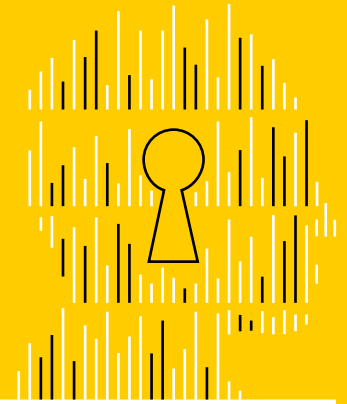


PRETRIAL REFORM: ILLINOIS

September 2023



Illinois' Pretrial Fairness Act (PFA) replaces wealth-based detention with risk-based detention, eliminating money bail and mandating new, rigorous legal standards to protect community safety.¹ This legislation strikes a critical balance by aiming to reduce unnecessary pretrial detention while enhancing accountability and safety, and retaining judicial discretion.

Before and After

Before the PFA²

- Illinois detained many people pretrial simply because they couldn't afford their money bond and released people who posed clear threats to community safety simply because they had access to wealth.
- Pretrial release conditions were set in a way that was inconsistent and unreliable.
- Judges had few tools to handle pretrial violations and were largely forced to rely on monetary conditions.

HOW THE PFA WORKS

The PFA improves community safety...

The PFA imposes **safety-based standards** for detention. No longer dependent on a person's wealth, judges retain the discretion to detain people before trial if they are charged with a serious or violent crime, including all non-probational felonies, all sex crimes, all domestic violence crimes, and all non-probational gun-related felonies.

The PFA ensures that the unique facts of domestic violence cases are scrutinized and that those accused of causing repeat harm to survivors are subject to a detention hearing.

The PFA upholds accountability...

The PFA **offers judges multiple options to respond to pretrial misconduct**. A new arrest for serious misdemeanors or felonies during the pretrial period *can* result in detention. A new arrest for lower-level misdemeanors, technical violations, and missed court dates are subject to warnings, fines, elevated conditions, and up to 30 days in jail.

2021-'22: Opponents
of the PFA launch a

\$40 MILLION

**CAMPAIGN ATTACKING
THE PFA, FEATURING
MISINFORMATION ABOUT
THE LEGISLATION AND
RACIALLY MOTIVATED
ADVERTISEMENTS.⁸**

After the PFA³

- Judges will have the tools necessary to handle pretrial misconduct, including sanctions and revocation to jail when necessary.
- Illinois will focus detention resources on serious cases that involve a clear and convincing risk to community safety, such as violence and gun charges, or willful flight, setting a high standard for preventive detention.
- Pretrial release conditions and detention will be decided based on statewide standards that assure community safety and provide people with due process protections.



Timeline of the PFA

November 2017: The Illinois Supreme Court creates the Commission on Pretrial Practices to provide guidance and recommendations for reforming state pretrial policy.⁴

Fall 2020: The Illinois Legislative Black Caucus proposes a series of criminal justice reforms to address systemic racism in the state.⁵

January/February 2021: A package of criminal justice reforms known as the Safety, Accountability, Fairness and Equity-Today Act (SAFE-T Act) passes the legislature and is signed by Governor J.B. Pritzker. The PFA is included in the SAFE-T Act with an implementation date of January 1, 2023.⁶

2021-'22: Opponents of the PFA launch a \$40 million campaign attacking the PFA, featuring misinformation about the legislation and racially motivated advertisements.⁷

2021-'22: In response to concerns from stakeholders, in June 2021, January 2022, and December 2022 the legislature passes amendments to the SAFE-T Act. The December 2022 amendments in particular make numerous changes to the way courts are to determine conditions of pretrial release.⁸

December 2022: A county judge rules that the PFA violates the state constitution. Attorney General Kwame Raoul appeals the ruling, and the Illinois Supreme Court issues a stay on implementing the law pending review.⁹

July 2023: The Illinois Supreme Court deems the PFA constitutional and sets a new implementation date of September 18, 2023.¹⁰

What the research suggests about the PFA

Researchers at Loyola University Chicago estimate that the PFA will not significantly reduce the number of individuals held in jail before trial. Rather, it will change the composition of who is in jail, refocusing the Illinois pretrial system around safety instead of wealth. It is estimated that roughly one-half of those arrested in Illinois will be eligible for detention, but only a fraction of these people will meet the “clear and convincing standard” necessary to impose detention.¹¹

As the PFA is rolled out, researchers at Loyola and other institutions will be closely monitoring the law’s impact and regularly releasing their findings.

What experts and community say about the PFA

- “Since the Pretrial Fairness Act makes safety the primary determinant of whether a person is jailed or released before trial, rather than access to wealth, it replaces an illogical and deeply harmful bail system with one that will be just and effective. The data and research ... show that money bond has never made our communities safer and, in fact has likely been making them less safe.” – *Matthew Piers, Partner at Hughes Socol Piers Resnick & Dym, Ltd.*¹²
- “The protections for survivors in the bill are a step toward a better system for all. People with low incomes will no longer be locked up simply because they can’t pay bail. People won’t be incarcerated pretrial because of racist and classist stereotypes that perpetuate fear against Black men, in particular.

The PFA protects individual liberty...

The PFA **eliminates wealth-based pretrial detention**, ending a practice that held people who are presumed innocent behind bars simply because they couldn’t afford money bond. No longer will individuals risk losing their jobs, homes, or custody of their children – or be pressured to plead guilty – merely due to lack of access to wealth.

The PFA **ensures due process**, allowing for pretrial detention only after relevant evidence is provided to defense counsel, an adversarial hearing with defense counsel present is conducted, and the state demonstrates the need to detain the person by a clear and convincing evidentiary standard. Additionally, detention must be re-examined at every court date, and judges must make specific findings that detention or existing pretrial conditions in place are appropriate to prevent a specific threat or willful flight.

The PFA **authorizes release by law enforcement**, requiring police to cite and release people charged with low-level misdemeanors and enabling law enforcement to use their professional judgment to release people with some more serious offenses without holding them overnight.

The PFA lays a foundation for better pretrial services...

The PFA **builds the momentum for comprehensive statewide pretrial services** to help individuals avoid new arrests, make court appearances, and access supportive services. After the PFA passed, Illinois established the Office of Statewide Pretrial Services (OSPS), providing pretrial risk assessment and supervision that can hold individuals accountable and help people succeed.



Survivors will be able to advocate for what they need to feel safe and secure.” – *Madeleine Behr, Policy Manager at the Chicago Alliance Against Sexual Exploitation and Amanda Pyron, Executive Director of The Network: Advocating Against Domestic Violence.*¹³

- “I do believe that most, if not all of the really violent offenders, are going to be detained under this law, the people charged with murder, carjacking, aggravated criminal sexual assault, I’m pretty confident that they’re going to be detained.” – *Bob Berlin, DuPage County State’s Attorney.*¹⁴
- “The Pretrial Fairness Act, as drafted, supports survivor autonomy and decision-making to determine what safety looks like for that individual survivor – not propping up a system of continued systemic racism centered on wealth-based incarceration instead of what it should be centered on: safety.” – *Alliance for Safety and Justice, Apna Ghar, Inc., Ascend Justice, Carol’s Inn, Chicago Alliance Against Sexual Exploitation (CAASE), Family Rescue, Illinois*

*Coalition Against Domestic Violence, Life Span, The Network: Advocating Against Domestic Violence, Women’s Justice Institute.*¹⁵

- “As leaders of local health departments, we serve on the frontlines of defending the public’s safety. It is our responsibility to not only protect communities from threats to their health, but to also address threats to the safety of people’s lives and wellbeing, which includes those lost or hurt by systemic racism. Today, we fully recognize the fact that racism is a public health crisis, and commend Gov. JB Pritzker for taking steps to end this crisis by signing House Bill 3653 into law and reforming the criminal justice system in Illinois.” – *Tom Hughes, Executive Director of the Illinois Public Health Association (IPHA).*¹⁶
- “A substantial step toward dismantling the systemic racism that plagues our communities, our state and our nation, and brings us closer to true safety, true fairness and true justice.” – *Illinois Governor J.B. Pritzker.*¹⁷

Endnotes

- 1 “Pretrial Fairness Act,” Illinois General Assembly, <https://www.ilga.gov/legislation/101/SB/PDF/10100SB4025lv.pdf>.
- 2 “Illinois Supreme Court Commission on Pretrial Practices: Final Report,” Illinois Supreme Court, April 2020, <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>
- 3 “Correcting Misinformation about Illinois Pretrial Reforms: What the Pretrial Fairness Act Does and Does Not Do,” The Civic Federation, September 16, 2022, <https://www.civicfed.org/civic-federation/blog/correcting-misinformation-about-illinois-pretrial-reforms-what-pretrial#:~:text=Release%20from%20police%20custody%20for,than%20appearing%20before%20a%20judge>.
- 4 “Office of Statewide Pretrial Services,” Illinois Courts, <https://www.illinoiscourts.gov/statewide-pretrial-system>.
- 5 Criminal Justice Reform Pillar,” Illinois Legislative Black Caucus, March 8, 2021, <https://www.illinoisenatedemocrats.com/ilbc-pillars/pillar-1>.
- 6 “The 2021 SAFE-T Act: ICJIA Roles and Responsibilities,” Illinois Criminal Justice Information Authority, <https://icjia.illinois.gov/researchhub/articles/the-2021-safe-t-act-icjia-roles-and-responsibilities>.
- 7 Insha Rahman, “Bail reform is the solution we need to bring about safety and justice,” Chicago Tribune, March 28, 2023, <https://www.chicagotribune.com/opinion/commentary/ct-opinion-bail-reform-pretrial-fairness-act-illinois-safe-t-act-20230328-2jr4usgrbzdwwjk6dfws3os4bq-story.html>.
- 8 “Summary of Amendments to Public Act 101-0652, the SAFE-T Act,” Civic Federation, December 16, 2022, <https://www.civicfed.org/civic-federation/blog/summary-amendments-public-act-101-0652-safe-t-act>.
- 9 Tre Ward, “IL Supreme Court halts Pre Trial Fairness Act, preventing no cash bail provision from taking effect,” ABC 7, December 31, 2022, <https://abc7chicago.com/illinois-supreme-court-pre-trial-fairness-act-no-cash-bail-safe-t/12635593/>.
- 10 Jonathan Franklin, “Illinois Supreme Court rules in favor of ending the state’s cash bail system,” NPR, July 18, 2023, <https://www.npr.org/2023/07/18/1188349005/illinois-ends-cash-bail-system-state-supreme-court>.
- 11 Don Stemen, Branden DuPont, and David Olson, “The Volume & Characteristics of Arrests Eligible for Detention,” Loyola Chicago Center for Criminal Justice, 2022, <https://loyolaccj.org/pfa/blog/estimate-pfa-act>.
- 12 “Amicus Supporting the Pretrial Fairness Act Filed with Illinois Supreme Court, Signed By More Than 400 Organizations, Elected Officials, and Faith Leaders,” Law Office of the Cook County Public Defender, January 26, 2023, <https://www.cookcountypublicdefender.org/news/amicus-supporting-pretrial-fairness-act-filed-illinois-supreme-court-signed-more-400>.
- 13 Madeleine Behr and Amanda Pyron, “Why the end of cash bail is good for Illinois survivors,” Rockford Register Star, May 8, 2021, <https://www.rstar.com/story/opinion/2021/05/08/why-end-cash-bail-good-illinois-survivors/7354781002/>.
- 14 George Wiebe, “DuPage County ‘absolutely prepared’ after amendments added to state cash bail law,” Chicago Tribune, August 15, 2023, <https://www.msn.com/en-us/news/crime/dupage-county-absolutely-prepared-after-amendments-added-to-state-cash-bail-law/ar-AA1fttE>.
- 15 “Letter from Crime Survivor Advocates,” Capital News Illinois, October 2022.
- 16 “Rich Miller, “React to Pritzker signing criminal justice reform bill,” Capital Fax, February 22, 2021, <https://capitolfax.com/2021/02/22/react-to-pritzker-signing-criminal-justice-reform-bill/>.
- 17 “Gov. Pritzker Signs Legislation Transforming Illinois’ Criminal Justice System,” Illinois.gov, February 22, 2021, <https://www.illinois.gov/news/press-release.22830.html>.