 3653 takes effect.

WHEREFORE, Plaintiff requests this Court enter an order permanently enjoining the State of Illinois from implementing or enforcing the provisions of HB 3653.

PATRICK KENNEALLY and

PEOPLE OF THE STATE OF ILLINOIS

By: /s/ Patrick D. Kenneally
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