

## Combatting the cash bail narrative

- There's a common myth that under Illinois' law, come January 1, repeat offenders will walk the streets committing violent crimes due to the lack of cash bail. That's simply not true.
  - The new pretrial system will not simply release every person arrested for a crime. For example, it will ensure people held for forcible felonies, including murder or sexual violence, are detained until trial. Simply put: The Pretrial Fairness Act makes communities safer by allowing courts to hold violent offenders who would ordinarily be able to use cash to pay for release.
  - Under the SAFE-T Act if the accused person presents a risk of harming others or fleeing a judge can order pretrial detention. The Act also allows an arresting officer to release someone they have arrested if the release is in the public interest, with certain exceptions. **People who pose a threat to the community will not be let back out on the streets.**
- Illinois' previous reliance on cash bail held people in jail pending trial simply because they could not afford to pay bond rather than based on safety.
  - A wealthy person who committed an egregious offense is often let out of jail at a quicker rate than a financially at-risk person who committed a petty crime, solely on the basis of the money in their bank account.
- Too many people cannot afford to cover their bond amount for release. Being poor is not a crime and should never be the sole reason a person remains incarcerated as they await their trial.
- A major aspect of winning safety and justice for our communities is transparency and accountability, and the Pretrial Fairness Act does a lot to provide that.
- Research shows that unnecessary pretrial incarceration undermines public safety by harming families and communities in multiple ways.
  - Pretrial incarceration creates barriers to maintaining employment and family stability.
  - People detained for as little as 72 hours are 2.5 times more likely to be unemployed one year later.
  - Pretrial incarceration harms household earnings: Past incarceration reduces annual income by as much as 40%.
- Illinois' new bail reform measure creates a smarter approach by basing these decisions on safety, rather than a defendant's ability to pay.
- In early August, a suburban man was arrested and charged after police found him in an Englewood park with five guns, a significant amount of ammo and notes referencing mass shootings. His bond was set at \$300,000.

- Following this report, questions circulated around if this man would have been able to walk freely had the elimination of the typical cash bail system been implemented.
- As noted, **the SAFE-T Act does not allow for the immediate release of every person arrested.** Should the person pose a threat to themselves or others they will be held in jail. Under the SAFE-T act, it is likely the Englewood man would not have been immediately released because the unlawful use of a weapon is still a detainable offense. Additionally, though not charged, the Englewood man discharged his weapon, which is also specifically detainable.
- Article reference: [Suburban man arrested near Englewood with five guns, notes about mass shootings, significant amount of ammo](#)

### **SOCIAL MEDIA IMAGES**

There's a graphic social media image that is circulating that claims that people who commit the following offenses will be released without bail:

- Aggravated battery
- Aggravated DUI
- Aggravated fleeing
- Arson
- Burglary
- Drug-induced homicide
- Intimidation
- Kidnapping
- Robbery
- Second-degree murder
- Threatening a public official
- Intimidation
- Aggravated fleeing and eluding
- Drug offenses

This is not accurate due to different factors in each case. All of these individuals can be detained if the court believes the person will evade prosecution or not to show up for court. Additionally, the court retains the power to impose significant restrictions on individuals released before trial, including GPS monitoring and house arrest.

Also people detained for the list of above offenses can post bail and be released under the law today.

[States Attorney Eric Rinehart of Lake County recently spoke about this in the Chicago Tribune.](#) According to the article-

*Rinehart said his office will consider the facts of each case, but will likely pursue pretrial detention for murders and predatory criminal sexual abuse cases, and could also see pretrial detention in many cases involving weapons or armed robbery charges.*

## **CLAIMS & FACTS**

**Claim-** There's a list of violent crimes that people will not be arrested for come January 1, 2023 when the Pretrial Fairness Act portion of the SAFE-T Act takes effect.

**Fact-** The list is not accurate. Most of the charges listed are detainable if the court believes the person will not show up to court and anyone who is arrested for one of these charges while already on pretrial release for another crime can be denied release until trial.

**Fact-** Under the Pretrial Fairness Act portion of the SAFE-T Act, persons 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.

**Claim -** In Illinois, police will be banned from removing trespassers from your home as of January 1, 2023.

**Fact –** This is false. There is nothing banning police from removing trespassers from your home. The police maintain the discretion to arrest anyone who poses an obvious threat to the community or any person or to their own safety.

**Claim-** People currently incarcerated will be released January 1, 2023, when portions of the SAFE-T Act related to cash bail are effective.

**Fact-** After January 1, 2023, judges will still have the ability to detain people. Any person charged with murder may be denied pretrial release.

**Fact-** Under the current pretrial system, anyone in jail who makes bail can be released. In the current system, the amount of money someone has determines whether they can be released—not whether they pose a threat to someone else or are likely to flee prosecution.

**Claim-** If the SAFE-T Act had been in effect when Drew Peterson killed his wife he would not have been able to be arrested.

**Fact-** Anyone charged with murder who poses a threat to another person can and would be denied release under the Pretrial Fairness Act portion of the SAFE-T Act.

**Claim-** When Illinois eliminates cash bail January 1, 2023 murders, kidnappers and rapists will not be arrested, but instead just issued a notice to appear in court.

**Fact-** This is absolutely false. There is nothing in the Pretrial Fairness Act preventing arrests for these crimes. The Pretrial Fairness Act also allows all of these individuals to be detained pending trial. Only

individuals who commit minor crimes are issued notices to appear in court. The Pretrial Fairness Act portion of the SAFE-T Act ensures that the facts of a person's case will be the main factor determining who is jailed and who is released pretrial, instead of the size of their bank account.

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

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

**Claim-** Law enforcement must complete their reports in a very short period of time in order to comply with the "48 hour rule". In that short time frame, they will need to report to prosecutors and then prosecutors must review the reports, make charging decisions, bring offenders to court, and present evidence showing the accused is a threat. This is an almost impossible standard and 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. Currently, 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 portion of the SAFE-T Act does not change this initial timeline between arrest and appearance in court. The 24-hour and 48-hour timelines in the SAFE-T 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 portion 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.

**Claim-** 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.

**Claim-** Come January 1, 2023, no one will remain in jail longer than 90 days if they need a trial. After the 90th day, they get out, no matter what crime they committed and then, if they don't show up for court, a warrant won't be obtained and they won't come back to court.

**Fact-** Nothing in the law requires the release of people on January 1, 2023. A determination on continued detention will need to be made in accordance with the law. The Illinois Supreme Court is working with courts and providing guidance on these hearings and more. It should be noted that individuals charged with violent crimes, such as murder and rape will still be detained under PFA.

## **RESOURCES ON CASH BAIL**

<https://lawenforcementactionpartnership.org/illinois-bail-law/>

<https://endmoneybond.org/>

### **Texas Bail Reform Reduced Jail Time and Crime, New Study Says**

<https://www.bloomberg.com/news/articles/2022-08-30/texas-bail-reform-reduced-jail-time-and-crime-new-study-says>

### **Don't blame bail reform for higher crime, NYC watchdog says**

<https://apnews.com/article/kathy-hochul-covid-health-new-york-violence-aa42caf25b4fc333e4c864346f28d42c>

### **As Nassau Executive Blasts Bail Reform, Data Shows Few Are Re-Arrested**

<https://patch.com/new-york/eastmeadow/few-released-under-bail-reform-rearrested-nassau-police-data-shows>

### **We must follow facts, not fear: Bail reform not the reason for rise in some crimes in NYC**

<https://www.nydailynews.com/opinion/ny-oped-nyc-follow-facts-not-fear-20220306-e56f7dyxx5frzia5tdsrugaouiu-story.html>

### **NYPD's own stats debunk claims of bail reform leading to spike in gun violence**

[https://nypost.com/2020/07/08/nypds-own-stats-debunk-claims-about-bail-reform-link-to-shootings/?mc\\_cid=0d99b0d788&mc\\_eid=231dba37c6](https://nypost.com/2020/07/08/nypds-own-stats-debunk-claims-about-bail-reform-link-to-shootings/?mc_cid=0d99b0d788&mc_eid=231dba37c6)

### **The Briefing:**

#### **The honest truth about bail reform written by criminal justice experts**

<https://justicenotfear.org/debunk/>

### **Snopes**

#### **Does Illinois' SAFE-T Act Make Some Violent Crimes Non-Detainable Before Trial?**

<https://www.snopes.com/fact-check/illinois-safe-t-act-non-detainable-crime/>

### **WMBD Peoria**

#### **FACT CHECK: What does the SAFE-T Act really do?**

<https://www.centralillinoisproud.com/news/illinois-news/fact-check-what-does-the-safe-t-act-really-do/>

**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.