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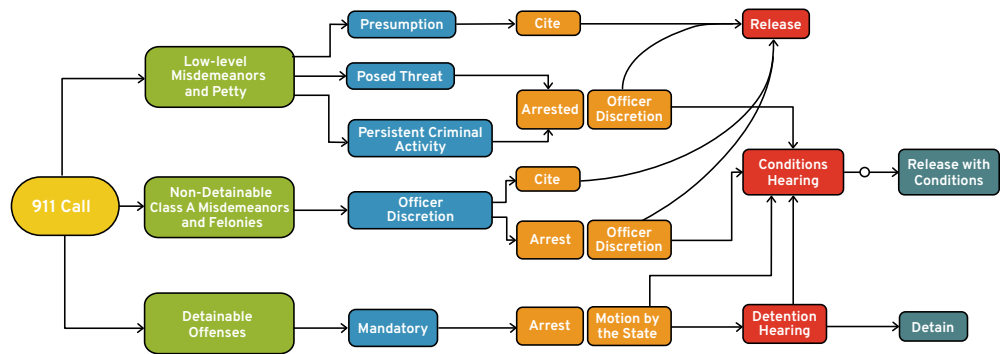
EXPLAINER

Illinois Strives for Fairer, More Effective Pretrial Justice

January 2024





Background

In a groundbreaking move, Illinois overhauled its approach to bail with the [Pretrial Fairness Act \(PFA\)](#)—an initiative with wide-ranging implications. This bold step reflects a demand to address public safety, fiscal responsibility, and longstanding issues that have impacted low-income individuals disproportionately. By prioritizing a system that upholds the presumption of innocence and focuses on community safety, Illinois aims to set a precedent for a more just and pragmatic criminal justice framework that other states can follow.



Summary of Changes

Major changes to Illinois’ pretrial laws include eliminating cash bail, granting more discretion to law enforcement in deciding to arrest or cite and release an individual, greater consistency of release decisions between counties, and more guidance to courts regarding hearing timelines and criteria for setting release conditions.

	Old System	Current System
Release 	Generally, only after arrest <i>In practice:</i> 8-60 percent of defendants (depending on county) released without monetary conditions after arrest	Presumption of cite and release: Low-level misdemeanors and petty offenses (unless threat posed, medical emergency, does not identify self, persistent criminal activity) Officer’s discretion: All other non-detention eligible offenses, before or after arrest
Arrest 	All crimes subject to arrest <i>In practice:</i> 90,000-170,000 arrests made per year for offenses not detainable under the PFA	Required: Crimes eligible for detention (serious felonies or domestic violence offenses) Officer’s discretion: High-level misdemeanors, low-level felonies
Release Hearing 	Upon arrest: Must be taken before judge without unnecessary delay <i>In practice:</i> Brief hearings, unclear decision-making, often deferring to cash only as a condition	Upon arrest: Officer discretion to release or take before judge without unnecessary delay (within 48 hours) Detention hearing: Only by motion of prosecution
Cash Bail 	Cash bail allowed for all offenses <i>In practice:</i> Most misdemeanors released on recognizance or follow bond schedule; felonies left to judge’s discretion; commercial bondsmen prohibited, but defendant could post 10 percent of bail amount for release	Abolished



Abolishing cash bail helps many individuals avoid the detrimental economic consequences of pretrial detention, such as job or housing loss or disruptions in family life, resulting in [lower reoffense rates](#).

Contact us



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Nonmonetary Conditions 	<p>To mitigate real and present safety threat or willful flight; must be individualized</p> <p>In practice: Least-restrictive conditions not required; depending on county, 41-92 percent of defendants released without supervision; some counties lack access to pretrial supervision or electronic monitoring</p>	<p>To mitigate real and present safety threat or willful flight, must be least restrictive, individualized, directly tied to risk</p> <p>Pretrial supervision, electronic monitoring available statewide</p>
Detention 	<p>Proof evident/presumption great that person committed capital or life imprisonment offense</p> <p>Must also show defendant poses real and present threat to physical safety for felonies with mandatory incarceration, stalking, unlawful use of weapons in or near school, terrorist threat</p> <p>In practice: “No bail” hearings rarely used; prosecutors often used prohibitively high bail amounts to accomplish continued detention with much less effort</p>	<p>Proof evident/presumption great that person committed offense</p> <p>Clear and convincing evidence that less-restrictive conditions would not avoid real and present safety threat or high likelihood of willful flight</p> <p>79 offenses eligible, including same crimes as before plus several others like domestic violence, violation of protection order, and additional gun offenses</p> <p>Defendants can also be held on petitions to revoke probation or pretrial release</p>

Frequently Asked Questions

How is public safety being addressed?

The PFA provides exceptions to [cite and release](#), allowing law enforcement to arrest individuals if they pose an evident threat to public safety or if criminal activity persists. Other crimes, such as violent and gun offenses, are eligible for continued detention without the possibility of release. If released, defendants are subject to a variety of nonmonetary conditions like electronic monitoring and supervision to address flight and safety concerns. If a defendant violates their pretrial release conditions, they can also be subject to detention. Finally, abolishing cash bail helps many individuals avoid the detrimental economic consequences of pretrial detention, such as job or housing loss or disruptions in family life, resulting in [lower reoffense rates](#).

How are victims protected?

The PFA requires that all individuals accused of [domestic and sexual violence](#) to be arrested and held until they go before a judge. Victims are now notified before a release hearing to give them adequate time to prepare a safety plan. These offenses are also now eligible for continued detention if there is a real and present threat to the victim should the individual be released. [Victim representatives](#) say the new law has helped keep victims safer.

How will we know if the PFA is successful?

The PFA establishes a [Pretrial Practices Data Oversight Board](#) charged with formulating a plan for the statewide gathering and disseminating data pertaining to pretrial hearings and outcomes. This initiative will provide a thorough and transparent understanding of the success of new pretrial processes throughout the state.