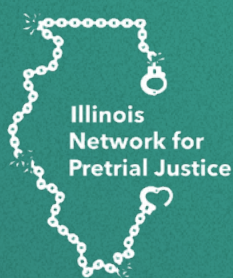




CHANGING LANDSCAPES

Community Court-Watchers' Observations of the Second Year of Pretrial Fairness Act Implementation



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GLOSSARY:

Pretrial detention or jailing: Incarceration in a jail for a period of time between an accused person's arrest and their trial.

Electronic monitoring: A form of surveillance that uses an electronic device, often an ankle monitor, to track a person's location or their proximity to a location.

Money bond or money bail: A payment required before an accused person is released from jail while their criminal case is pending. As of September 18, 2023, judges in Illinois do not set money bonds.

Pretrial Fairness Act: The state law that abolished the use of money bond in Illinois and set rigorous standards for when an accused person can be jailed awaiting trial. The Pretrial Fairness Act was originally passed as part of the SAFE-T Act (Public Act 101-0652) and was later amended by Public Act 102-1104.

Conditions hearing: A hearing in which a judge decides the conditions of an accused person's release before their trial, such as checking in with a pretrial services officer, not going to a certain location, or, in limited cases, electronic monitoring; jailing is not a possible outcome of this hearing.

Detention hearing: A hearing in which a judge decides whether to jail an accused person or release them with conditions before their trial; a prosecutor must file a petition to detain the accused person to trigger a detention hearing.

Petition to detain: A State's Attorney's request for a person to be detained pretrial; a detention hearing only occurs if this petition is filed.

Detention-eligible charge: Charges that are eligible for pretrial detention; prosecutors can only file a petition to detain someone if they are accused of one of these offenses.

Public Safety Assessment (PSA): A proprietary risk assessment tool used by the Pretrial Services Division in Cook County to provide guidance to judges on the likelihood of an accused person failing to appear in court, being rearrested pretrial, and/or being charged with a new "violent" offense pretrial.¹

Willful flight: "Intentional conduct" by an accused person to avoid being prosecuted; isolated instances of failing to appear at individual court dates alone is not evidence of willful flight, but repeatedly missing court or a pattern of intentional conduct to evade prosecution may be considered as factors in assessing future intent to evade prosecution.²

Dangerousness: Posing a "real and present threat to the safety" of a person or the community, based on the facts of the case such as the alleged offense and information about the accused person and any alleged victim.
Burden of proof: The standard an attorney must meet in order to prevail on a claim in court.³

Burden of proof: The standard an attorney must meet in order to prevail on a claim in court.

¹The tool was developed by Arnold Ventures.

²725 ILCS 5/110-1(f).

³725 ILCS 5/110-6.1(g).

SUMMARY

In Spring 2025, almost two years after the implementation of the Pretrial Fairness Act, the Illinois Network for Pretrial Justice (INPJ) trained more than 50 volunteer court-watchers to observe detention hearings at the Leighton Criminal Courthouse for a one-month period and to document what they saw. Though they witnessed judges continuing to spend more time deciding detention outcomes than they had under the money bond system, **their observations reveal that individual court actors' recent application of the law has led to less individualized detention hearings than when the law was first implemented.**⁴ Their observations shed light on why pretrial jailing has increased in Cook County despite the strong limits on detention set by the Pretrial Fairness Act.

Our analysis of court-watchers' observations revealed the following about pretrial detention in Chicago⁵:

- The Pretrial Fairness Act was predictably unable to reduce the racial and ethnic disparities present at all levels of the criminal legal system, as 96% of accused people our court-watchers observed in detention hearings appeared to be Black or Latine.
- More than two thirds of detention hearings were for people who had allegedly possessed a gun illegally but not used it; most of them likely possessed a gun for protection rather than with an intent to inflict harm.
- Accused people were jailed in 74% of cases where a prosecutor petitioned to detain them, and a majority of detention hearings resulted in jailing even of people deemed low-risk by the court's own risk assessment tool.
- Although judges are supposed to take the accused's Pretrial Risk Assessment score into account when making detention decisions, they do not appear to be doing so. Of the 30.5% of the people with low scores that signal a judge should release the person with limited conditions, 80.4% of these people were either jailed or placed on electronic monitoring.



LEIGHTON CRIMINAL COURT HOUSE

⁴As briefly discussed below, INPJ volunteers conducted court-watching in November 2023, shortly after the Pretrial Fairness Act went into effect.

⁵The observers attended detention hearings in the Leighton Criminal Courthouse in Chicago, and thus the findings described herein are limited to Chicago; background data is county-wide.

BACKGROUND

Under the money bond system, whether an accused person returns to the community or is detained in a county jail while awaiting trial is determined by their ability to pay a dollar amount set by a judge. This harmful practice leads to the pretrial jailing of large numbers of people despite their presumed innocence. Before the implementation of the Pretrial Fairness Act on September 18, 2023, all fifty states utilized a money bond system to some extent to determine the freedom of people awaiting their criminal trials.⁶

Even brief periods of jailing have been found to undermine fairness in the criminal process: incarcerated people cannot fully participate in their own defense, as they do not have ready access to their attorneys, police reports, and other case evidence; they feel more pressure to plead guilty, regardless of whether they are innocent; and if they are convicted, they are more likely to be sentenced to prison, and for longer periods of time, than people who were released pretrial.⁷ Pretrial jailing can also destabilize accused people's health, housing, employment, and families.⁸ These harms are not distributed equally: nationally, most people jailed pretrial are poor because they are less likely to be able to buy their pretrial release,⁹ and Black people bear the greatest burden of pretrial jailing.¹⁰

These national findings applied to Illinois' money bond system, especially in Cook County, even though significant steps were taken to try and reduce pretrial jailing before the Pretrial Fairness Act. In October 2016, the Coalition to End Money Bond supported litigation challenging the unaffordable money bonds set by Cook County judges. That lawsuit led to Chief Judge Timothy Evans issuing General Order 18.8A,¹¹ a general administrative order that required judges to set money bonds at an amount the accused person could reasonably pay and created a process for making that determination. The order decreased the number of people incarcerated by more than 1,500 people within a few months and led to tens of thousands fewer people passing through the jail each year.¹² Despite the immediate success of the order in reducing the number of people in Cook County Jail, some judges still routinely set bond amounts that accused people could not pay and there were limited means to hold such judges accountable.¹³



THE COALITION TO END MONEY BOND RALLIES OUTSIDE THE LEIGHTON CRIMINAL COURTHOUSE BEFORE THE IMPLEMENTATION OF GENERAL ORDER 18.8A.

Over the course of the ten years preceding Illinois' implementation of the Pretrial Fairness Act, the number of people incarcerated in Cook County Jail decreased by nearly 50% as a consequence of the General Order and other efforts by advocates and stakeholders.¹⁴ Still, the number of people incarcerated in Cook County Jail hovered near 5,500 in early 2023.¹⁵ Approximately 75% percent of the people incarcerated in Cook County Jail were Black,¹⁶ even though Black people accounted for less than 31% of the county's population.¹⁷ In Illinois, as with the rest of the United States, money bond generated a system of pretrial detention based not on public safety but individual wealth, disproportionately harming people from marginalized communities.

⁶ACLU Illinois. (n.d.). End money bond. Retrieved November 11, 2025, from <https://www.aclu-il.org/campaigns-initiatives/end-money-bond/>

⁷Nam-Sonenstein, B. (2024, August 6). Research roundup: Evidence that a single day in jail causes immediate and long-lasting harms. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2024/08/06/short_jail_stays/

⁸Nam-Sonenstein, B. (2024, August 6). Research roundup: Evidence that a single day in jail causes immediate and long-lasting harms. Prison Policy Initiative. https://www.prisonpolicy.org/blog/2024/08/06/short_jail_stays/

⁹Rabuy, B., & Kopf, D. (2016, May 10). Detaining the poor: How money bail perpetuates an endless cycle of poverty and jail time. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/incomejails.html>

¹⁰National Association of Criminal Defense Lawyers. (2022, December 7). Race and pretrial. <https://www.nacdl.org/Content/RacialDisparityPretrial>

¹¹Gen. Ord. Cook Co. Cir. Ct. 18.8A. (2017). <https://www.cookcountycourt.org/about/general-orders-cook-county-circuit-court>

¹²Illinois Network for Pretrial Justice. (n.d.). Monitoring Cook County's Central Bond Court: A community courtwatching initiative: August - October, 2017. https://chicagobond.org/wp-content/uploads/2018/10/courtwatching-report_coalition-to-end-money-bond_final_2-25-18.pdf (p. 29)

¹³The Civic Federation. (2022). Observations of Cook County Felony Bond Court hearings: Analysis and findings. <https://www.civiced.org/bondcourt2022>

¹⁴AMitchell, Chip, Cook County Jail population has shrunk dramatically, but costs have not. Why? Chicago Sun Times. <https://chicago.suntimes.com/politics/2024/2/7/24065318/cook-county-jail-population-down-costs-up>

¹⁵Ibid.

¹⁶Cook County Sheriff's Office. (2021, January 1). Sheriff's daily report: 2/1/2023. https://cookcountysheriffil.gov/wp-content/uploads/2023/02/CCSO_BIU_CommunicationsCCDOC_v1_2023_02_01.pdf

¹⁷U.S. Census Bureau (2020). Decennial Census — Race [Table P1]. <https://data.census.gov/table?g=160XX00US1714000>

In January 2021, the Illinois General Assembly passed the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act¹⁸, a criminal justice omnibus bill crafted by the Illinois Legislative Black Caucus in response to the 2020 Black Lives Matter protests that followed the police murders of George Floyd and Breonna Taylor. As a result of years of organizing by INPJ, the SAFE-T Act included a series of reforms to the state's pretrial system that are collectively referred to as the Pretrial Fairness Act. Most notable among these reforms was the provision making Illinois the first state to completely abolish money bond; this was implemented statewide in September 2023.

The Pretrial Fairness Act limits pretrial detention by designating a sequence of mechanisms for pretrial release and setting strict limits on which cases may result in pretrial detention.

The first “offramp” occurs before an accused person ever appears in court: When someone is alleged to have committed an offense that is not a felony or Class A misdemeanor, the arresting officer is required to issue that person a citation to appear in court instead of arresting them, unless the officer “reasonably believes the accused poses a threat to the community or any person” or the accused person continues to engage in criminal activity after the citation has been issued.¹⁹ Officers are also given discretion to issue a citation in lieu of arrest for felonies and Class A misdemeanors. Furthermore, if someone is arrested for an offense that is not detention-eligible, they may be released by law enforcement without appearing before a judge.²⁰



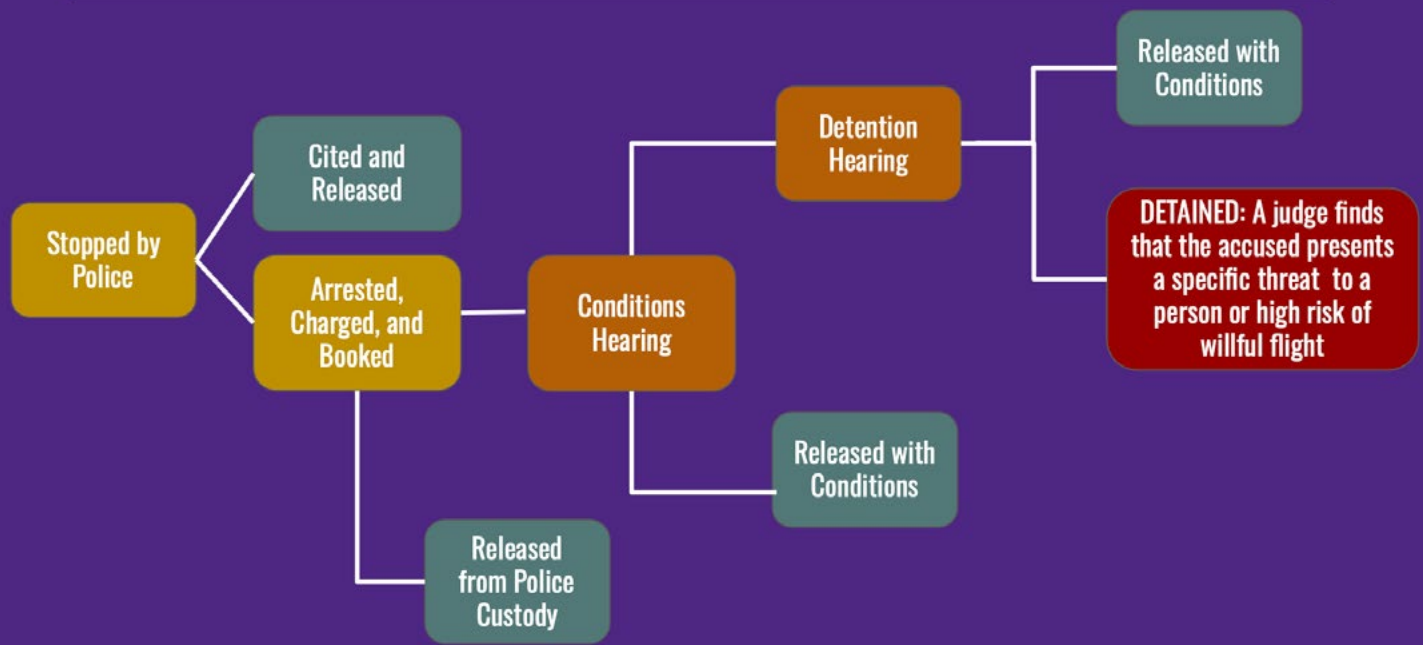
IMAGE BY ROGER PEET, JUSTSEEDS COLLECTIVE

¹⁸Safety, Accountability, Fairness and Equity-Today Act, Public Act 101-0652. (2021). <https://www.ilga.gov/legislation/publicacts/101/PDF/101-0652.pdf>

¹⁹725 ILCS 5/109-1(a-1).

²⁰725 ILCS 5/109-1(a-1), (a-3).

How the Pretrial Fairness Act Works



If an accused person is held until their first court appearance, they are only at risk of being detained pretrial if they are charged with a detention-eligible offense and the State's Attorney's Office files a petition to detain them. If a prosecutor does not seek detention, then a judge decides the conditions of the accused person's release in a conditions hearing. In addition to the mandatory conditions of release—which include appearing in court as requested and not committing a criminal offense—a judge may impose discretionary conditions of release so long as they are “the least restrictive means” of ensuring the accused person follows court orders.²¹ Potential discretionary conditions include supervision by Pretrial Services, refraining from leaving the state or possessing a firearm, avoiding specific people or areas, or “other reasonable conditions.”²²

Advocates behind the Pretrial Fairness Act intended for electronic monitoring to be limited to a narrow set of cases as a condition of release because it replicates many harms of jailing by imposing severe restrictions on the accused person's freedom of movement. A judge may only impose electronic monitoring if no less restrictive condition or combination of conditions could mitigate an alleged risk of willful flight or “protect an identifiable person or persons from *imminent* threat of *serious physical harm* [emphasis added].”²³

²¹725 ILCS 5/110-10(b).

²²725 ILCS 5/110-10(a), (b).

²³725 ILCS 5/110-5(g).

If a prosecutor files a petition to detain, the court holds a detention hearing, and a judge decides whether to detain the accused person or set conditions for their release. Both the prosecutor and the defense have an opportunity to present facts and arguments in this hearing. Importantly, the prosecutor bears the burden of proving by clear and convincing evidence that detention is necessary. Specifically, the prosecutor must prove the following:²⁴

1. “The proof is evident or the presumption great” that the accused person committed the alleged offense;²⁵
2. The accused person poses either a risk of willful flight or danger (defined specifically below); and
3. “No condition or combination of conditions” of release could mitigate the risks allegedly posed by the accused person.

The Pretrial Fairness Act explicitly defines willful flight as “intentional conduct with a purpose to thwart the judicial process to avoid prosecution.”²⁶ The law clarifies that isolated instances of failing to appear at individual court dates does not qualify as willful flight, nor can they be used as evidence that there is a risk of willful flight if the accused person subsequently appears in response to a court summons.²⁷ A pattern of failing to appear or intentionally evading prosecution, though, could be evidence of such a risk.²⁸

Dangerousness means that the accused person poses a “real and present threat to the safety” of a person or the community “based on specific articulable facts of the case.”²⁹ The Pretrial Fairness Act includes a non-exhaustive list of factors that a judge should consider in deciding dangerousness, including the nature and circumstances of the alleged offense; the accused person’s criminal background or psychiatric history; statements attributed to them; their age; their access to weapons; whether they were being supervised by the court at the time of the alleged offense or arrest; attributes of any complaining witness; and the accused person’s character, physical and mental condition, employment, and family and community ties.³⁰

The judge decides in a detention hearing whether the prosecutor has met their burden to prove these three prongs and may only grant pretrial detention if the prosecutor has done so.

²⁴725 ILCS 5/110-6.1(e).

²⁵This is not the same as proof “beyond a reasonable doubt,” which is required for a conviction, but it is a much higher standard than “probable cause,” which is all that is required for an arrest; this very high standard of proof means that there must be clear and strong evidence of the defendant’s guilt.

²⁶725 ILCS 5/110-1(f).

²⁷725 ILCS 5/110-3(c).

²⁸725 ILCS 5/110-1(f).

²⁹725 ILCS 5/110-6.1(g).

³⁰725 ILCS 5/110-6.1(g), 725 ILCS 5/110-5(a).

OUR FINDINGS FROM COURT-WATCHING IN 2023

INPJ conducted a court-watching initiative similar to the present study from September to November 2023. We trained approximately 100 court-watchers to observe conditions and detention hearings at the Leighton Criminal Courthouse and collected more than 1,000 observations; we provide some quotes from those court-watchers here to provide context for the findings we present later in this report.

In these first months of implementation, court-watchers generally spoke well of the court's implementation of the Pretrial Fairness Act, noting that "the process seems clear, with a lot of statutory guidelines but also some flexibility." They described court actors as knowledgeable about the Pretrial Fairness Act and committed to following the statute in detention hearings:

The Assistant State's Attorneys, Assistant Public Defenders, and judges all seemed well-versed on the new Pretrial Fairness Act and professionally discussed the nuances of the new law. All seemed to advocate for both treating the accused fairly and considering the safety of the community as arguments and decisions were made.

Further, they found that judges devoted individualized attention to each detention hearing, as the statute requires:

Even if 2 people are accused of the exact same crime . . . they are treated as individuals. The crime is taken into consideration of course, but so is each of the individual's separate circumstances and [Public Safety Assessment] scores.

Sometimes, this meant that judges asked prosecutors or the defense follow-up questions on their arguments. Though one court-watcher described judges as "quite deferential to prosecutors," others described a pattern of meaningful examination and critique of arguments by judges:

[The judge] sometimes paused when there was a discrepancy or information that would give her a fuller picture. . . I was impressed [with] how thorough everyone seemed to be in these hearings.

I observed that while the attorneys on both sides offered detailed information . . . the judge asked questions and looked for details to have clarification about the incidents.

They also praised public defenders for countering arguments presented by prosecutors in detention hearings:

The mitigations offered [by the defense] seemed very thorough, and there were instances where it really was like a mini-trial where the defenders spoke back to the judge . . . and also challenged the [prosecutor]'s recounting of the facts.

There was one instance . . . where there was an especially vigorous defense and not just mitigation.

Though court-watchers identified instances of uneven implementation of the Pretrial Fairness Act, they generally spoke positively about the court's application of the Act. **As we outline in our findings, more recent court-watching reveals serious concerns about detention hearings no longer being as thoughtful and individualized.**

METHODS

In the spring of 2025, INPJ trained more than 50 community volunteers to observe court and evaluate the impact of the Pretrial Fairness Act on detention hearings in Cook County’s George N. Leighton Criminal Courthouse. Between May and June 2025, court-watchers observed the weekday afternoon detention hearings in Courtroom 102 (Branch 99-4) at the courthouse; these hearings encompassed a majority of cases in Cook County where a prosecutor had filed a petition to detain. INPJ volunteer court-watchers submitted 464 observation forms across 28 days.³¹

INPJ member Chicago Appleseed Center for Fair Courts cleaned the data by correcting improperly completed forms³² and then matching observations that corresponded to the same hearing based on the accused person’s name. To aggregate these observations for each hearing, they selected the most common non-missing response for each prompt. Using observers’ accounts of the charges, a legal expert categorized each case into one of 16 charge categories³³ based on the most serious charge read by the prosecutor. After aggregating, there were 167 unique hearings represented in the data.

We also collected qualitative data on pretrial detention hearings with a survey and focus group. Court-watchers were asked to document some of their impressions and reflections from each day of observing via an online survey, which received 50 responses. After we stopped collecting court observations for this project, we conducted a virtual, hour-long focus group with 12 volunteers to gather more collective insight about the detention hearings they observed. Multiple members of the research team reviewed both sources of data to identify emergent themes and illustrative quotes.

LIMITATIONS

Community court-watching poses some limitations as a data collection tool; notably, it relies on community volunteers, many of whom do not have traditional legal training or expertise, to understand pretrial detention hearings well enough to reliably document information. We improved the accuracy of our data by providing in-person, 90-minute training sessions to all volunteers about the Pretrial Fairness Act, the structure of detention hearings, and the observation form. Volunteers almost always observed in small groups, and they collected data on the same hearings so that we could test consistency across observations. We ensured that each group of court-watchers was paired with a member of our research team so they could easily get answers to their questions about the observation form while in the courthouse. Pairs of observers of the same hearings who gave valid responses agreed more than 90% of the time for every question. See [Table X](#) for a measure of this agreement by question.

	n	% responded	% agreement
Gender Presentation	452	97.4%	99.1%
Perceived Race	438	94.4%	96.5%
Pretrial Outcome	419	90.3%	94.8%
Failure to Appear PSA Score	412	88.8%	92.6%
New Criminal Activity PSA Score	414	90.3%	94.8%

³¹Volunteers originally submitted 566 observation forms, but some observations were discarded because they seemed to represent hearings that were not detention hearings.

³²For example, an observation form submitted with multiple options selected for a single-choice prompt.

³³The 16 charge categories with any cases in the sample were arson, assault, battery, burglary, escape, firearm discharge, gun possession, homicide (not 1st degree), kidnapping, murder, narcotics, possession of a stolen motor vehicle, registry, residential burglary, robbery, and sex crime.

Court-watching for this project did not include all detention petitions filed during the period of observation. Detention hearings for escape, sex offense, and homicide charges, as well as felony cases resulting from grand jury action, were heard in separate court calls which were not observed by court-watchers.³⁴ Additionally, on days when a large number of detention petitions were filed, some hearings were delayed to the following morning or heard in a different courtroom, and these hearings were not observed by our court-watchers. Finally, volunteers did not observe court on weekends or holidays.

This study cannot provide insight into the frequency of petitions to detain, as we only observed hearings for cases where prosecutors did petition to detain. Thanks to previous sustained advocacy from our coalition, however, the Office of the Chief Judge issues weekly data dashboards providing snapshots on the cumulative number and rate of petitions to detain that are filed and granted, including the charge types. We discuss the charges most prevalent among cases observed for which prosecutors sought pretrial detention. Moreover, court-watching was conducted after the Pretrial Fairness Act was implemented, so our findings do not compare detention hearings to bond hearings that occurred prior to the implementation. For more information on the frequency at which petitions to detain are filed and granted, visit the Office of the Chief Judge's website where a report with cumulative data about first appearance hearings is uploaded weekly.³⁵

³⁴Gen. Ad. Ord. Cook Co. Cir. Ct. 2025-03 (2025). [https://ocj-web-files.s3.us-east-2.amazonaws.com/orders/General-Administrative-Order_2025-03_Pretial-Division-Schedules_\(eff-Feb-10-2025\)_0.pdf?VersionId=S1Lcbsn1NgyTNAX0CzZe2Ayo1eNsPUYZ](https://ocj-web-files.s3.us-east-2.amazonaws.com/orders/General-Administrative-Order_2025-03_Pretial-Division-Schedules_(eff-Feb-10-2025)_0.pdf?VersionId=S1Lcbsn1NgyTNAX0CzZe2Ayo1eNsPUYZ); Circuit Court of Cook County. (n.d.). Pretrial division. Retrieved November 18, 2025, from <https://www.cookcountycourt.il.gov/division/pretrial-division>

³⁵The weekly data can be accessed at <https://www.cookcountycourt.il.gov/court-reports-statistics>.

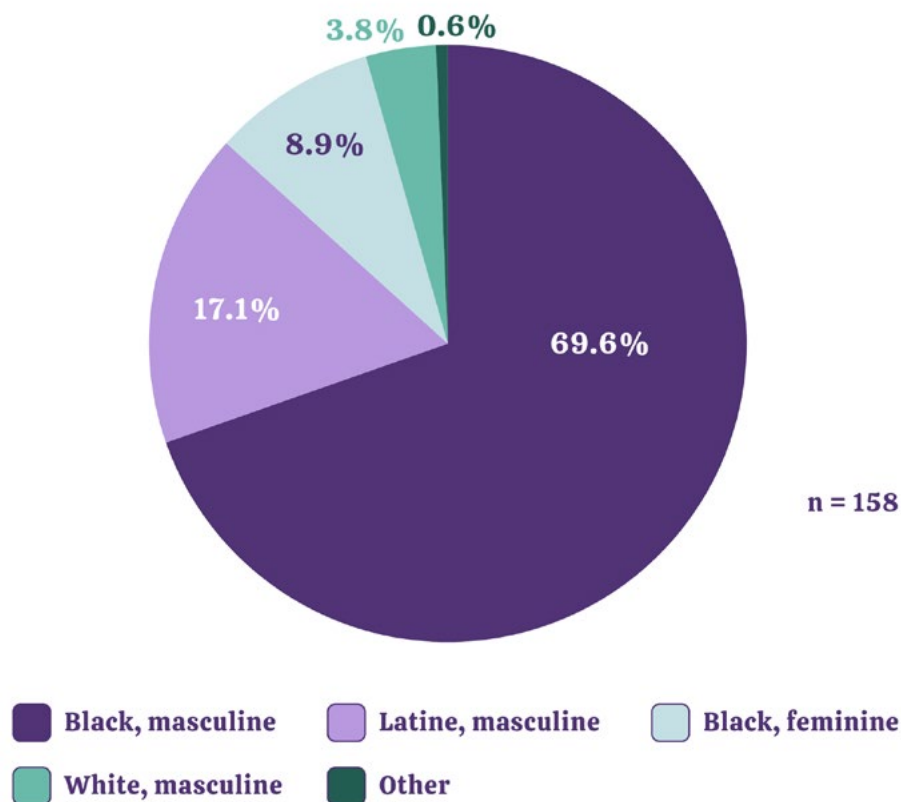
FINDINGS

96% of accused people that prosecutors sought to jail were Black or Latine.

Black people, especially Black men, are very overrepresented in pretrial detention hearings in Cook County. **More than 75% of accused people in pretrial detention hearings were identified by court-watchers as Black,³⁶ as compared to 31% of Chicago's population being Black,³⁷ and almost 70% of accused people were Black and masculine-presenting.³⁸** These findings are consistent with racial disparities in the criminal legal system generally, both before and after the enactment of the Pretrial Fairness Act.³⁹ One court-watcher noted that, across the three days they observed, they “only saw two defendants [who] were non-Black.” Masculine-presenting Latine people were the next most common gender and racial-ethnic demographic represented in pretrial detention hearings, accounting for 17% of accused people observed by our volunteers.

See **Figure X** for a more complete demographic breakdown of the accused people our court-watchers observed in detention hearings.

RACIAL AND GENDER DEMOGRAPHICS OF ACCUSED PEOPLE IN DETENTION HEARINGS



³⁶Court-watchers documented the perceived race/ethnicity of each accused person, with the options of Black, Hispanic/Latine, White, other, and unsure. These perceptions were then compared across court-watchers to eliminate inconsistencies. They may not accurately reflect the racial and ethnic identities of all accused people, but this data is not publicly available.

³⁷U.S. Census Bureau (2020). Decennial Census — Race [Table P1]. <https://data.census.gov/table?g=160XX00US1714000>

³⁸Court-watchers documented the gender presentation of each accused person, with the options of androgynous, feminine, masculine, and unsure. These perceptions were then compared across court-watchers to eliminate inconsistencies. They may not accurately reflect the gender identities of all accused people, but this data is not publicly available.

³⁹Every year between 2018 and 2024, between 65% and 74% of the people criminally prosecuted in Chicago have been Black, according to the Cook County Justice Dashboard. (2025, June 30). Cases filed in court [Data set]. Retrieved November 11, 2025, from <https://cook-dashboard.loyolaccj.org/court-filings-bond/cases-filed-in-court>

Though court-watchers did not intentionally collect age data, they reported that most accused people observed were “really young, usually just around 20 years old.”⁴⁰ The prevalence of young Black men in pretrial detention court is largely a consequence of targeted policing strategies.⁴¹ In the words of two court-watchers:

I heard a few times . . . [the prosecutor] said something about “the epidemic of young males bringing weapons to . . . public beaches.”

If [the accused person] was not an African American male, would [the police] have stopped him on Oak Street Beach . . . to check his book bag? . . . The reality we need to always keep in mind is, who are they going to search?

The Pretrial Fairness Act did not and could not resolve racial disparities in pretrial detention that largely stem from the overpolicing of Black and Latine Chicagoans.⁴² Major changes to policing practices in Chicago and elsewhere are necessary to change the demographics of who is charged with detention-eligible offenses and is thus at risk of pretrial jailing. In the meantime, the Cook County State’s Attorney’s Office can mitigate the effects of racial disparities by ensuring that all of its attorneys engage in a thoughtful, individualized analysis of each person before seeking pretrial detention.

A majority of detention petitions filed were against people accused of possessing but not using a gun.

The most common primary charge category documented in detention hearings was, by far, gun possession, composing 67.1% of cases observed by our court-watchers. (The second most common charge observed was robbery, which accounted for 13.8% of cases.) This aligns as expected with the high number of accused people in pretrial detention hearings who are young Black men—the demographic group most commonly targeted by law enforcement for possessing weapons in Chicago.⁴³ As one court-watcher noted:

What I observed was Black men being arrested for gun possession, and even sought out by police. People of all races have loaded guns today, but it appears more Black men are in jail and detained when no harm has been done.

Judges granted a prosecutor’s detention petition for gun possession in 70.3% of cases observed. When the judge denied a prosecutor’s petition to detain someone facing a gun possession charge, they set electronic monitoring as a condition of release half of the time. This means that people facing gun possession charges were released without electronic monitoring only 14.8% of the time when a prosecutor petitioned for detention. This suggests that merely filing a detention petition in a gun possession case leads to a very high probability of an accused person being jailed or facing severe restrictions on their liberty and that the prosecutor has a significant amount of influence over the pretrial process.

⁴⁰Though we did not collect quantitative data on the ages of accused people in detention hearings, this sentiment was echoed by multiple court-watchers and reflected in observations by the research team.

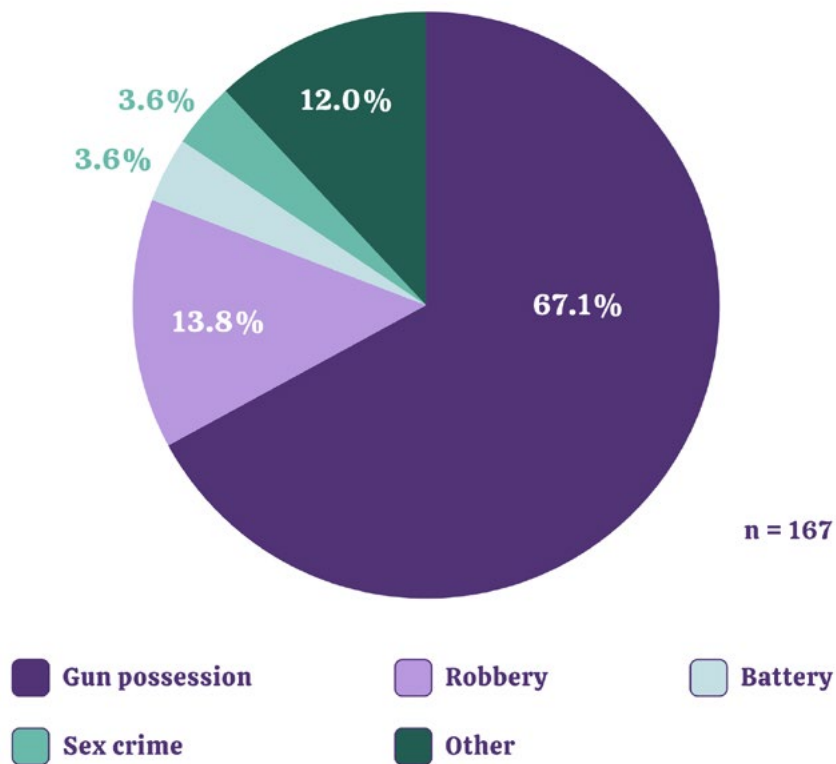
⁴¹Every year between 2018 and 2024, between 61% and 72% of the people arrested in Chicago have been Black, according to Cook County Justice Dashboard. (2025, June 30). Arrests made by Chicago Police Department [Data set]. Retrieved November 14, 2025, from <https://cook-dashboard.loyolaccj.org/incident-arrest/arrest>

⁴²Levin, J. (2022, August 10). Racially disproportionate traffic stops do not make Chicago neighborhoods safer. ACLU of Illinois. <https://www.aclu-il.org/en/news/racially-disproportionate-traffic-stops-do-not-make-chicago-neighborhoods-safer>

⁴³Johnson, N., Segal, A., Simkin, M., Agnew, S., Butler, K., & Payton, B. (2024). Punishing fear: The devastating impacts of the war on gun possession in Chicago. Chicago Appleseed Center for Fair Courts. <https://www.chicagoappleseed.org/punishing-fear>

See **Figure X** for a full breakdown of the primary charge categories observed by court-watchers.⁴⁴

PRIMARY CHARGE CATEGORIES OF DETENTION HEARINGS



Gun possession charges in Illinois reflect allegations of owning, carrying, or driving with, a gun without being properly licensed. Gun *possession* is distinct from gun *discharge*, which applies to cases where the weapon was allegedly fired.⁴⁵ Despite this material distinction, gun possession charges carry harsh punishments, including at the pretrial stage, as these charges often lead to detention or electronic monitoring. Following a conviction, the charges often lead to sentences of incarceration and potentially consequences of a felony record.⁴⁶ It is important to note, though, that nearly one third of gun possession cases are dismissed or result in a not-guilty verdict,⁴⁷ so many people are jailed for a gun possession offense of which they will not be convicted.

Many people who carry guns, especially in Chicago's most overpoliced neighborhoods, do so for their own protection, not because they intend to cause harm.⁴⁸ This framing is especially important in the context of pretrial detention, where the concept of "dangerousness" is central and is often applied very liberally:

Though [the accused people] never took their guns out or threatened anyone with a gun, they were still deemed a risk to the community and usually detained.

⁴⁴Since the Branch 99 call is held directly before the Branch 99-4 call in the same courtroom and includes detention hearings for felony sex offenses, the sex crimes in this sample likely represent hearings from the prior call when it lasted past its allotted time.

⁴⁵720 ILCS 5/24.

⁴⁶Johnson, N., Segal, A., Simkin, M., Agnew, S., Butler, K., & Payton, B. (2024). Punishing fear: The devastating impacts of the war on gun possession in Chicago. Chicago Appleseed Center for Fair Courts. <https://www.chicagoappleseed.org/punishing-fear>, pp. 24-25

⁴⁷69% of gun possession cases in 2025 resulted in a conviction, according to Cook County Justice Dashboard. (2025, December 31). Case dispositions [Data set]. Retrieved March 12, 2026, from <https://cook-dashboard.lovolaccj.org/court-filings-bond/disposition>

⁴⁸Fontaine, J., La Vigne, N., Leitson, D., Erond, N., Okeke, C., & Dwivedi, A. (2018). "We carry guns to stay safe": Perspectives on guns and gun violence from young adults living in Chicago's West and South Sides. Urban Institute. <https://www.urban.org/research/publication/we-carry-guns-stay-safe>

Law enforcement agencies in Cook County have increased their policing and prosecution of gun possession dramatically over the past decade,⁴⁹ with weapon offenses accounting for more than 5,000 arrests and even more criminal cases annually in recent years.⁵⁰ Since taking office in December 2024, Cook County State's Attorney Eileen O'Neill Burke has only intensified the criminalization of gun possession, as we discuss in depth in the discussion section of this report.

One court-watcher observed what they perceived as a prosecutor “upcharging” for gun possession, that is, charging the accused person with *aggravated* unlawful possession of a weapon rather than *simple* unlawful possession of a weapon for reasons that did not actually relate to public safety. *Simple* unlawful possession of a weapon, including pistols, revolvers and other firearms, can be charged as a misdemeanor for first-time offenses.⁵¹ However, if an “aggravating factor” is present, a prosecutor has the discretion to charge a first-time offense as aggravated unlawful possession of a weapon, which is most often a Class 4 felony.⁵² The statute lists several aggravating factors, such as the weapon being uncased, loaded and immediately accessible; the accused person lacking a valid Firearm Owners Identification (FOID) card;⁵³ and the accused person being less than 21 years old.⁵⁴ While felony charges for gun possession are the norm in Chicago, one court-watcher observed a prosecutor charging someone with the aggravated offense based on their age, as if that alone was sufficient to implicate public safety concerns:

The prosecutor justified the aggravated [offense] because [the accused person] was a 19 year old who had a gun at 9:15 at night.

According to court-watchers, prosecutors and judges were inclined to regard anyone accused of illegally possessing a gun as dangerous:

Technically the presumption is [pretrial] release [under the Pretrial Fairness Act], but as soon as you have a gun, that presumption flies out the window.

One court-watcher compared this approach to the strategy of hypercriminalization historically employed in response to drug use:⁵⁵

Guns are the new heroin, you know, and the judges . . . they didn't care too much about what the other circumstances were.

One way that judges justified pretrial detention was by pointing to the accused person's gun possession charge as evidence that they would not follow court orders:

The judge also ruled in multiple cases that because [the accused people allegedly] illegally possessed a firearm, it meant that they wouldn't follow release conditions and so they had to be detained.

Thus, the mere fact that someone was accused of possessing a gun was considered sufficient evidence that they would not follow court orders. However, gun licensure requirements in Illinois are confusing and pose economic and geographic barriers,⁵⁶ so possessing a weapon without the proper licensure is often not an intentional choice to violate the law nor an indication that a person would not follow a court order. Thus, framing noncompliance with gun regulations as predictive of general noncompliance with the courts is unwarranted. Furthermore, when the charge itself is used as justification for detention, it is very difficult for mitigation, no matter how compelling, to impact the outcome; even though illegal gun possession is a non-violent offense, judges frequently detain people accused of it regardless of other factors.

⁴⁹Johnson, N., Segal, A., Simkin, M., Agnew, S., Butler, K., & Payton, B. (2024). Punishing fear: The devastating impacts of the war on gun possession in Chicago. Chicago Appleseed Center for Fair Courts. <https://www.chicagoappleseed.org/punishing-fear>

⁵⁰Cook County Justice Dashboard. (2025, June 30). Arrests made by Chicago Police Department [Data set]. Retrieved September 4, 2025, from <https://cook-dashboard.loyolaccj.org/incident-arrest/arrest>; Cook County Justice Dashboard. (2025, December 31). Cases filed in court [Data set]. Retrieved September 4, 2025, from <https://cook-dashboard.loyolaccj.org/court-filings-bond/cases-filed-in-court>

⁵¹720 ILCS 5/24-1.

⁵²720 ILCS 5/24-1.6.

⁵³The license required to own a gun in Illinois.

⁵⁴720 ILCS 5/24-1.6(c).

⁵⁵Dholakia, N. (2021, June 17). Fifty years ago today, President Nixon declared the war on drugs: The “war on drugs” targeted communities of color and has caused decades of harm. Vera Institute. <https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs>

⁵⁶Johnson, N., Segal, A., Simkin, M., Agnew, S., Butler, K., & Payton, B. (2024). Punishing fear: The devastating impacts of the war on gun possession in Chicago. Chicago Appleseed Center for Fair Courts. https://www.chicagoappleseed.org/wp-content/uploads/2024/10/20241030_Gun-Possession-Facts.pdf

Judges granted a vast majority of the petitions to detain and rarely appeared to consider less restrictive conditions, even in low-risk cases.

In 73.8% of the cases observed by our court-watchers, judges ordered the accused person to be detained pretrial. This observation from our court-watchers is mirrored in data released by the Office of the Chief Judge, which found that judges granted detention requests in 69% of non-domestic violence felony cases since the Pretrial Fairness Act went into effect.⁵⁷ Court-watchers noted that:

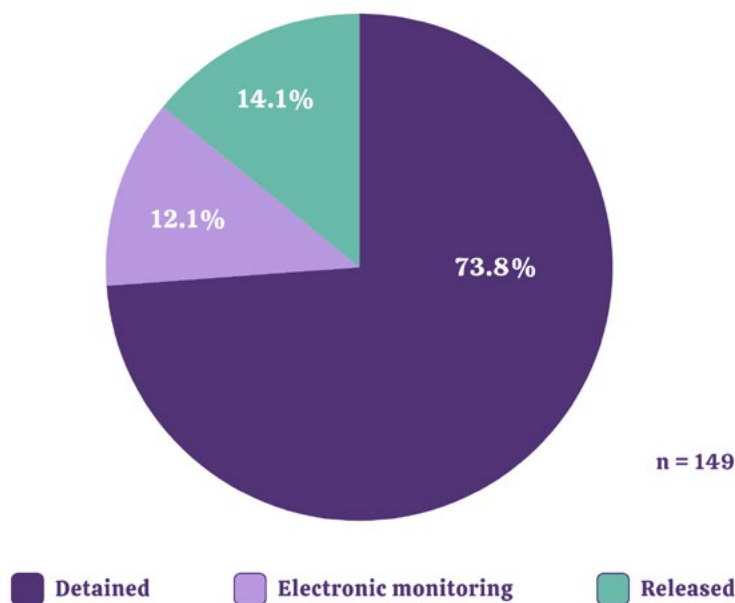
It seems as though the default decision is to detain—the burden of proof seems to be on the defense rather than the prosecutor.

The tendency to detain as a default suggests that prosecutors and judges are ignoring the evidence that releasing people pretrial does not compromise public safety. A Prison Policy Initiative study of jurisdictions that ended or limited their use of money bond found that crime or re-arrest rates did not substantially change, with some experiencing decreases or negligible increases.⁵⁸ In New Jersey, which virtually eliminated the use of money bail, “the percentage of people arrested for new crimes while awaiting trial changed by only 1 percentage point before and after reform, from 12.7% to 13.7%. In 2020, only 0.6% of people were re-arrested for a serious violent offense while awaiting trial.”⁵⁹ Most people on pretrial release in Cook County are succeeding: In the two years since the Pretrial Fairness Act took effect, 94% of the more than 150,000 people released pretrial have not been charged with committing any new offense against a person.⁶⁰ Despite the predictions that the Pretrial Fairness Act would lead to an increase in crime, violent crime fell 7% and property crime fell 14% statewide after the reforms.⁶¹

In the infrequent cases when the judge denied a detention petition, they imposed electronic monitoring almost half of the time.

See **Figure X** for a pie chart visualizing the prevalence of these outcomes.

OUTCOMES OF DETENTION HEARINGS



⁵⁷Office of the Chief Judge of the Circuit Court of Cook County. (2026). Pretrial Fairness Act (PFA) weekly dashboard: September 18, 2023 – February 7, 2026. https://ocj-web-files.s3.us-east-2.amazonaws.com/documents/February_07_2026_Weekly_PFA_Data_Dashboard.pdf?VersionId=PFXh.aLgc0YgALuZBwu1MA.iQDCw99p

⁵⁸Staudt, S. (2023, July 6). Releasing people pretrial doesn't harm public safety. Prison Policy Initiative. <https://www.prisonpolicy.org/blog/2023/07/06/bail-reform/>

⁵⁹Id.

⁶⁰Office of the Chief Judge of the Circuit Court of Cook County. (2026). Pretrial Fairness Act (PFA) weekly dashboard: September 18, 2023 – April 4, 2026. https://ocj-web-files.s3.us-east-2.amazonaws.com/documents/April_04_2026_Weekly_PFA_Data_Dashboard.pdf?VersionId=xzsWAAOW76m2Nd1SUCfW8Ej.LwTeaM60

⁶¹Griffin, P., DuPont, B., Stemen, D., Olson, D., & Ward, A. (2024). The first year of the Pretrial Fairness Act. Loyola Center for Criminal Justice. <https://pfa-1yr.loyolaccj.org/>

While electronic monitoring was originally intended to serve as an alternative to jail, this technology has been found to replicate many harms of jailing.⁶² There are many people being jailed who could safely return to the community with or without electronic monitoring. Judges seldom released someone on electronic monitoring if a prosecutor requested detention. “Some judges seemed particularly unwilling to release accused people on electronic monitoring . . . rather than detain them,” according to our court-watchers. One person noted that “it was very apparent that [one] judge was opposed to [electronic monitoring] as a matter of principle.”

Judges repeatedly applied the argument that an accused person could commit a crime while released on electronic monitoring, even if there was no evidence that they would not comply with their conditions of release:

The judge also said there was no reason to believe that [electronic monitoring] would prevent [the accused person] from committing similar crimes due to the randomness of the [alleged] crime, communicating that he could commit similar crimes during his movement . . . It seems that he was not given the proper chance to prove that he would comply and not reoffend.

To prevent human rights abuses, the Pretrial Fairness Act mandates that all people subjected to electronic monitoring be given two periods of “movement” per week to ensure that they are able to complete essential tasks like buying groceries and attending medical appointments.⁶³ Court watchers reported that this policy was repeatedly referenced as a reason why electronic monitoring was not a sufficient condition of release to mitigate alleged risks, even though increased movement has not resulted in a large quantity of re-arrests of people who were released on electronic monitoring.⁶⁴

In fact, there is ample evidence that the vast majority of people placed on electronic monitoring succeed. While there have been isolated instances of people on electronic monitoring committing a violent offense, both before and after the implementation of the Pretrial Fairness Act, a study conducted at the request of the Cook County Board of Commissioners found that electronic monitoring had “no substantial effect on failure to appear rates and rearrest rates, or on rearrest rates for violent crimes”; the vast majority of people on electronic monitoring appear at all of their court dates, and less than 1% are rearrested for allegations of violence.⁶⁵

Despite the data, the Cook County State’s Attorney’s Office has not only advanced the faulty rhetoric that increased “movement” will increase the likelihood of rearrest; the office has also attempted to place additional pressure on judges by requiring prosecutors to object, with scripted language, whenever a judge opts to place someone on electronic monitoring in lieu of detention.⁶⁶ These objections have virtually no legal significance and instead seem to be an attempt to pressure judges into granting detention. State’s Attorney Burke released this policy in close proximity to the consolidation of Cook County’s two electronic monitoring programs into one program, which will soon be managed entirely by the Office of the Chief Judge.⁶⁷ In light of this, it is worth noting that the Chief Judge’s program is more humane: The Sheriff’s program regularly incarcerated people in their homes all day everyday and prevented them from completing essential tasks such as going to work or obtaining groceries, whereas the Chief Judge’s program has historically given people ample time to complete basic tasks.⁶⁸

Judges’ concerns about accused people reoffending while released on electronic monitoring seemed to be exacerbated in gun possession cases. One court-watcher recalled an accused person who was detained pretrial because, according to the judge, “the two [periods] of movement on [electronic monitoring] might allow him to get another weapon.” Two other court-watchers relayed similar sentiments:

[Allegedly] having the gun was considered . . . itself enough not to warrant [release on] electronic monitoring. And what I kept hearing was, “well, [electronic monitoring is] not going to keep you from being able to get a gun.”

[The judge] would say, “electronic monitoring keeps track of where you are but not what you’re doing . . . Because [the accused person is] clearly able to obtain a firearm, knowing where they are won’t matter.” Usually at the end they would say that, pretty much every time.

⁶²CGL Companies, & Chicago Appleseed Center for Fair Courts. (2022). Electronic monitoring review: Cook County, Illinois: Final report – September 2022. Cook County Government. https://www.cookcountylil.gov/sites/g/files/ywwepo161/files/documents/2022-10/Cook%20County%20Electronic%20Monitoring%20Final%20Report_09142022.pdf (pp. 6-8)

⁶³730 ILCS 5/5-8A-4(a), (a-1).

⁶⁴Justice Not Fear. (2024, February 8). Cook County Sheriff Tom Dart spreads disinformation about electronic monitoring reforms. <https://justicenotfear.org/debunk/Dart-Misleads/#:~:text=The%20Cook%20County%20Sheriff's%20Office%20chose%20to%20implement%20this%20law,of%20harm%20to%20another%20person>

⁶⁵CGL Companies, & Chicago Appleseed Center for Fair Courts. (2022). Electronic monitoring review: Cook County, Illinois: Final report – September 2022. Cook County Government. https://www.cookcountylil.gov/sites/g/files/ywwepo161/files/documents/2022-10/Cook%20County%20Electronic%20Monitoring%20Final%20Report_09142022.pdf

⁶⁶Hill, T. (2025, April 8). SAFE-T Act advocates sound the alarm on Cook County State’s Attorney’s new electronic monitoring policy. Triibe. <https://thetriibe.com/2025/04/safe-t-act-advocates-sound-the-alarm-on-cook-county-states-attorneys-new-electronic-monitoring-policy/>

⁶⁷Quig, A. D. (2024, November 21). Cook County budget passes without property tax or fee increases. Chicago Tribune. <https://www.chicagotribune.com/2024/11/21/cook-county-budget-passes/>

⁶⁸CGL Companies, & Chicago Appleseed Center for Fair Courts. (2022). Electronic monitoring review: Cook County, Illinois: Final report – September 2022. Cook County Government. https://www.cookcountylil.gov/sites/g/files/ywwepo161/files/documents/2022-10/Cook%20County%20Electronic%20Monitoring%20Final%20Report_09142022.pdf

Judges repeatedly used this formulaic language about the risk of an accused person obtaining a gun illegally while on electronic monitoring to justify their decision to grant detention, even though prosecutors failed to offer any evidence of this risk other than the charge itself. In addition, even if this were a substantiated risk, it would not inevitably cause harm to any person or community because gun possession is a victimless offense. Judges deemed the very act of an accused person possessing a gun without the proper licensure dangerous enough to render electronic monitoring insufficient to protect the community.

Even the people assessed to be at the lowest risk of rearrest or missing court, according to their Public Safety Assessment (PSA) scores, were detained pretrial in a majority of detention hearings.

In Cook County and most of Illinois, the Arnold Ventures' Public Safety Assessment (PSA) is used to calculate an individual's likelihood of failing to appear in court, being rearrested pretrial,⁶⁹ and being charged with a new "violent" offense pretrial. The PSA includes a Failure to Appear score and a New Criminal Arrest score, each of which ranges from 1 to 6 with 1 indicating the lowest risk, as well as a New Violent Criminal Activity flag, which is either "Yes" or "No."⁷⁰ These tools are intended to provide an "unbiased" assessment of what kind of conditions should be set in order for a person to be released pretrial.

In the hearings observed by our court-watchers, 30.5% of accused people had a Failure to Appear score of 1 and a New Criminal Arrest score of 1 or 2. Although pretrial risk assessment tools cannot fully capture risk and have been known to reflect racial injustices in their calculations of risk,⁷¹ the rubric for the PSA tells us that these individuals had no prior or pending charges and had never failed to appear in court at the time of their detention hearings. People with these scores were detained in 58.7% of cases and released on electronic monitoring in 21.7% of cases.

The fact that a majority of these people, whose release would seemingly pose very little risk, were detained when prosecutors requested detention reflects the ease and willingness with which prosecutors construct, and judges accept, a narrative of dangerousness to justify granting detention. Pretrial detention punishes people who are presumed innocent, undermining that presumption. The injustice of this is reflected in the fact that 33% of people charged with weapons offenses are acquitted or have their cases dismissed.⁷²

⁶⁹Advancing Pretrial Policy & Research. (n.d.). About the PSA. Retrieved November 10, 2025, from <https://www.advancingpretrial.org/about-the-psa/>

⁷⁰Advancing Pretrial Policy & Research. (n.d.). How the PSA works. Retrieved November 10, 2025, from <https://www.advancingpretrial.org/how-the-psa-works/>

⁷¹Freeman, K. R., & McGilton, M. (2020, August 3). The problem is not the criminal justice risk assessment tool: It's systemic racism. Urban Institute. <https://www.urban.org/urban-wire/problem-not-criminal-justice-risk-assessment-tool-its-systemic-racism>

⁷²Cook County Justice Dashboard. (2025, December 31). Case dispositions [Data set]. Retrieved March 6, 2026, from <https://cook-dashboard.loyolaccj.org/court-filings-bond/disposition>

Judges rarely critiqued or questioned the police narratives provided by prosecutors in detention hearings.

The Pretrial Fairness Act places the responsibility for meeting the burden of proof in detention hearings on prosecutors. This means that for an accused person to be detained pretrial, the prosecutor must demonstrate that “the proof is evident or the presumption great” that the accused person committed a detention-eligible offense, substantiate the risk their release would pose, and show that no conditions of release could mitigate that risk.⁷³ In the hearings observed by our court-watchers, the prosecutor often just recited the police report verbatim without adding any analysis and made proffers about the accused person’s criminal history without providing additional context (e.g. the fact that an arrest did not result in the filing of criminal charges or, if it did, the charges were later dismissed). If the presumption of innocence were taken seriously and the clear and convincing standard of evidence were properly applied to give effect to the presumption of pretrial liberty, simply proffering a police report and incomplete information about prior arrests taken would be considered inadequate. **Yet, judges rarely questioned or critiqued the information provided by the prosecutors in the detention hearings our court-watchers observed:**

Police reports and the [prosecutor’s] information [are] taken at face value, no matter how you might imagine that [the accused] person was stopped or searched unlawfully. At this stage, it is stacked in favor of the prosecution, despite the [accused] person being “[presumed] innocent.”

When justifying their decisions, judges often repeated the prosecutor’s account of the arrest “word for word.” This pattern reflects what appears to be a tendency among judges to rubber-stamp pretrial detention petitions, which in practice reverses responsibility by placing the burden of proof on the defense. This forces defense attorneys, without the benefit of cross-examining the officer who wrote the report, to focus on identifying holes in the prosecutor’s argument and tilts the eventual outcomes of the hearings:

While the burden of proof was supposed to be on the prosecution, it really felt like the burden of proof was on the defense. This opens the possibility that, in some cases, false or illegally obtained evidence may be used to justify pretrial detention for accused people.

By unquestioningly adopting the prosecutor’s account of an arrest as truth, judges place tremendous power in the hands of the police. **Police effectively control the narratives in detention hearings without being physically present for cross examination.** This is incredibly dangerous given Chicago’s long and notorious history of police misconduct.⁷⁴ **It is important to note that, for half of cases with charges that are detention eligible, the charges will be dismissed, accused people will be found not guilty, or prosecutors will decline to prosecute.**⁷⁵

That [the police are] telling the truth, that their analysis is correct, and that their behavior is correct—that was the . . . presumption that I saw across all of the cases.

In fact, court-watchers repeatedly observed gun possession cases that began with a “pretextual stop,” often a minor traffic offense that law enforcement used to justify a search of someone’s vehicle or belongings. One court-watcher observed a case where the police pulled someone over because their “license plate light wasn’t working” and eventually found cause for arrest. Another noted:

You can hear the sort of pretextual search . . . “well, you were parked on a street in a bad neighborhood, in a neighborhood known for drugs and crime.” It’s like, but they were just parked on the street? . . . So being in the neighborhood was considered guilt.

⁷³725 ILCS 5/110-6.1(e)(1).

⁷⁴Invisible Institute. (n.d.). Civic Police Data Project. Retrieved August 13, 2025, from <https://invisible.institute/police-data>

⁷⁵50% of detainable cases that concluded in 2024 or 2025 resulted in a conviction, according to Cook County Justice Dashboard. (2025, December 31). Case dispositions [Data set]. Retrieved April 6, 2026, from <https://cook-dashboards.loyolaccj.org/court-filings-bond/disposition>

Traffic stops have become a primary source of arrests for the Chicago Police Department since they agreed to halt their “stop-and-frisk” practices in 2015. They now conduct more than 10,000 traffic stops every week, even though they only find weapons in 0.07% of stops,⁷⁶ and research has shown that the Chicago Police Department targets Black and Latine drivers for traffic stops.⁷⁷ Moreover, despite the agreement to end stop-and-frisk practices, the Chicago Police Department continues to improperly search people⁷⁸ simply for being in a group or existing in a “high-crime area.” As noted above, these policing practices contribute significantly to the racial disparities in the Cook County criminal courts, specifically the overrepresentation of Black Chicagoans.

In detention hearings, court-watchers repeatedly witnessed formulaic explanations for why police officers conducted searches:

I saw the same language being used a lot about why the police would come up to a person in the first place . . . like, “oh, we noticed a bulge,” [or] “oh, there was an L shape underneath the clothing.” And after hearing that multiple times, like those exact sentences . . . I’m kind of at this point assuming that they chose to stop and search someone, found the gun, and then that language gets incorporated into the arrest report.

The pretextual nature of stops and searches was glossed over or minimized by prosecutors, and judges rarely questioned the events that led to an arrest, so discriminatory policing practices were largely ignored in pretrial detention hearings. Even though judges should consider the fact that a charged crime may have been the product of an illegal search when assessing the weight of the evidence,⁷⁹ it does not appear that they were doing so.

It sounded like, to me, that [the police] searched every single person that had a bag. That’s the way it’s presented [by the prosecutor] . . . so that becomes the record. You know, the discrimination is—the racism is not in the record from the very beginning.

Police narratives wielded great influence in detention hearings. In arguing that an accused person was dangerous and should be detained, prosecutors routinely informed the court of any prior arrests, some of which had occurred years earlier, even if they did not result in a charge or conviction. One observer noted:

I find it strange and upsetting that the judge can consider one’s previous arrests that did not result in charges, charges that were dropped, and charges where someone was found not guilty as a part of their criminal background.

The Pretrial Fairness Act mandates that “no single factor or standard may be used exclusively to order detention,” including the accused person’s criminal background.⁸⁰ In order to detain an accused person pretrial, a judge must find that their release would pose a danger to the community or that they present a risk of willful flight. This reliance on a person’s arrest record to decide detention is contrary to the spirit of the Pretrial Fairness Act, which requires judges to make holistic decisions based on a variety of factors, not just a person’s arrest record, and to take seriously the presumption of innocence when someone has not been convicted.

⁷⁶ACLU of Illinois. (2025, August 12). CPD massive traffic stop program is “deliberate, purposeful” program, new court filing asserts. <https://www.aclu-il.org/press-releases/cpd-massive-traffic-stop-program-is-deliberate-purposeful-program-new-court-filing-asserts/>

⁷⁷Impact for Equity. (2025). Chicago 2024 traffic stops data report. <https://impactforequity.org/report/chicago-2024-traffic-stops-data-report/>

⁷⁸Cherone, H. (2025, February 11). Reform groups say CPD’s new plan to stop and search Chicagoans violates Constitution, consent decree. WTTW News. <https://news.wttw.com/2025/02/11/reform-groups-say-cpd-s-new-plan-stop-and-search-chicagoans-violates-constitution>

⁷⁹725 ILCS 5/110-6.1(f)(6).

⁸⁰725 ILCS 5/110-6.1(e)(7).

Prosecutors and judges invoked “dangerousness” broadly and inconsistently to justify detention.

Though both dangerousness and risk of willful flight may be used as grounds to detain someone pretrial, dangerousness was mentioned more often by prosecutors - and used as justification for detention more often by judges - in cases observed by our court-watchers. Judges appeared to apply the law in inconsistent and sometimes opaque ways, sometimes focusing on one factor (such as the nature of the alleged offense) to the exclusion of the others. In order to assess whether judges are adhering to the law, it is critical to understand how prosecutors and judges are interpreting, and in the process manufacturing narratives of, dangerousness within the pretrial setting.

Our court-watchers observed prosecutors and judges citing a wide range of arguments to demonstrate the alleged dangerousness of an accused person. Some rationales included the accused person’s criminal background (no matter how long ago the events happened), the time of day the alleged offense occurred, the presence of drugs at the time of the arrest, the location of the arrest, and whether the accused person was deemed compliant by law enforcement during the arrest. By casting a wide net to create a sense of dangerousness, it was very easy for prosecutors and judges to construct a narrative of danger in a majority of cases. It is no surprise, then, that court-watchers perceived detention as “the default decision.” Some judges relied on racialized constructions of crime to justify their decisions to detain accused people. In one instance, a judge cited the neighborhood in which an arrest occurred as evidence of dangerousness, essentially placing a presumption of dangerousness on poor Black and Brown Chicagoans:

The location of the [arrest] is used as evidence against the accused person — today, a “known high-crime area” happened to be where the [accused person] lived.

In some cases, prosecutors and judges seem to construct a narrative of dangerousness not only based on what an accused person allegedly did but also what they believe the accused person is capable of doing in the future. Because of the historical and structural criminalization of Black children⁸¹ and immigrants,⁸² court actors’ assumptions about what crimes an accused person might go on to commit are shaped by racial and ethnic stereotypes. This racist logic is used to devalue an accused person’s limited or nonexistent criminal record if they recently became a legal adult or immigrated to the United States:

A 19-year-old male from Venezuela was detained. He didn’t have a [prior] gun offense . . . He only had a previous misdemeanor, and he’s only been in the U.S. since September . . . [The judge] said that he only had 1 misdemeanor, but that he hasn’t been in the country long enough to have more arrests.

Other court-watchers also reported similar statements by prosecutors or judges about young adults.

Sometimes, the charge an accused person faced was wielded as substantial evidence of dangerousness, even when that charge was non-violent and had no victim. One court-watcher documented repetitive language they heard from prosecutors and judges regarding people with prior felony convictions who faced gun possession charges:

I also heard from both prosecutors and judges . . . very similar language. I wrote it down because I heard it so many times . . . Specifically for the “unlawful possession of a weapon by a felon” charges, they said: “The state legislature has determined that firearms in possession of a felon are inherently dangerous.”

This is an extrapolation from the fact that people with prior felony convictions are, for the most part, barred from obtaining a FOID card.⁸³ The arguments made by prosecutors imply that they believe there should be a presumption of detention for people charged with “unlawful possession of a weapon by a felon”; such a policy would violate the statutory presumption of pretrial release and the Illinois Constitution’s right to bail.⁸⁴

⁸¹Agyepong, T. E. (2018). The criminalization of Black children: Race, gender, and delinquency in Chicago’s juvenile justice system, 1899–1945. University of North Carolina Press.

⁸²Ewing, W. A., Martinez, D. E., & Rumbaut, R. G. (2015). The criminalization of immigration in the United States. UC Irvine. <https://escholarship.org/uc/item/9hw9c28d>

⁸³430 ILCS 65/4(a)(2)(ii).

⁸⁴725 ILCS 5/110-2.

Some claims of dangerousness appeared to punish accused people for the fear they may have felt during their arrest, cultural differences, or possibly physical or intellectual disabilities:

I noticed judges bringing up . . . so-called “anti-social behavior” . . . [such as] not looking at the police, shaking, extreme shaking, [or] wearing a face mask.

The fact that [the accused person] ran [from the police], I felt like that was all that counted. Nothing else counts. They had a very low [Public Safety Assessment] score, they were, I think they were very young . . . but they ran, and that was— [Different speaker] That judge . . . compliance made a big difference with her.

For many people, especially young Black men, fleeing is a very natural reaction to being approached by police officers.⁸⁵ Still, judges seemed to use the fact that an accused person did not immediately comply with law enforcement as justification that releasing them would pose a risk. This second quote also touches on another trend our court-watchers noticed: Some judges seemed to have specific factors that, whenever present, convinced them to grant detention. Another court-watcher explained:

The one thing that kept coming up was whether or not [the accused person] had been previously convicted on felony charges . . . It almost felt like, if that happened, then it was a no-go in terms of [them] being released.

These anecdotes indicate that judges were, in some cases, directly ignoring the Pretrial Fairness Act, which says that “decisions regarding. . .detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention.”⁸⁶

Court-watchers also noted incongruent criteria for determining dangerousness among judges:

When one judge thinks they can provide mitigating conditions in certain cases, another judge thinks there can be no mitigating conditions.

It was very clear that different things weighed with different judges. So like, [for] the first judge I saw, it was really important that there were family in the courtroom, he brought it up every single time . . . [With] some of the other judges, I didn't hear that at all.

In practice, court actors' personal criteria for dangerousness were not only unclear but at times even contradictory. Court-watchers witnessed prosecutors and judges pointing to opposing factors as both indicating danger, which led to what a court-watcher called a “damned if you do, damned if you don't” situation:

In virtually all cases, the time of day of the arrest was used to paint a picture of the dangerous nature of the accused. “5:00 pm when people are about,” “after dark,” “1:00 am in the morning when most people are not out.”

The judge said she didn't trust people without a FOID card [the license required to own a gun in Illinois] to not [illegally] obtain another gun while awaiting trial. Then, for someone with a FOID card, she said she didn't trust them to not legally obtain a gun while awaiting trial. What's the point of a FOID card if both options create an argument for detention?

Though the statute limits judicial discretion, varying or even contradictory opinions on what constitutes dangerousness could result in uneven detention outcomes depending on the judge presiding over someone's hearing.

It bears repeating that dangerousness is not enough to warrant detention; the prosecutor must also prove that no less restrictive set of conditions could mitigate the safety risk that an accused person's release would presumably pose.⁸⁷ Prosecutors and judges rarely flesh out this argument in detail, instead simply stating that it is true without evidence or repeating the formulaic argument that “electronic monitoring keeps track of where you are but not what you're doing.” Thus, court actors not only manufacture a narrative of dangerousness but also fail to contemplate alternative ways to deal with it beyond jailing the accused person.

⁸⁵Robinson, J. (2016, September 30). For Black men, running is a reasonable reaction to police harassment and racial profiling, concludes Massachusetts' Supreme Court. ACLU. <https://www.aclu.org/news/criminal-law-reform/black-men-running-reasonable-reaction-police>

⁸⁶725 ILCS 5/110-6.1(f)(7).

⁸⁷725 ILCS 5/110-6.1(e)(3).



Defense attorneys were at a disadvantage in pretrial detention hearings.

The Pretrial Fairness Act sets pretrial release as the norm and places the burden of proof on the prosecutor in detention hearings—not on the defense attorney. In defending against detention, the defense’s role is twofold: raising challenges to the prosecutor’s narrative and presenting the judge with critical information about their client to show why they do not pose a danger or a flight risk and should be released.

When asked what kinds of arguments they most typically heard from defense attorneys, many court-watchers recalled them describing details about their client’s life, including their age, family, community involvement, education, or employment. In practically every courtroom, observers noted that it appeared that prosecutors were not providing defense attorneys with all of the materials they needed to effectively challenge the prosecutor’s narrative of the events, despite the legal requirement to do so:⁸⁸

“No body cams, no witness interviews, no security videos” . . . That was argued [by the defense] in almost every one of the weapons cases.

Based on the cases they observed, court-watchers did not believe arguments made by the defense held a lot of weight in judicial decision-making:

The public defender would point out that witnesses were not part of the report from the CPD, and it didn't seem to matter to the judge for any case – the judge simply didn't acknowledge that point.

What [is in] the police report and how the [prosecutor] spins it seems to influence the judge more than the points the public defender makes.

⁸⁸725 ILCS 5/110-6.1(f)(1).

Another court-watcher witnessed that arguments by the defense against the first prong, that there is not sufficient evidence that the accused person committed the alleged offense, were even received poorly by judges:

I saw a few cases where [lack of evidence] was most heavily argued [by the defense], and . . . I felt like it almost had a negative impact on the judge . . . It seemed like both of [the] times when the defense really rode for prong one, that it kind of dissuaded the judge in general.

Judges' failure to enforce the law's requirement that the prosecutor provide the defense with all the evidence used as the basis for its arguments, and also to consider whether there is sufficient evidence to warrant detention, undermines the intention of the Pretrial Fairness Act for prosecutors to bear the burden of proof and for judges to make individualized determinations for every case, as our court-watchers themselves noted.

With judges ignoring or actively discouraging defense attorneys from making substantive arguments about the facts of the case, the defense appeared to have less influence than when the Pretrial Fairness Act was first implemented. The power differential here is problematic, and further attention to this dynamic is warranted in order for the law to realize its full potential.

Pretrial jailing has devastating impacts on accused people, families, and entire communities.

Our court-watchers got a glimpse into the devastating consequences of pretrial detention for accused people and their loved ones. As with all forms of incarceration, pretrial jailing disrupts people's capacity to care for people in their lives:

One [accused person] was the sole provider for his 4 children and very involved in their lives. While the judge stated that the defendant posed a threat to society, I believe his absence poses a much more tangible threat to the well-being of his children.

Pretrial jailing also acts as a punishment in itself for many people who have not even been convicted of a crime:

[The accused person] was a 19-year-old college freshman, arrested for [allegedly] being the getaway driver in a petty theft that spiraled out of control. He hadn't stolen anything himself—just sat behind the wheel of his cousin's car, waiting nervously . . . He wanted to be loyal, to help family — but [was likely to pay] for it with months in jail before his trial even started.

When cases frequently take months or even years to go to trial, the period of pretrial detention can represent a large portion of an accused person's potential sentence if convicted or even exceed the sentence, given that many of the charges accused people face in detention hearings are lower-level felonies—gun possession offenses, for example, are often Class 4 felonies. **This means that, even if their case is eventually dismissed or they are found not guilty, they will have already served jail time for a crime they may not have committed.**

Pretrial jailing could also pressure accused people to plead guilty, instead of continuing to fight their cases, in order to be released sooner; it could even encourage them to plead guilty immediately if they have been in jail long enough to get a sentence of "time considered served." Thus, pretrial jailing could set accused people up to accept convictions that could limit their opportunities for the rest of their lives.⁸⁹



IMAGE BY OLLY COSTELLO, JUSTSEEDS COLLECTIVE

⁸⁹Smith, S. S. (2022). How pretrial incarceration diminishes individuals' employment prospects. Federal Probation, 86(3) 11-18. https://www.uscourts.gov/sites/default/files/86_3_3_0.pdf

RECOMMENDATIONS

Recommendations for the Cook County State's Attorney

The Cook County State's Attorney's Office plays a critical role in driving pretrial detention by deciding which accused people they petition to detain and constructing narratives of dangerousness in detention hearings. We have the following recommendations for State's Attorney Eileen O'Neill Burke:

Grant more discretion to prosecutors to decide whether to file felony charges and whether to seek detention.

State's Attorney Burke has implemented multiple policies that undermine the discretion of prosecutors in her office and guarantee that a greater number of people will face felony charges and pretrial detention. Since her first day in office, Burke has limited the discretion of her prosecutors by requiring that they seek detention in all cases where certain charges are present, including non-violent charges like unlawful possession of a defaced firearm.⁹⁰ The Pretrial Fairness Act was intended to ensure that decisions regarding pretrial detention are individualized and based on a variety of factors. By mandating that her prosecutors seek detention for all cases involving certain charges and factors, Burke strips them of their power to decide whether a risk of danger or willful flight is actually present in an individual case.

As mentioned earlier, Burke issued a directive requiring her prosecutors to object on the record whenever their petition to detain is denied and the accused person is released on electronic monitoring.⁹¹ This policy not only limits discretion for prosecutors but is a blatant attempt to undercut judicial discretion by pressuring judges to grant all petitions to detain even when a judge decides that pretrial detention is unnecessary to mitigate risks.

In January 2025, the State's Attorney's Office also launched a pilot of what they call the "Felony Review Bypass Program," which allows the Chicago Police Department to file felony charges directly for most gun possession offenses.⁹² In November 2025, Burke rebranded this policy as "Expedited Felony Review" and announced plans to expand it citywide.⁹³ The policy weakens due process protections for accused people by allowing the police to completely bypass felony review. Felony review is the process where prosecutors review the available evidence and decide whether to file felony charges,⁹⁴ and it was previously employed in a majority of non-drug felony charges.⁹⁵ With this policy, Burke deprives her prosecutors of a say in whether certain felony charges are filed, which allows for unsubstantiated allegations to progress further in the criminal legal process. Since this policy is being implemented alongside the decision to request detention in all gun possession cases in which certain factors are present, prosecutors may be seeking detention for gun possession cases with minimal evidence or evidence that will not be upheld once challenged in court.

Allowing the police to bypass felony review also deprives accused people the opportunity to have a prosecutor assess whether the arrest was a result of unconstitutional actions by the police, which is critical given the Chicago Police Department's historic and ongoing misconduct.⁹⁶ Black Chicagoans bear the brunt of the harm from the policy, as they are overrepresented in gun possession cases and as victims of the city's notable history of police misconduct.⁹⁷

⁹⁰Cook County State's Attorney. (2024, December 2). Cook County State's Attorney Eileen O'Neill Burke announces new detention policy to increase public safety and protect victims [Press release]. <https://www.cookcountystatesattorney.org/news/cook-county-states-attorney-eileen-oneill-burke-announces-new-detention-policy-increase-public>

⁹¹Hill, T. (2025, April 8). SAFE-T Act advocates sound the alarm on Cook County State's Attorney's new electronic monitoring policy. Triibe. <https://thetriibe.com/2025/04/safe-t-act-advocates-sound-the-alarm-on-cook-county-states-attorneys-new-electronic-monitoring-policy/>

⁹²Cook County State's Attorney. (2025, April 4). Cook County State's Attorney expands pilot program to streamline charging process for low-level gun possession cases [Press release]. <https://www.cookcountystatesattorney.org/news/cook-county-states-attorney-expands-pilot-program-streamline-charging-process-low-level-gun>

⁹³Cook County State's Attorney. (2025, November 21). CCSAO introduces new Expedited Felony Review standard [Press release]. <https://www.cookcountystatesattorney.org/news/ccsao-introduces-new-expedited-felony-review-standard>

⁹⁴Cook County State's Attorney. (2025, April 4). Cook County State's Attorney expands pilot program to streamline charging process for low-level gun possession cases [Press release]. <https://www.cookcountystatesattorney.org/news/cook-county-states-attorney-expands-pilot-program-streamline-charging-process-low-level-gun>

⁹⁵84.3% of non-drug felony cases filed in Cook County in 2024 were approved via felony review, according to Cook County Justice Dashboard. (2025, June 30). Case review [Data set]. Retrieved November 10, 2025, from <https://cook-dashboard.loyolaccj.org/felony-reviews/case-initiation>; Cook County Justice Dashboard. (2025, June 30). Cases filed in court [Data set]. Retrieved November 10, 2025, from <https://cook-dashboard.loyolaccj.org/court-filings-bond/cases-filed-in-court>

⁹⁶Invisible Institute. (n.d.). Civic Police Data Project. Retrieved August 13, 2025, from <https://invisible.institute/police-data>

⁹⁷Spielman, F. (2017, December 11). Chicago aldermen settled for \$31 million with Englewood Four following wrongful conviction. Loevy + Loevy. <https://www.loevy.com/big-wins/31m-settlement-englewood-four/>; Schuba, T., & Main, F. (2023, July 14). Chicago cops sidelined for allegedly seizing guns without making arrests, then lying about it. Chicago Sun-Times. <https://chicago.suntimes.com/crime/2023/7/14/23795492/chicago-cops-sidelined-seizing-guns-lying>

We call on State's Attorney Burke to end these policies immediately and return discretion to her prosecutors to prevent unnecessary involvement with the legal system and avoid the detention of people who pose little or no risk of danger or willful flight. Focusing on the facts of the case and the person charged, rather than solely on the charge itself, would result in a more individualized assessment of whether to seek detention. Research shows that the vast majority of people facing even the most serious charges and people deemed high-risk by the court can succeed pretrial.⁹⁸

Release usable data on pretrial detention petitions and outcomes.

Despite her election promise to “prioritize increasing transparency,”⁹⁹ State's Attorney Burke has rolled back data transparency measures since taking office. The Felony Dashboard, published and updated regularly by the State's Attorney's Office under Kim Foxx's administration,¹⁰⁰ was an incredibly useful data source on charging, trials and pleas, sentencing, and diversion in Cook County. The dashboard has not been updated under Burke's administration, yet her office has not replaced the dashboard in any meaningful way to promote transparency.

Likely in an attempt to quell concerns about data transparency, the State's Attorney's Office has published multiple data dashboards, all of which are far less accessible or useful than the Felony Dashboard was. At the time of this report's release, the Office publishes a Community Dashboard,¹⁰¹ a Detention Dashboard,¹⁰² a Domestic Violence Dashboard,¹⁰³ and a Sexual Assault Dashboard;¹⁰⁴ critically, **none of these dashboards allow the user to download the underlying data as a CSV or Excel file, making most statistics incredibly onerous to compute.** The Detention Dashboard in particular is useless to researchers, community members, and local officials in its current form.

The State's Attorney's Office should update its Detention Dashboard to allow users to download the table. Furthermore, Burke should regularly update the Felony Dashboard to meet the promises of her own campaign and the standard of data transparency set by her predecessor. At the very minimum, Burke should release data on the pretrial detention petitions that the office files and their outcomes, including the charges; the race, gender, and age of the accused persons; whether they were detained; and their conditions of release if they were not detained. Though some of this data exists on the Cook County Criminal Justice Data Dashboard,¹⁰⁵ which includes data from multiple Cook County agencies and was first published in June 2025,¹⁰⁶ the dashboard only includes aggregated statistics rather than case-level data, which limits the user's ability to ask their own questions about the data.

Reinstate the policy of disclosing police officers who have a history of misconduct.

State's Attorney Burke has stopped keeping and disclosing a list of police officers with a history of misconduct,¹⁰⁷ a critical step backward in the push for greater police accountability in a city that for too long had none. As noted earlier, prosecutors often read the police report directly to the judge, seemingly without assessing its reliability. Maintaining and disclosing lists of discredited officers would give prosecutors, defense attorneys, and judges important information to assess the actions and accounts of police officers; this is even more critical in gun possession cases given the policy of bypassing felony review in those cases.

⁹⁸Corey, E. (2019, August 8). How a tool to help judges may be leading them astray. The Appeal. <https://theappeal.org/how-a-tool-to-help-judges-may-be-leading-them-astray/>

⁹⁹ACLU of Illinois. (n.d.). Eileen O'Neill Burke — Cook County State's Attorney Candidate Questionnaire. <https://www.aclu-il.org/en/ccsa-burke>

¹⁰⁰Gates, E. (2023, March 25). Cook County State's Attorney Kim Foxx, releases comprehensive data on felony cases and charging trends. American Judicial System. <https://www.ajs.org/cook-county-states-attorney-kim-foxx-releases-comprehensive-data-on-felony-cases-and-charging-trends/>

¹⁰¹Cook County State's Attorney. (n.d.). Community dashboard [Data set]. Retrieved September 22, 2025, from <https://www.cookcountystatesattorney.org/community-dashboard>

¹⁰²Cook County State's Attorney. (n.d.). Detention dashboard [Data set]. Retrieved September 22, 2025, from <https://www.cookcountystatesattorney.org/detention-dashboard>

¹⁰³Cook County State's Attorney. (n.d.). Domestic violence dashboard [Data set]. Retrieved September 22, 2025, from <https://www.cookcountystatesattorney.org/domestic-violence-dashboard>

¹⁰⁴Cook County State's Attorney. (n.d.). Sexual assault dashboard [Data set]. Retrieved September 22, 2025, from <https://www.cookcountystatesattorney.org/sexual-assault-dashboard>

¹⁰⁵Cook County Justice Dashboard. (2025, December 31). Cook County Criminal Justice Data Dashboard. Retrieved February 27, 2026, from <https://cook-dashboard.loyolaccj.org/>

¹⁰⁶Cook County Government. (2025, June 24). Cook County leaders announce new criminal justice dashboard. <https://www.cookcountyil.gov/news/cook-county-leaders-announce-new-criminal-justice-dashboard>

¹⁰⁷Blaisdell, M. (2025, July 23). Cook County state's attorney stops maintaining lists of discredited cops. Chicago Reader. <https://chicagoreader.com/news/reader-investigative-reports/brady-list-eileen-oneill-burke-cook-county/>

Recommendations for the Chief Judge of the Circuit Court of Cook County

Call on judges to engage in more holistic decision-making.

Our findings make clear that judges regularly rationalize their decisions to detain accused people with formulaic and broad constructions of “dangerousness” based on police narratives, unfair assumptions about possible future actions, or irrelevant background information. This is in direct contravention of the principle articulated in *United States v. Salerno* and the Pretrial Fairness Act: Pretrial jailing should be a “carefully limited exception”¹⁰⁸ based on “individualized” decision-making.¹⁰⁹ Judges should take advantage of the increased information and time they are now granted for detention hearings to engage critically with the prosecutor’s narratives and arguments.

Collect data on judicial decision-making and regularly assess judicial performance.

Although each judge is intended to be independent, it is critical, in part because of the recency of the law, to ensure that judges are consistently and fairly applying the Pretrial Fairness Act in every detention hearing. In the early months of the Pretrial Fairness Act, the Law Office of the Cook County Public Defender regularly released data on pretrial release and detention outcomes. However, it is our understanding that this was exceptionally laborious for the office and impossible to maintain, especially in light of the increase in detention petitions filed under State’s Attorney Burke. We recommend that the Office of the Chief Judge, perhaps in partnership with the Clerk of the Circuit Court of Cook County, collect and release data for each conditions or detention hearing that includes the judge; the charges; the PSA scores; the race, gender, and age of the accused person; whether they were detained; and their conditions of release if they were not detained. Unlike their weekly Pretrial Fairness Act Dashboard,¹¹⁰ this data should be released at the case level as a downloadable table so that users do not have to manually copy down information from a PDF.

Similarly, court observers noted patterns in judicial decision-making, as well as disparities in outcomes that appeared to be consequences (or reflections) of individual judges’ interpretations of the law. Collecting data in detention hearings would assist the Office of the Chief Judge and advocates in identifying patterns and behaviors of individual judges, as well as disparities. Other mechanisms to assess judges’ analyses and decision-making in detention cases, such as random transcript reviews or court observations, should be considered. The Office of the Chief Judge could use this information to determine if corrective action should be taken to ensure fidelity to the law and consistency in application of the presumption of release and factors (and weight assigned) that judges are to consider in making detention decisions. Such actions could include coaching, providing supplemental training, issuing guidelines or directives, and creating opportunities for attorneys and people impacted by the courts’ detention decisions (e.g. past defendants and / or their family and community members) to share their experiences with the judges.

¹⁰⁸United States v. Salerno, 481 U.S. 739 (1987). <https://supreme.justia.com/cases/federal/us/481/739/>

¹⁰⁹725 ILCS 5/110-6.1(f)(7).

¹¹⁰Office of the Chief Judge of the Circuit Court of Cook County. (n.d.). Court reports & statistics. Retrieved February 27, 2026, from <https://www.cookcountycourtill.gov/court-reports-statistics>

Recommendations for the Illinois General Assembly

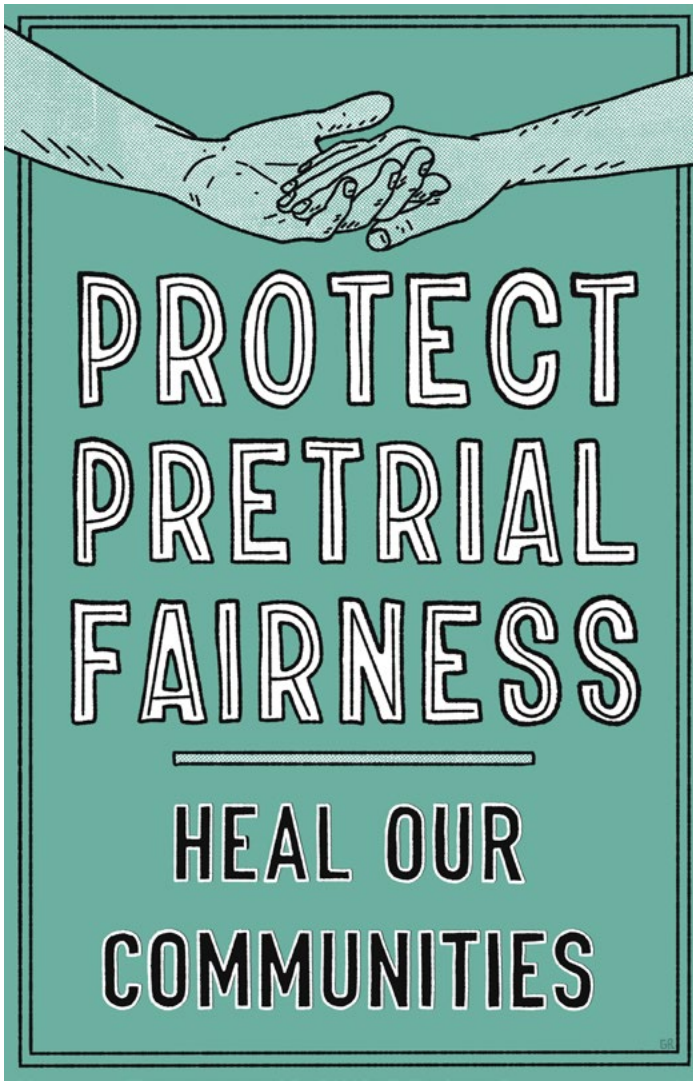


IMAGE BY GRAESON ROSA, JUSTSEEDS COLLECTIVE

Protect the detention eligibility net.

As one measure to limit pretrial detention, the Pretrial Fairness Act reinforced use of a *detention eligibility net*, a list of charges that are eligible for pretrial detention; unless someone is accused of committing a detention-eligible offense, prosecutors generally may not petition to detain them.¹¹¹ This means that many arrests cannot result in pretrial detention. In 2025, a majority of criminal cases did not involve any detention-eligible charges.¹¹²

The detention eligibility net is more important than ever given State's Attorney Burke's decision to request detention in all cases when certain charges are present, regardless of insubstantial evidence, mitigating factors, or individual circumstances. We encourage the Illinois General Assembly to protect this important provision of the Pretrial Fairness Act from potential attacks, including undue expansion, in future legislative sessions.

Reverse changes to the law's safety standard made in a 2022 trailer bill.

The Pretrial Fairness Act limits pretrial detention to cases where the accused person's release would pose a danger to people (the safety standard) or a risk of them fleeing to evade prosecution (the willful flight standard). However, the language of the safety standard has changed since the law passed in 2021. When the Pretrial Fairness Act was originally passed, the safety standard required that the accused person pose "a *specific*, real, and present threat to the safety of any person or persons [emphasis added]."¹¹³ A 2022 trailer bill adjusted this language to require that the accused person pose "a real and present threat to any person or persons or *the community* [emphasis added]."¹¹⁴

From our court-watching data, it seems that prosecutors and judges are taking advantage of the ability to use non-specific threats to the community at large as justification for detention. Court-watchers regularly observed claims of dangerousness made by both prosecutors and judges in gun possession cases where no specific threat to any person's safety could be identified. This exploitation of the safety standard's revised language to detain people accused of non-violent offenses undermines the original intent of the law. The Illinois General Assembly should amend Article 110 of Illinois' Code of Criminal Procedure to return the safety standard to its original language or issue other clarifying language to prevent the unnecessary jailing of accused people who pose no specific danger.

¹¹¹725 ILCS 5/110-6.1(a).

¹¹²54.9% of cases were not detention-eligible, according to Cook County Justice Dashboard. (2025, December 31). Pretrial release decision [Data set]. Retrieved February 23, 2026, from <https://cook-dashboard.loyolaccj.org/court-filings-bond/pretrial-release-decisions>

¹¹³Safety, Accountability, Fairness and Equity-Today Act, Public Act 101-0652. (2021). <https://www.ilga.gov/legislation/publicacts/101/PDF/101-0652.pdf>

¹¹⁴Public Act 102-1104. (2022). <https://www.ilga.gov/documents/legislation/publicacts/102/PDF/102-1104.pdf>

CONCLUSION

Two years into the implementation of the Pretrial Fairness Act, our court-watchers observed judges spending more time and utilizing more information to make decisions about pretrial detention and conditions of pretrial release than they did before the law was implemented. However, their observations clearly document how the actions of individual court actors impact courtroom culture and decision-making. As the number of people jailed pretrial increases in Cook County due to shifts in the way the law is being interpreted and implemented by judges and prosecutors, the law's bright-line rules limiting detention, namely the detention eligibility net, have become even more critical.

While the Pretrial Fairness Act was able to improve the quality of pretrial hearings, reduce the number of people jailed in many parts of the state,¹¹⁵ and take money out of the question of who is released pretrial, it was unable to address the racial disparities of pretrial jailing. As in previous studies of Cook County's pretrial system, Black men continue to be disproportionately jailed pretrial. To address this, stakeholders must work together to address the ways in which the police disproportionately target Black communities.

The vast majority of detention petitions in cases observed by our court-watchers were filed in gun possession cases, which do not involve the use or discharge of a weapon. In many of the observed cases, law enforcement clearly used a minor infraction unrelated to gun possession as justification to search someone's vehicle or belongings and ultimately found a weapon; given the racial demographics of accused people observed in these cases, many of these searches were likely motivated by racial profiling.

We must acknowledge that many Chicagoans have valid concerns for their safety and, as a result, decide to procure weapons for their own protection.¹¹⁶ Stakeholders should invest in alternative ways of addressing harm and violence in our communities rather than criminalize people's responses to real or perceived danger. Greater investments in violence prevention programs, economic and workforce development, and mental health and substance use disorder treatment would better address the root causes of violence.

Our findings also highlight that judges grant a large majority of detention petitions filed by prosecutors, even for accused people that the risk assessment tool deemed low risk. Court-watchers' narratives and insights are important to understanding how this happens. In many cases, judges uncritically accept the validity of police reports as presented by prosecutors, and prosecutors and judges use these narratives to manufacture claims of dangerousness in cases without meaningful risks to safety while ignoring mitigating information provided by the defense. Defense attorneys seem to have minimal influence over judicial decision-making in detention hearings.

¹¹⁵Stemen, D., Olson, D., Dupont, B., Ward, A., & Griffin, P. (2024, March 10). Illinois jail population tracker [Data set]. Loyola Chicago Center for Criminal Justice. Retrieved December 3, 2025, from <https://loyolaccj.org/blog/illinois-jail-population-tracker>

¹¹⁶Johnson, N., Segal, A., Simkin, M., Agnew, S., Butler, K., & Payton, B. (2024). Punishing fear: The devastating impacts of the war on gun possession in Chicago. Chicago Appleseed Center for Fair Courts. <https://www.chicagoappleseed.org/punishing-fear>

Our findings are specific to Cook County's Leighton Criminal Courthouse in the late spring of 2025. Though we did not formally compare data for the present project to prior rounds of court-watching, we believe that implementation of the Pretrial Fairness Act has changed in Chicago since its effective date in 2023. One 2025 volunteer who also court-watched detention hearings in the fall of 2023 described how the process has changed in their eyes:

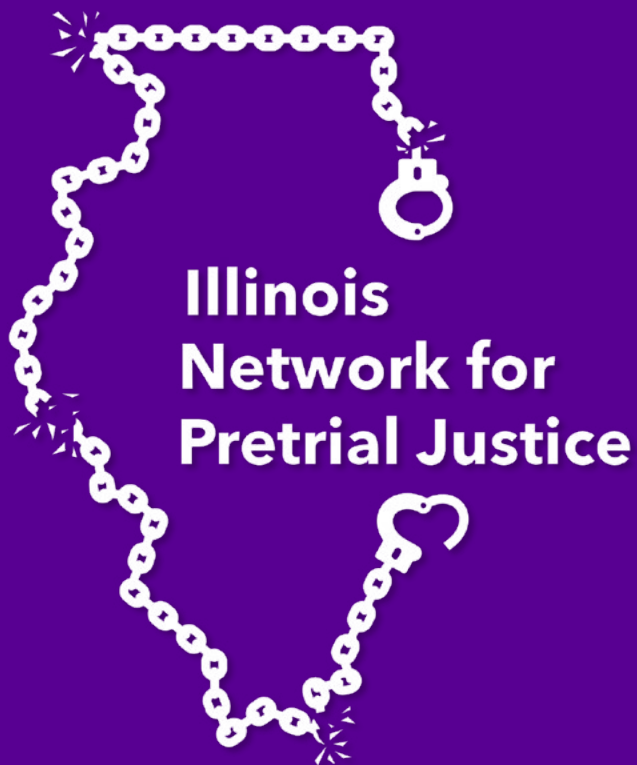
The Pretrial Fairness Act . . . is really being misused [and] has gone downhill dramatically from when it was first implemented . . . [The detention hearing] is really about, are you gonna flee or do something bad? . . . I feel like that is not really being considered anymore, and it was [being considered] a year and a half ago, and it's really changed through this session for me.

In its first year, Cook County's implementation of the Pretrial Fairness Act made abundantly clear the law's potential to improve pretrial hearings and reduce pretrial jailing. While we document significant issues with the interpretation and application of the law in its second year, many of these problems could be addressed if stakeholders follow our recommendations. It is also clear that there are other mechanisms within the law that require closer evaluation, including analysis of rates of detention decisions, whether reviews of detention decisions and electronic monitoring orders are being conducted in accordance with the law, and rates and outcomes of appeals.

It is essential that researchers and advocates continue to pay attention to how the Pretrial Fairness Act is being implemented in their local jurisdictions, because the law is only as strong as our capacity to hold court actors accountable to it. Our Network is committed to continuing to work with community members and court stakeholders to improve implementation through research, advocacy, public education, stakeholder engagement, and impact litigation. Right now, we have an opportunity to reduce the harms caused by our pretrial legal system and ensure that our state's pretrial system becomes a national model.



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