

Fact-check of recent statements about the Illinois Pretrial Fairness Act (a part of the wider SAFE-T Act) September 2022

Knox County State's Attorney's statement

Misinformation - The law is full of contradictions, ambiguities and is poorly drafted. No one reads it the same way.

Fact – On the contrary, there are consistent interpretations of the law, and the Illinois Supreme Court Pretrial Implementation Task Force has been [releasing guidance on interpretation](#) with new resources every week. It is common for Public Acts to be clarified in subsequent trailer bills, and there will always be interpretation of any statute in the courts.

The current pretrial statutes are themselves patchwork of contradictory guidance and even includes language previously [declared unconstitutional by an Illinois Appellate Court](#). The Pretrial Fairness Act organizes, clarifies and sharpens a set of laws that has been in poor shape for decades.

Misinformation - The law was introduced during a lame duck session with little to no debate.

Fact - Debate and discussion of pretrial reform has been ongoing in Springfield for more than five years. A version of the Pretrial Fairness Act was first introduced in 2017 during the 100th General Assembly, as the [Equal Justice for All Act, HB 3421](#). There were versions of the legislation in 2018 and 2019 and experts answered questions in person before the legislature in an April 2019 subject matter hearing.

The Pretrial Fairness Act was developed and refined over the course of four years. National experts were consulted, and Illinois had the ability to learn from reforms in other jurisdictions. The [Illinois Supreme Court Pretrial Task Force](#) issued a report in 2020, and the Pretrial Fairness Act significantly mirrors the recommendations from that report. Of the 34 members of the board that created the report, 26 were active former members of the judiciary, law enforcement or prosecuting community. One person was formerly incarcerated and one person represented the defense community. There were zero representatives from the nonprofit advocacy community.

There were lengthy subject matter hearings on ending money bond and reforming the pretrial system in February and October 2020, at which experts testified and legislators had the opportunity to raise questions. There was vigorous debate in 2020 and 2021 before the bill was passed.

Misinformation - “Even if the person commits an offense...”

Fact - Attacks on the Pretrial Fairness Act consistently fail to recognize the presumption of innocence for everyone, and the actual innocence of many accused people.

Many people who are arrested and accused of a crime will not be convicted. [In 2019, 40 percent of felony cases in Cook County did not end in convictions](#), and instead resulted in dismissals or findings of not guilty.

Misinformation - Judges will no longer be allowed to consider the person's threat to the community.

Fact - As part of the detention decision, judges will consider a threat to any person or persons. The person does not have to be a named individual. Prosecutors will still be able to present information about a person's criminal background. The standard says that the prosecutor must make an argument that goes to suggest that a person will be a harm to a person or any persons and show evidence. This clarifies the court's path in deciding whether to release someone.

Additionally, when setting conditions of release, the court can and will consider a threat to the broader community. Here is the specific language in the statute on that point:

725 ILCS 5/110-5(a): "In determining which conditions of pretrial release, if any, 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 such matters as: .."

It is important to remember that there should be a very high and clear standard for incarcerating a person who is presumed innocent and awaiting trial and that study after study has shown that people on pretrial release are very rarely arrested for new allegations of violence against another person.

- The vast majority of people on pretrial release comply with the terms of their release, show up for court dates and are not rearrested on a new accusation.
- Studies that show this include:
 - A [Loyola University Chicago study](#) showed that bail reform in Cook County has not been associated with increases in new criminal activity.
 - An [analysis by the Chicago Appleseed Center for Fair Courts](#) showed that less than 4 percent of people on electronic monitoring in Cook County between 2016 and 2020 were rearrested on accusation of a new serious crime.
 - [A study by the University of Chicago Crime Lab, using recent data](#), showed that arrests for individuals on electronic monitoring have remained flat and low despite vast fluctuations in the amount of gun homicides over the last few years, indicating that those on electronic monitoring are not driving crime.

The Pretrial Fairness Act refocuses the court's decision on pretrial release or detention on the individual facts of the case, on safety and willful flight – not on access to money. Money bail and unpaid money bail have distorted our understanding of pretrial processes and resulted in mass incarceration. Money is the primary determinant of whether someone is released pretrial, and that has no relationship to safety.

Misinformation - Serial domestic abusers, sex offenders and residential burglars will be set free without judges being allowed to consider public safety generally.

Fact - Judges retain the power to deny release for all these alleged offenses: domestic violence, sex offenses and residential burglary.

The Pretrial Fairness Act [is supported by advocates against domestic and sexual violence](#) because they believe it will increase safety for survivors, and they recognize that basing pretrial release on access to money has not resulted in safety for victims.

- **SAFETY:** Under the Pretrial Fairness Act, if a state's attorney is concerned for the safety of a domestic violence survivor and their family, they have 24-48 hours to prepare for a hearing where a judge weighs evidence to decide if the accused should be incarcerated pretrial.
 - Under the current system people charged with domestic violence may be released directly by the police or after only one quick court date.
 - The Pretrial Fairness Act ensures that release decisions in cases of domestic or sexual violence are made by a judge after a careful hearing and goes further in taking victims' safety into consideration than the current process.
- **NOTIFICATION:** The Act makes it mandatory that victims are notified of each stage of the decision-making process in their case, including the release of a person charged with domestic or sexual violence.
- **MONEY:** Currently, access to money determines which people charged with domestic or sexual violence stay in jail. Under the new rules, careful consideration by a judge will determine which people stay in jail.

Misinformation - The 48-hour rule "means law enforcement must complete their reports in a very short period of time, send the reports to prosecutors and then prosecutors must review the reports, making charging decisions bring offenders to court, and present evidence showing the accused is a threat... This is an almost impossible standard." This is an unfunded mandate.

Fact - There is already a time requirement between arrest and when someone must appear in court, which is based on US Supreme Court case law requirements. Within 48 hours of arrest, a judge must make a finding of probable cause to allow law enforcement to keep someone in custody. The Pretrial Fairness Act does not change this initial timeline between arrest and appearance in court. The 24-hour and 48-hour timelines in the Pretrial Fairness Act apply to detention hearings, which occur after someone has already appeared in court for the first time.

As a result, the Pretrial Fairness Act will likely mean there is a longer timeframe between when someone is arrested and when the decision about their release or detention is made compared to the status quo.

Detaining someone in police custody or jail has enormous consequences for that person's life, their job, their family and their community. As a result of this loss of liberty, police and prosecutors are legally required to present evidence to justify detention. As little as 24 hours in detention has [significant negative impact on a person's future](#).

The SAFE-T Act (the larger act that includes the Pretrial Fairness Act) and trailer bills include significant increases in law enforcement funding.

Misinformation - The new law requires that a person held in custody is entitled to a trial within 90 days, instead of 120 days under the current system. Any case that requires scientific analysis of evidence, such as DNA, fingerprints, firearms or drug analysis cannot be brought to trial in that short period of time.

Fact - This is not a new timeline introduced by the statute. It was existing law (see [725 ILCS 5/110-6.1\(f\)](#)). It is common practice for courts to pause this clock for the reasons mentioned.

Misinformation - The new law eliminates the ability to hold people in custody in an in-patient setting in clear crimes of substance abuse or mental illness.

Fact - Mental illness and issues with substance use are not crimes, and jails are not treatment centers. Judges retain the power to issue conditions of release including ordering treatment and assessments.

Among people in Illinois jails and prisons, it is estimated that [only 17 percent of those in need of clinical treatment services actually receive those services during their incarceration](#). Jails are incapable of providing competent substance use treatment and often worsen the health and safety of people experiencing mental health issues or dealing with substance use. In fact, people who use drugs and people with mental health needs [are at the greatest risk of dying during or immediately after incarceration](#), and deaths in custody occur at the greatest rate within the first few days.

The Pretrial Fairness Act will end wealth-based pretrial incarceration and ensure that no one is jailed before trial simply because they are accused of drug-related offenses. This decreases the health risks caused by pretrial incarceration for people who use substances and allows people to seek treatment and support from community-based services.

Will County State's Attorney Jim Glasgow

Misinformation - "All bonds will be extinguished on Jan. 1 and I will have to release 60 people from jail who are charged with murder"

State Rep Adam Niemberg

Misinformation - "Hardened criminals will be released into the streets"

Misinformation - "I won't be able to hold anybody in jail longer than 90 days if they demand trial. After the 90th day, they get out, no matter what crime they committed and then, if they don't show up for court, I can't get a warrant. They're not going to come back to court"

Fact - These are transparently false interpretations of the Pretrial Fairness Act. They are fabricated and made in bad faith.

Nothing in the law requires release of people charged with murder. Money bonds entered by the court don't evaporate on January 1st. Murder is a charge that is eligible for pretrial detention under the Pretrial Fairness Act.

Parties making this claim seem to be acknowledging that State's Attorneys have been failing to petition for murder suspects to be held without bail and that they instead relied solely on money bond to determine who is released while awaiting trial. That is indeed common practice in many counties in Illinois. Under the Pretrial Fairness Act, State's Attorneys continue to have the ability to petition the court for detention – without bond – for people charged with murder and other acts of violence.

The 90-day timeline for trial has been the law for more than two decades, for people who are denied pretrial release. It is common practice for the court to extend the timeline for parties to prepare for trial.

Judges retain the power to issue warrants when people do not appear for court and prosecutors retain the ability to seek violations when someone does not comply with their conditions of pretrial release.

Proft PAC mailer disguised as a newspaper, with attacks on the Pretrial Fairness Act

Misinformation – The front page of the mailer lists some offenses and says they would become non-detainable after the SAFE-T Act goes into effect, meaning that criminals will be allowed to be charged with and released for these crimes without bail.

Fact – Actually, people with any of these charges can be detained if found to have a risk of willful flight.

Under the Pretrial Fairness Act, anyone accused of a crime involving the use of a gun can be held in jail until their trial without the option of paying bail if prosecutors present evidence to a judge that the person poses a danger to someone else or is a flight risk. The ad claims that the law will “set free” people charged with offenses like kidnapping and robbery - but in fact, the law allows courts to hold people accused of those offenses in custody if they pose a flight risk.

Misinformation - Starting Jan. 1 accused murderers won't have to plan their hits on witnesses from jail. The so-called SAFE-T act mandates the accused will be released as they await trial.

Misinformation - Accused murderers, currently held in jail pending trial, will be released and allowed to live among the public

Fact - These, again, are transparently false interpretations of the Pretrial Fairness Act. They are fabricated and made in bad faith.

Nothing in the law requires release of people accused of murder. Money bonds entered by the court don't evaporate on January 1st. There are various legitimate interpretations of how courts will handle the cases of people currently detained due to unpaid money bonds: a court may review the bonds and make an in-or-out decision, the prosecutor may affirmatively file a petition seeking detention, or the defense attorney may seek review of the bond. There is, however, no good-faith interpretation of the law that requires immediate release without judicial review.

Under the Pretrial Fairness Act, anyone accused of murder can be denied release until trial without the option of paying bail if prosecutors present evidence to a judge that the person poses a danger to someone else or is a flight risk.

Misinformation – The center spread of the publication shows mug shots of multiple individuals and lists their charges and their bail amounts set by the court. A headline says that all these people will be released to Cook County’s neighborhoods under the SAFE-T act.

Fact – According to the publication itself, every single one of these people currently has a money bond amount set by a judge. That means if they were people of means, they would already be released under the current law. A judge has decided under CURRENT law that they can be released. But they are POOR and cannot pay the bond.

Everyone pictured in this “centerfold” is detainable under the SAFE-T Act. Almost all of them are detainable under either the willful flight standard or the safety standard that judges will use to make decisions. One of them is detainable under only the willful flight standard.

Keith Pekau, U.S. House candidate, IL-06

Misinformation – The SAFE-T act prohibits police officers from removing trespassers from your residence or business.

Fact - The Pretrial Fairness Act requires police to ticket people with low-level charges, unless they pose an obvious threat to themselves, any person, or the community.

The situation described—where someone is violating the law and refuses to stop—are exactly the situations the law contemplates when it talks about “an obvious threat to the community.” Police have complete discretion to decide when that threat exists and will not be barred from arresting anyone who they believe poses a threat to public safety.

Misinformation - Someone charged with simple kidnapping will not be held pretrial.

Fact – If the court finds that the person accused of kidnapping presents a danger, or is a flight risk, the person could be held pretrial.

Illinois House Republican Leader Jim Durkin, Op-ed in Chicago Tribune

Misinformation - Starting Jan. 1, those accused of being large-scale smugglers, traffickers or distributors may end up not being detained or subject to a bond hearing. Suspected street gang and cartel members could be released immediately. The courts will have to tell them to follow the honor system and attend their next scheduled appearance.

In addition, if they don’t show up, the court has to give them another opportunity to appear before issuing a warrant. This catch-and-release policy will not make our streets and borders safer. Instead, it will perpetuate the trade of gangs and drug dealers.

Fact – Police in Illinois currently have the discretion to release most people accused of misdemeanors from their custody with a court date. This can save people accused of low-level offenses days in jail while they would have waited to see a judge who would almost surely order them released anyway. The Pretrial Fairness Act merely expands this practice to a larger set of charges, including low-level drug possession cases. Police are not forced to release anyone they

do not want to and are extremely unlikely to release the people described above instead of sending them to court for a bond hearing.

Judges will retain the authority to issue warrants when people miss court after the Pretrial Fairness Act takes effect.