
Fall 2024 Illinois: Criminal Justice Legislative Update

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Overview

- Comment on legislative climate for criminal justice legislation
- 2024 Spring session recap
- Looking ahead to Veto & Lame Duck sessions
- Preview of the 2025 session

General Legislative Climate

- Law enforcement & GOP backlash to SAFE-T Act
- False media narratives about increasing crime
- Election year politics

2024 Spring Session Recap

[HB 4500](#) (Public Act 103-0822) – Title change for gun possession offenses

- Changes the title of "Unlawful Use of a Weapon" and related offenses to "Unlawful Possession of a Weapon." Also changes the title of "Armed Habitual Criminal" to "Unlawful possession of a firearm by a repeat felony offender" to match similar offenses.
- Does not change the definitions of any offenses or associated penalties.
- Intended to address common misunderstandings of the nature of the underlying conduct and reduce stigma.

2024 Spring Session Recap (cont.)

[HB 5285](#) (Public Act 103-0702) – Non-Conviction Probation programs

- Clarifies that participants in specified enumerated probation programs in which judgment is withheld are not considered to have criminal convictions while the program is ongoing or after successful completion. Impacted programs include Second Chance Probation, the First Time Weapons Offense Program, and diversionary probation sentences for controlled substances, cannabis, and methamphetamine.
- Also amends the definition of "conviction" in 720 ILCS 5/2.5 to add this clarifying language: "If judgment is withheld, the plea, verdict, or finding of guilty is not a conviction under Illinois law unless and until judgment is entered."



2024 Spring Session Recap (cont.)

[HB 4623](#) (Public Act 103-0825) – "Deepfake" Child Pornography

- Amends the Criminal Code to provide that "child pornography" includes the depiction of a part of an actual child under 18 who by manipulation, creation, or modification, appears to be engaged in sexual activity.
- Creates the new criminal offenses of obscene depiction of a purported child (720 ILCS 5/11-20.4) and non-consensual dissemination of sexually explicit digitized depictions (720 ILCS 5/11-23.7).



2024 Spring Session Recap (cont.)

SB 2934 (Public Act 103-0765) – Consent not a defense to Hazing

- Provides that it is not a defense to hazing that the person against whom the hazing was directed consented to or acquiesced in the hazing.



2024 Spring Session Recap (cont.)

SB 2626 (Public Act 103-0755) – Expedited expungement petitions for diversion program participants

- Allows participants to file expungement petitions up to 61 days in advance of their anticipated "successful completion of a problem-solving court, pre-plea diversion, or post-plea diversion program."
- Designed to avoid delays in expungement caused by the mandatory 60 day waiting period after a petition for expungement is filed by allowing petitions to be filed in cases where the participant is not yet eligible but will be eligible 61 days or less after its filing.



2024 Spring Session Recap (cont.)

SB 3285 (Public Act 103-0968) – Domestic Violence post-conviction relief for negotiated pleas

- Amends the Gender-Based Violence Resentencing Act to allow post-conviction review of negotiated plea deals, undoing the Illinois Supreme Court's 2023 decision in *People v. Wells*, 2023 IL 127169.
- Makes explicit that relief may include reduced sentences even if a conviction is not vacated.



2024 Spring Session Recap (cont.)

[HB 5431](#) (Public Act 103-0745) – Rights of pregnant incarcerated persons

- Amends the Code of Corrections and Counties Code to prohibit restraint of pregnant people at all times during pregnancy (instead of only during labor), in all county jails (instead of only Cook County), and extends the restraint ban six weeks postpartum.
- Limits use of electronic monitoring on pregnant people and requires immediate removal of BM devices during labor and delivery, or earlier if medically necessary.
- Requires county jails to provide supplemental nutrition to pregnant and postpartum people in their custody and requires written notice of this and other rights related to pregnancy and delivery to be posted inside of facilities.
- Requires data reporting on pregnancy and labor in county jails.



2024 Spring Session Recap (cont.)

[HB 277](#) (Public Act 103-0789) – Ending Automatic Driver's License suspension for failure to appear in court

- Eliminates the requirement that a driver's license be suspended when someone fails to appear in court, and clears all such suspensions going back five years.
- Instead requires a series of consequences for failing to appear in court. When someone fails to appear, the accused will first be sent a notice. If they again fail to appear, the judge may enter an ex parte judgment that is sent to the Secretary of State where it serves as a penalty on their driving record.
- Also grants optional authority for circuit court clerks to notify accused people of their court dates via text message, phone call, and email reminders.



Looking Ahead to Veto & Lam Duck sessions

Veto session

- November 12-14; November 19-21
- Used to address any bills the governor has vetoed, but can also be used to pass other legislation.
- Two-thirds supermajority required to pass legislation with immediate effective date; other bills require simple majority



Looking Ahead to Veto & Lame Duck sessions

"Lame duck" session

- Likely early January; No dates set at this time; usually scheduled at end of veto session, or after.
- Final opportunity to vote on bills for members who lost reelection bids or did not run for reelection.
- A simple majority (51%) is required to pass legislation.



Looking Ahead to Veto & Lame Duck sessions

HB 5842 – FAIR Act / Statewide Public Defender

Intended to:

- Bring Illinois into compliance with American Bar Association (ABA) standards for defender independence from judicial and political interference.
- Allow for a two-year planning process for a hybrid state-plus-county defender system based on client and defender needs and input.
- Maintain state funding to county defenders without interruption.
- Facilitate Illinois' fulfillment of its Sixth Amendment obligations



Looking Ahead to Veto & Lame Duck sessions

HB 5842 – FAIR Act / Statewide Public Defender (cont.)

Creates an Office of the State Public Defender to:

- Assess, with client communities and local public defenders, client needs and defense office staffing, resources, and workloads around the state.
- Distribute state funds to county defenders and supplement their work with state purchasing and staffing.
- Improve recruitment, hiring, contracting, and training of public defenders statewide



Looking Ahead to Veto & Lame Duck sessions

HB 5842 – FAIR Act / Statewide Public Defender (cont.)

Creates a State Public Defender Commission to:

- Appoint and remove county defenders independent of the judiciary, in alignment with national standards.
- Provide transparent oversight of the Office of the State Public Defender and defense expenditures

STATUS: Introduced in House; Proposal is in development & is expected to be amended



Looking Ahead to Veto & Lame Duck sessions

HB 4241 – Sexual misconduct by educators & school employees

Creates new offense of Abuse by an educator or authority figure. Provides that a person commits the offense if:

- that person is an educator or authority figure at the school, the student is at least 18 years of age but under 23 years of age, the person is at least 4 years older than the student and holds or held within the previous year a position of trust, authority, or supervision in relation to the student in connection with an educational or extracurricular program or activity, and
- the person either: (i) commits an act of sexual conduct with the student; or (ii) commits an act of sexual penetration with the student.



Looking Ahead to Veto & Lame Duck sessions

HB 4241 – Sexual misconduct by educators & school employees (cont.)

The penalty for an offense involving sexual conduct is a Class A misdemeanor for the first offense and a Class 4 felony for a second or subsequent offense, or if there is more than one victim.

The penalty for an offense involving sexual penetration is a Class 4 felony for the first offense and a Class 3 felony for a second or subsequent offense, or if there is more than one victim.

Amends the School Code to provide for the suspension and revocation of the teaching license of a person charged or convicted of the new offense of Abuse by an educator or authority figure.

STATUS: Passed the House in Spring



Looking Ahead to Veto & Lame Duck sessions

[HB 5888](#) / [SB 3973](#) – Lost and stolen firearms

- Amends the offenses of firearms trafficking, possession of a stolen firearm, and aggravated possession of a stolen firearm to provide that a person must "know or reasonably should know" that the firearm has been stolen (current law requires actual knowledge). Allows trier of fact to presume knowledge that firearm is stolen if the firearm is listed on Illinois State Police's online database.
- Provides that if a person loses a firearm, or if the firearm is stolen from the person, they must report the loss or theft to local law enforcement within 48 (rather than 72) hours after obtaining knowledge of the loss or theft.
- Provides that for a second or subsequent offense of failure to report the loss or theft of a firearm to law enforcement within 48 hours shall result in revocation of the person's FOID Card.

STATUS: Newly introduced legislation



Looking Ahead to Veto & Lame Duck sessions

[HB 5891](#) / [SB 3971](#) – Safe storage of firearms

- Provides that a firearm owner shall not store or keep any firearm in any premises where they know or reasonably should know a minor without the lawful permission of the minor's parent or guardian, an "at-risk person" (defined as a person who has made statements or exhibited behavior that indicates to a reasonable person there is a likelihood that the person is at risk of attempting suicide or causing physical harm to oneself or others), or a prohibited person is likely to gain access to the firearm unless the firearm is secured in a locked container, properly engaged so as to render the firearm inaccessible or unusable to any person other than the owner or other lawfully authorized user.
- Provides that a violation of the Act is subject to civil monetary penalties.
- STATUS:** Newly introduced legislation



Looking Ahead to Veto & Lame Duck sessions

[HB 4469](#) – Automatic search warrant when court grants petition for protective order prohibiting firearms ("Karina's Bill")

Amends the Protective Orders Article of the Code of Criminal Procedure and the Illinois Domestic Violence Act.

Provides that, if a petitioner seeks a court order prohibiting the respondent from possessing firearms, the court shall immediately issue a search warrant directing seizure of firearms at the time an ex parte or final order of protection is issued.



Looking Ahead to Veto & Lame Duck sessions

HB 4469 – Automatic search warrant when court grants petition for protective order prohibiting firearms (“Kaiina’s Bill”)

Issuance of search warrant requires that the court find:

- (1) probable cause exists that the respondent possesses firearms;
- (2) probable cause exists to believe that the respondent poses a danger of causing personal injury to the petitioner or child by possessing or receiving a firearm; and
- (3) probable cause exists that firearms are located at the residence, vehicle, or other property of the respondent.

STATUS: Still in the House



Looking Ahead to Veto & Lame Duck sessions

HB 5271 – Voluntary intoxication is not a defense

- Provides that evidence of a defendant’s voluntary intoxication is not admissible for the purpose of negating the defendant’s mental state, nor shall any such argument to the trier of fact be permitted.
- Provides that evidence of a defendant’s voluntary intoxication is admissible for any other relevant purpose.
- Provides that if evidence of the defendant’s intoxication, either voluntary or involuntary, is admitted, the trier of fact shall be instructed that voluntary intoxication is not a defense to the crime charged.

STATUS: Passed the House in Spring



Looking Ahead to Veto & Lame Duck sessions

HB 4567 – Expands Disorderly Conduct to include threats against libraries

- Provides that a person commits disorderly conduct when the person knowingly transmits or causes to be transmitted in any manner a threat of destruction of a library building or library property, or a threat of violence, death, or bodily harm.
- Provides that the program of State grants administered by the State Librarian shall include grants to improve or enhance security of a library.

STATUS: Passed the House in Spring



Looking Ahead to Veto & Lame Duck sessions

HB 5070 – Protecting Children's Speedy Trial and Pretrial Release

- Provides greater clarity and guidance as to the rights, remedies, and processes for children regarding both speedy trial and detention rights.
- Prevent parents or guardians from waiving a child's right to speedy release, ensuring children are not left incarcerated pretrial by an overwhelmed caretaker or state agency.
- Preserves extensions of time for lab report delays not caused by either party.
- Prohibit extended detention caused by the prosecution, which has the burden of time.

STATUS: Passed the House in Spring; Expected to be amended



Looking Ahead to Veto & Lame Duck sessions

SB 378 – Disclosure of Child Abuse Pediatricians

- Requires medical providers who had contractual agreements with DCFS, and other entities accredited by statute to conduct abuse investigations, to identify themselves as forensic investigators and not as members of the child's treatment team.
- Allows families to seek second opinions from independent medical experts and requires DCFS to consider those opinions.
- Requires DCFS to report data and demographic statistics on outcomes of allegations stemming from the opinions of state-contracted providers and their teams to ensure accountability and accuracy in investigations.

STATUS: Passed the Senate



Looking Ahead to Veto & Lame Duck sessions

Waiver of Financial Assessments in Traffic Cases (Cook County)

- Maintains an existing provision that allows traffic assessments to be waived in a manner similar to criminal cases in Cook County.
- The amendment would remove some confusing language that has been interpreted by some to be a sunset date on the waiver program.

STATUS: Legislation not yet introduced



Looking Ahead to Veto & Lame Duck sessions

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Looking Ahead to 2025 Spring Session

- New legislators will be sworn in
- All pending 103rd GA bills are dead; Brand new bills will be filed
- Veto session & lame duck session bills that don't pass may be refiled
- What is possible will depend in part on election results



Looking Ahead to 2025 Spring Session

- Ending Automatic Transfer of Young People (103rd GA version: [HB 4726](#))
- DCFS to make "Active" (rather than "Reasonable") Efforts to Reunify Families (103rd GA versions: [SB 3183](#) / [HB 5036](#))
- Allow Judicial Discretion in Imposition of Automatic Firearm Sentencing Enhancements (103rd GA version: [HB 5037](#))



Looking Ahead to 2025 Spring Session

- Equal Access to Post-Conviction Relief (103rd GA version: [SB 3629](#))
- Civil Asset Forfeiture Data Collection (103rd GA version: [HB 3038](#))
- Abolish "Truth in Sentencing" (103rd GA version: [HB 5219](#))
- Defend against sentencing enhancements & attempts to roll back the Pretrial Fairness Act



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Questions?
