

PRETRIAL FAIRNESS ACT

Trailer Bill Priorities

Last Updated: October 25, 2022

As the effective date of the Pretrial Fairness Act approaches in January 2023, stakeholders are hosting ongoing discussions aimed at addressing implementation needs. The Illinois Network for Pretrial Justice is supportive of these discussions and believes that any trailer bill passed by the legislature must stay true to the promise of this historic racial justice legislation and focus on clarifying and refining key implementation priorities. It is essential that the changes included in **HB5537** are included in any SAFE-T Act trailer bill passed by the legislature. These include:

Consistent Safety Standards:

HB5537 ensures that all references to the “safety standard”—the finding a judge needs to make in order to jail someone for posing a safety risk to someone else—will be standardized to say, “specific, real, and present threat to the safety of any person or persons.” This ensures there is no confusion in judicial decisionmaking and that the same standard is applied in all cases.

Clear Legal Limits on Pretrial Incarceration:

Clarifying amendments must preserve guidelines on when and why someone can be incarcerated pretrial. This aligns with national best practices and the recommendations from the Illinois Supreme Court Commission on Pretrial Practices’ [Final Report](#).

Just as there are limits on what charges merit sentencing to prison upon conviction, there must be limits on what charges qualify for pretrial jailing. The legal standards in the Pretrial Fairness Act ensure that pretrial incarceration will not increase under the new system and that pretrial jailing is only an option in serious cases where safety or flight risk is a concern.

Hearing Timelines:

HB5537 clarifies that an accused person must appear in court within 48 hours of their arrest. This ensures a consistent standard across the state and minimizes the harm to people’s stability and well-being caused by even 24 hours in custody. This 48-hour timeline is in line with national best practices and was passed into law in Colorado and Nevada in 2021.

Video Hearings:

Due to the detrimental impact video hearings have on both substantive outcomes for accused people and their access to counsel, HB5537 limits remote hearings to instances where appearing in person would pose a health risk, where there will be no restrictive conditions of release set, or where the accused person waives their right to an in-person hearing.

Transition Guidance:

HB5537 creates a clear process for the state to transition out of the money bond system: After January 1, 2023, people who are currently jailed on money bonds should have their conditions reconsidered in court. This ushers in an era where no one in Illinois will be jailed solely because they cannot pay for their freedom and ensures uniform decision-making. It is unfair and inefficient to have two systems operating at once—one for people arrested before January 1st and one for those arrested after. HB5537 will guarantee that everyone is treated the same way once the new law takes effect.



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