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Innocent Until Proven Guilty: Unless You're Poor. Righting a Systemic Wrong Under the Pretrial Fairness Act

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INNOCENT UNTIL PROVEN GUILTY: UNLESS YOU'RE POOR. RIGHTING A SYSTEMIC WRONG UNDER THE PRETRIAL FAIRNESS ACT.

NATASHA BROWN*

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I. INTRODUCTION

On September 18, 2022, 42-year-old Shannon Brandt hit and killed 18-year old Cayler Ellingson with his SUV following a heated altercation in McHenry, North Dakota.¹ Brandt admitted to the crime and “was charged with vehicular homicide and leaving the scene of an accident that resulted in death.”² Despite court documents revealing Brandt’s past DUI history, “unlawful possession of alcohol and fleeing a peace officer on foot”, two days later, on September 20, 2022, Brandt was released from custody after posting \$50,000 bail.³

On September 12, 2022, 42-year-old Ivan Cheung was “charged with aggravated rape (four counts), aggravated rape of a child (four counts), and aggravated statutory rape (two counts)” in Boston Massachusetts.⁴ Sixteen days later, on September 28, 2022, Cheung walked out of Boston Municipal Court after posting a \$200,000 bail.⁵

In contrast, in March of 2016, 31-year-old Jessica Preston was arrested for driving with a suspended license in Macomb County, Michigan.⁶ Despite being eight months pregnant, the judge gave her

1. Jerry Lambe, *Man Accused Of Using SUV To Run Down ‘Republican Extremist’ Teen Pleads Guilty To Manslaughter*, L. & CRIME (May 30, 2023, 5:57 PM), lawandcrime.com/crime/man-accused-of-using-suv-to-run-down-republican-extremist-teen-pleads-guilty-to-manslaughter/ [perma.cc/UYT2-ATDB].

2. *North Dakota Driver Charged with Fatally Striking Teenager Says He Purposely Hit The Teen After a Political Argument*, CBS (Sep. 22, 2022, 6:24 AM), [www.cbsnews.com/news/shannon-brandt-vehicular-homicide-cayler-ellingson-says-he-hit-teen-after-political-argument-north-dakota/#text=Cayler 20Ellingson2C20182C20was20struckaccident20that20resulted20in20death](http://www.cbsnews.com/news/shannon-brandt-vehicular-homicide-cayler-ellingson-says-he-hit-teen-after-political-argument-north-dakota/#text=Cayler%20Ellingson%2018%20was%20struck%20that%20resulted%20in%20death) [perma.cc/5DRE-FCES]; *Contra North Dakota Man Pleads Guilty to Fatal Hit-and Run in Case That Drew Political Attention*, CBS (May 19, 2023, 5:20 AM), www.cbsnews.com/minnesota/news/north-dakota-man-pleads-guilty-to-fatal-hit-and-run-in-case-that-drew-political-attention-3/#text=The20case20drew20attention20of20a20Republican20extremist20group [perma.cc/6K3C-75Q5] (explaining that Brandt who initially told law enforcement that he ran over Ellingson due to a heated political argument, was later disputed by investigators saying the disagreement between Brandt and Ellingson was not political).

3. Adam Sabes, *Shannon Brandt Known By Neighbors For Booze-Fueled ‘Rampages,’ Being ‘Nuts His Whole Life’*, FOX NEWS (Sep. 24, 2022, 5:33 PM EDT), www.foxnews.com/us/shannon-brandt-known-neighbors-booze-fueled-rampages-being-nuts-whole-life [perma.cc/SP5H-44XN].

4. Heath Alterisio, *Former State Street Exec. Accused of Multiple Rapes Released on \$200K Bail*, BOS. NEWS (Sept. 29, 2022), www.boston.com/news/crime/2022/09/29/former-state-street-exec-accused-of-multiple-rapes-released-on-200k-bail/ [perma.cc/C3CJ-82U4]. As part of Cheung’s bail conditions, he “must remain in Massachusetts, surrender his passport, stay away from any accusers or witnesses, and wear a GPS monitoring bracelet.” *Id.*

5. *Id.*

6. *Stories from a Broken Bail System*, ACLU MICH., www.aclumich.org/

the choice of going to jail until she received a hearing date, or come up with \$10,000 for bail.⁷ Preston did not have the financial resources to make bail and as a result was put in jail. Five days later, Preston went into labor.⁸ When the jail staff refused to call an ambulance, Preston had no choice but to give birth on a mat lying on the jailhouse floor.⁹

These three stories above reveal that despite the wide range of crimes that were committed, the determining factor to secure the pretrial release of a murderer, a rapist, and a traffic violator was money.¹⁰ While Shannon Brandt and Ivan Cheung were charged with violent crimes, they were both released because they had the means to pay their bail.¹¹ In contrast, Jessica Preston who was arrested for a non-violent crime remained in pretrial detention because she could not afford to pay her way out.¹²

Ending a decades long system that bases someone's freedom off of access to money requires collective collaboration between advocates across political lines who are ready to implement change.¹³ On January 22, 2021, Illinois Governor JB Pritzker signed into law the Safety, Accountability, Fairness and Equity Today Act, otherwise known as the SAFE-T Act ("Act").¹⁴ Within the SAFE-T Act is the Pretrial Fairness Act ("PFA") which eliminated cash bail in Illinois.¹⁵ While states like California and New Jersey have

en/stories-broken-bail-system#Jessica [perma.cc/KYF5-RYPY] (last visited Jan. 9, 2023).

7. *Id.*

8. *Id.*

9. *Stories from a Broken Bail System*, *supra* note 6. Both Jessica Preston and her child survived the delivery, but the physical, mental, and emotional damage continues to impact their lives. Nick Wing, *A Woman Gave Birth on a Jail Cell Floor After Being Locked up for a Driving Offense*, HUFFPOST (Feb. 8, 2017), www.huffpost.com/entry/macomb-county-jail-birth_n_589a25e4e4b09bd304be42a7 [perma.cc/VS5T-4B7G]. While this was Preston's first driving infraction, Preston had "a history of drug arrests and outstanding warrants for failure to appear in court." *Id.*; *Stories from a Broken Bail System*, *supra* note 6. Regardless of her high flight risk and likely failure to appear in court, if Preston had more money, she would have been released that day. *Id.*

10. Lambe, *supra* note 1; Alterisio *supra* note 4

11. Lambe, *supra* note 1; Alterisio, *supra* note 4.

12. *Stories from a Broken Bail System*, *supra* note 6.

13. Devin Taseff, *The Illinois Bail Reform Act of 2017: Roadmap to Reform or Reform in Name Only?*, 38 N. ILL. U. L. REV. 528, 529 (2018) (discussing how posting cash bail in exchange for freedom until trial is a foundational staple of the American criminal justice system that can be traced back to the Anglo-Saxon common law system).

14. Jessica Reichert et al., *The 2021 SAFE-T Act: ICJIA Roles and Responsibilities*, ILL. CRIM. JUST. INFO. (July 15, 2021), www.icjia.illinois.gov/researchhub/articles/the-2021-safe-t-act-icjia-roles-and-responsibilities [perma.cc/4KNG-CM24].

15. S.B. 4025, 101st Gen. Assemb., Reg. Sess. (Ill. 2019); *Pretrial Implementation Task Force*, ILL. CTS., www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/WF5Y-27VB] (last visited Aug. 29, 2023). 725 ILL. COMP. STAT. 195/2. (2023).

passed similar cash bail reform laws, Illinois is the first state in the country to abolish the cash bail system entirely.¹⁶ This bill affirms the notion that people accused of crimes are considered innocent until proven guilty and their release is not based on their access to monetary funds.¹⁷

Those in opposition claim the SAFE-T Act will be the beginning stages of *The Purge*, the infamous movie where all crime is legal for 12 hours.¹⁸ Critics against the Act have promoted misinformation leading many to believe that violent people will be released into the neighborhoods and cause chaos among communities.¹⁹

This comment explores how the implementation of the PFA does not impose a threat to the safety of Illinois residents, but rather how the PFA will pave the way for a more just court system that other states should follow. Part II discusses the history of pretrial detention and cash bail in the United States. This will lead to how cash bail became a faulty and unreliable metric to determine whether someone could be a danger to their community and whether they pose a flight risk. Part III discusses the development leading to the PFA in Illinois. Part IV proposes that the PFA should grant judicial decision-making power to the Restorative Justice Community Courts and further explains how this expansion will lead to safer communities. While the Act will impact the entire state of Illinois, most of the analysis for this comment is focused towards Cook County.

II. BACKGROUND

This section will outline the history of pretrial detention from Thirteenth Century England and what led to the development of the PFA in 2021. First, this section details how the interpretation of the

16. Mawa Iqbal, *Illinois Will Become the First State to Do Away with Cash Bail*, NAT'L PUB. RADIO (Dec. 28, 2022), www.npr.org/2022/12/28/1145763929/illinois-will-become-the-first-state-to-do-away-with-cash-bail [perma.cc/XS3N-TJYG]; John O'Connor, *Illinois Is First State To Eliminate Cash Bail, A Penalty Affecting Low-Income Communities Most*, KCRA3 (Jul 18, 2023, 6:03 PM) www.kcra.com/articl/illinois-first-state-to-eliminate-cash-bail/44582623 [perma.cc/BES2-5FT2].

17. Jason Asenso, *Pretrial Fairness Act Would Make Illinois the First State to Abolish Cash Bail*, INJUST. WATCH (Nov. 12, 2020), www.injusticewatch.org/news/2020/pretrial-fairness-act-bill-end-cash-bail-illinois/ [perma.cc/U4K7-GVJU] (last visited Oct 29, 2022).

18. See MJC Matthew (@officialmjcmatthew), *I Can't Believe This Is Happening*, TIKTOK (Sep. 15, 2022), [perma.cc/V7FJ-Z2FT] (describing how a "real life purge" is starting as a result of the passing of the SAFE-T Act in Illinois). Cf. Pritzker 'Sets Record Straight' On Safe-T Act Which Ends Cash Bail In Illinois, FOX 32 CHICAGO (Sep. 14, 2022, 5:22 PM), www.fox32chicago.com/news/pritzker-sets-record-straight-on-safe-t-act-which-ends-cash-bail-in-illinois [perma.cc/W8GY-55KF].

19. *Could SAFE-T Act Make It Harder for Accused Violent Criminals to Be Detained?*, NBC CHI. (Sept. 23, 2022, 5:14 PM), [perma.cc/32JK-4RVH].

Constitution influenced cash bail in the United States and how different states have developed and reformed their bail system. Next, it addresses how pretrial detention became the norm in the United States and not the exception. Finally, it will discuss how Illinois led the charge in its bail reform laws to lead up to the approval of the PFA.

A. History of Pretrial Detention

1. Colonial America

The history of pretrial detention can be traced back to Thirteenth Century England.²⁰ Dating back to 1275, “the right to bail meant a right to be released, and the denial of bail meant detention.”²¹ Merriam Webster defines bail as “the temporary release of a prisoner in exchange for security given for the prisoner’s appearance at a later hearing.”²² Under this system, pretrial release was the standard and detention the “carefully limited exception.”²³

Colonial America adopted this same method of securing pretrial release.²⁴ Over time, colonial judges began looking at additional factors before granting pretrial release such as: the charge, the evidence both for and against the accused, and the character of the accused.²⁵ In 1641, the Bodies of Liberties was published establishing the first legal code in New England.²⁶ This document contained a list of liberties intended to be used as a guide for the General Court.²⁷ Many of the liberties listed appeared later on in the Bill of Rights.²⁸

20. Timothy R. Schnacke et al., *The History of Bail and Pretrial Release*, 16-17 PRETRIAL JUST. INST. (Sept. 23, 2010), cdpsdocs.state.co.us/ccjj/Committees/BailSub/Handouts/HistoryofBail-Pre-TrialRelease-PJI_2010.pdf [perma.cc/5GCJ-YNGZ].

21. Robbin Stuckert et al., *Illinois Supreme Court Commission on Pretrial Practices Final Report April 2020*, 15, ILL. CTS. www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/VMM8-WSPN] (last visited Aug. 30, 2023).

22. *Bail*, MERRIAM WEBSTER, www.merriam-webster.com/dictionary/bail [perma.cc/W62H-PCD7] (last visited Aug. 30, 2023).

23. *United States v. Salerno*, 481 U.S. 739, 755 (1987); see also *Pretrial Release and Detention: Legal Principles*, APPR (Aug. 2021) cepp.com/wp-content/uploads/2021/08/APPR-Pretrial-Legal-Principles-Handout-August-2021.pdf [perma.cc/XB9T-TFR9] (explaining how the “right to physical liberty” is a core foundation of the Constitution and as such, an individual has a right to freedom before conviction).

24. Stuckert et al., *supra* note 21, at 16.

25. *Id.*

26. Nathaniel War, *Massachusetts Body of Liberties*, MASS GOV., www.mass.gov/service-details/massachusetts-body-of-liberties [perma.cc/8CPJ-GUF8] (last visited Jan. 8, 2023).

27. *Id.*

28. *Id.*

2. *Bodies of Liberties*

The Bodies of Liberties created an unequivocal right to bail to all persons, except those charged with a capital crime.²⁹ Nineteen states adopted this traditional constitutional right to bail following the language adopted in New England case law stating “[a]ll prisoners shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption is great.”³⁰ In short, this provision requires that every defendant accused of an offense, other than a capital crime, is entitled to have a court set conditions of release.³¹ In the late 1800’s, frontiers began to expand and people became reluctant to assume responsibility when they were accused, posing greater flight risks.³²

3. *Bail and the Constitution*

The Eighth Amendment to the United States Constitution states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”³³ The Supreme Court held in 1951 that the traditional right to freedom before conviction permits “the preparation of a defense and serves to prevent the infliction of punishment prior to conviction.”³⁴ When the first major US bail reform bill was passed in 1966, it reinforced the idea that the goal of cash bail was to ensure court appearance, and the basis of the law favors release pending trial.³⁵

After crime rates started going up across the US, pretrial detention became a focus and means to address community safety

29. *Massachusetts Body of Liberties*, §18 Hanover Historical Texts Project, (1641) history.hanover.edu/texts/masslib.html [perma.cc/A6QH-3Q86]; *Crimes and Punishment*, ENCYCLOPEDIA, www.encyclopedia.com/history/news-wires-white-papers-and-books/crimes-and-punishment [perma.cc/XDW5-YTUK] (last visited Oct. 29, 2022). Plymouth’s laws of 1671 created twenty-one capital offenses including cursing your parents, profaning the Sabbath, sodomy, and rape. *Id.*

30. *Commonwealth v. Daniel George Talley*, 265 A.3d 485 (Pa. 2021); (quoting PA. CONST. art. I §14). This case addressed three core tenets of the Pennsylvania criminal justice system later adopted by other states across the United States: “the importance of the presumption of innocence, the distaste for the imposition of sanctions prior to trial and conviction, and the desire to give the accused the maximum opportunity to prepare their defense.” *Id.*

31. *Id.*

32. Stuckert et al., *supra* note 21, at 16.

33. U.S. CONST. amend. VIII.

34. *Stack v. Boyle*, 342 U.S. 1, 6-7 (1951) (holding monetary bail set at an unreasonably high amount that goes beyond fulfilling the purpose of assuring court appearing is considered “excessive” under the Eighth Amendment).

35. Marie VanNorstrand et al., *Our Journey Toward Pretrial Justice*, 71 FED. PROBATION J. at 2 (Sept. 2007), www.uscourts.gov/federal-probation-journal/2007/09/our-journey-toward-pretrial-justice [perma.cc/AU4N-Y2FR].

prompting the need for another reform act.³⁶ Congress enacted the Bail Reform Act of 1984 which permitted public safety to be used as a reason for limiting an individual's pretrial freedom and due process.³⁷

The Bail Reform Act of 1984 was put to the test in the 1987 case *United States v. Salerno*.³⁸ The defendants Anthony Salerno and Vincent Cafaro were arrested after being indicted for numerous counts of racketeering activity including: fraud, extortion, gambling, and conspiracy to commit murder in addition to several other federal crimes.³⁹ The United States District Court for the Southern District of New York granted the Government's motion for pretrial detention under the Bail Reform Act of 1984 finding the defendants were potentially dangerous to the community.⁴⁰ Those in opposition argued that the Act violated an individual's Fifth Amendment right to due process.⁴¹ The issue before the court was whether the Bail Reform Act of 1984 was facially unconstitutional because it allowed states to hold someone in pretrial detention without due process.⁴²

The Supreme Court held that the Government's regulatory interest in community safety can sometimes outweigh an individual's liberty interest.⁴³ The opinion of the Court provided by Chief Justice Rehnquist emphasized that the federal statute limited the cases in which detention could be sought for the most serious crimes.⁴⁴ Furthermore, in seeking pretrial detention, there must be specific procedures and criteria in which a judicial officer can use to evaluate the risk of an individual being dangerous to a community.⁴⁵ While the Court found that the government's regulatory interest in community safety outweighed an individual's liberty interest, the Court strongly asserted that in American society, "liberty is the norm and detention prior to trial or without trial is the carefully limited exception."⁴⁶ After the Supreme Court

36. Bureau of Just. Stats., *Pretrial Release and Detention: The Bail Reform Act of 1984*, U.S. DEPT. OF JUST. (Feb. 1988), www.bjs.ojp.gov/library/publications/pretrial-release-and-detention-bail-reform-act-1984 [perma.cc/3EH6-RN2N]. This act substantially altered the basis for judicial decisions on pretrial release and detention of defendants. *Id.* The results of the report suggested that pretrial detention had largely been used as an alternative to bail as a means of holding defendants. *Id.* Roughly two-thirds of defendants who were held until trial after the Act were held on pretrial detention, compared with 7% before. *Id.*

37. Stuckert et al., *supra* note 21, at 17.

38. *Salerno*, 481 U.S. at 739.

39. *Id.* at 743.

40. *Id.*

41. U.S. CONST. amend. V.

42. *Salerno*, 481 U.S. at 739.

43. *Id.* at 748.

44. *Id.* at 750.

45. *Id.*

46. *Id.* at 739.

upheld the Bail Reform Act of 1984 in *Salerno*, Illinois adopted a similar statute permitting defendants to be denied pretrial release based on community safety concerns.⁴⁷

B. Statistics on Pretrial Detention

1. Pretrial Detention is the Norm, Not the Exception.

Access to money has been the determining factor for someone to be released pretrial.⁴⁸ It is the proverbial “get out of jail free card” offered to those who can afford it, regardless of a person’s flight risk or danger they present to their community.⁴⁹ Despite the Supreme Court establishing that detaining people pretrial is the “carefully limited exception”, the pretrial population has significantly grown across the United States.⁵⁰ Since the Bail Reform Act of 1984 took effect, there has been a 430% increase in the number of individuals detained pretrial in the United States between 1970 and 2015.⁵¹

Further, statistics on pretrial release indicate a disparity across racial and socio-economic backgrounds.⁵² The United States Commission on Civil Rights reported that Black and Latinx individuals have higher rates of pretrial detention than any other demographic based not on their potential harm to a community, but inability to pay bail.⁵³ In highlighting disparities across different

47. Stuckert et al., *supra* note 21, at 17.

48. Lorelei Laird, *Court Systems Rethink the Use of Financial Bail, Which Some Say Penalizes the Poor*, AM. B. ASS’N J. (Apr. 1, 2016, 4:40 AM), www.napco4courtleaders.org/2016/04/court-systems-rethink-the-use-of-financial-bail-which-some-say-penalizes-the-poor/ [perma.cc/WN9Q-JLBC].

49. See generally Cassie Miller, *The Two-Tiered Justice System: Money Bail in Historical Perspective*, S. POVERTY L. CTR. (June 6, 2017), www.splcenter.org/20170606/two-tiered-justice-system-money-bail-historical-perspective [perma.cc/45TS-2YUA] (highlighting the damaging impact of the cash bail process through the stories of Sandra Bland and Kalief Browder and how their deaths reveal a darker side of the debate surrounding cash bail reform).

50. Leon Digard, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, VERA (Apr. 2019), www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf [perma.cc/B5XN-YQUS].

51. Norma Cantu, *The Civil Rights Implication of Cash Bail*, U.S. COMM’N ON CIV. RTS., at ii (Jan. 20, 2022), www.usccr.gov/reports/2021/civil-rights-implications-cash-bail [perma.cc/5WAL-5AXH].

52. *Id.* at 232.

53. *Id.* at 45. The data indicates that more than 60% of inmates are detained pretrial, with over 30% remaining in jail “solely because they could not afford to pay bail.” John Matthews II and Felipe Curiel, *Criminal Justice Debt Problems*, 44 AM. BAR ASS’N (Nov. 30, 2019), www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/criminal-justice-debt-problems/. Currently, there are no national databases on specific pretrial detention rates, bail or sentencing for defendants accused of committing a misdemeanor, as the Bureau of Justice Statistics does not collect these

demographics, this information can be used to reduce racial and other systemic disparities and ensure programs and practices are constantly being improved.⁵⁴

2. *Methods to Address Misdemeanor Violations*

FBI data shows that about 80% of the over 10 million arrests each year are for misdemeanor violations as opposed to felony charges.⁵⁵ The pretrial incarceration rate of 49 per 100,000 residents in rural counties grew to 265 per 100,000 residents between 1976 and 2013 showing a 436% increase.⁵⁶ The Vera Institute of Justice suggests that one of the main causes of this recent growth in pretrial detention rates can be traced to local criminal justice systems having fewer resources such as: court practitioners, administrators, judges, prosecutors, public defenders, investigators etc. in addition to a lack of pretrial service programs, diversion programs and community-based services.⁵⁷ Further, the use of cash bail between 1992 and 2006 “increased by 32%, and by 2015, 61% of all pretrial releases included financial conditions.”⁵⁸

In an effort to address the harmful rates of pretrial detention and recidivism rates in Illinois, Chief Judge Timothy Evans of the Circuit Court of Cook County created the Restorative Justice Community Courts (“RJCC”), a program aimed at helping offenders with non-violent misdemeanors have their case dismissed and offense expunged.⁵⁹ RJCC takes a holistic approach to achieving justice and is “designed to get to the root of the problem and address

statistics. Paul Heaton et. al., *The Downstream Consequences of Misdemeanor Pretrial Detention* 69 STAN. L. REV. 711, 732 (2017). *But see* FBI, *FBI Releases 2018 Crime Statistics* (Sept. 30, 2019), www.usccr.gov/files/2022-01/USCCR-Bail-Reform-Report-01-20-22.pdf. [perma.cc/ZFN7-4S4F] (recognizing that this hole in research exposes a larger problem in addressing pretrial injustice and the efficacy of the current regulations). Proper data collection and reporting is crucial to improve any quality of information in addressing tangible solutions for pretrial detention. *Id.* at 90.

54. Cantu, *supra* note 51, at ii.

55. Robert C. LaFountain et. al., *Examining the Work of State Courts: An Analysis of 2008 State Court Caseloads*, NAT'L CTR. FOR STATE CTS. 47 (2010), www.courtstatistics.org/_data/assets/pdf_file/0022/29803/2008-EWSC.pdf [perma.cc/WZK5-QGEW].

56. *Id.* at 12.

57. Jacob Kang-Brown and Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America*, VERA INST., at 18, 20 (June 2017), www.vera.org/downloads/publications/out-of-sight-growth-of-jails-rural-america.pdf. [perma.cc/577L-AGCK].

58. Alexa Van Brunt & Locke Bowman, *Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What's Next*, 108 J. CRIM. L. & CRIMINOLOGY 701, 740 (2018).

59. *Restorative Justice Community Courts*, COOK COUNTY COURT www.cookcountycourt.org/ABOUT-THE-COURT/Restorative-Justice-Community-Courts [perma.cc/HD8T-V4RU].

it rather than just punish the individual.”⁶⁰ The practice of RJCC is to focus on educating offenders on how to build tools, skills, and acquire resources and training to be a beneficial and contributing member of their community.⁶¹ The RJCC is one of many unique ways Illinois strives to make the criminal justice system more just and provide space specifically for those who commit misdemeanors to be rehabilitated and avoid unnecessary detention.⁶²

3. *The Pretrial Process*

Understanding the impact of cash bail starts with an understanding of the possible outcomes an individual has if they are arrested.⁶³ Once an officer arrests an individual, that individual is charged, booked and sent for a bond hearing.⁶⁴ At the bond hearing, there are a few possible options of what could happen.⁶⁵

In Cook County, there are three main types of bonds.⁶⁶ The

60. Judge Beatriz Santiago, *The Talking Piece: The Avondale Restorative Justice Community Court Newsletter*, COOK COUNTY COURT (2022), [www.cookcountycourt.org/Portals/0/Chief%20Judge/RJCC/THE%20AVONDAL E%20RESTORATIVE%20JUSTICE%20COMMUNITY%20COURT%20NEWS LETTER%20SUMMER%202022.pdf?ver=jfalXMf17yW6kwqubUEI1Q%3d%3d \[perma.cc/AMV2-FFC8\]](http://www.cookcountycourt.org/Portals/0/Chief%20Judge/RJCC/THE%20AVONDAL E%20RESTORATIVE%20JUSTICE%20COMMUNITY%20COURT%20NEWS LETTER%20SUMMER%202022.pdf?ver=jfalXMf17yW6kwqubUEI1Q%3d%3d [perma.cc/AMV2-FFC8]). “Restorative Justice is an alternative form of justice rooted in the belief that repairing harm, building empathy, and restoring relationships is a better way to prevent, deter, and respond to crime.” Timothy C. Evans, *Restorative Justice Community Courts Booklet*, STATE OF ILL. CIR. CT. OF COOK CNTY. 2 (2020), [www.cookcountycourt.org/Portals/0/Chief%20Judge/RJCC/Restorative%20Justice%20Booklet.pdf?ver=01M69g8Ey-5QMLMcE6UVEQ%3d%3d . \[perma.cc/QJU5-TWQB\]](http://www.cookcountycourt.org/Portals/0/Chief%20Judge/RJCC/Restorative%20Justice%20Booklet.pdf?ver=01M69g8Ey-5QMLMcE6UVEQ%3d%3d . [perma.cc/QJU5-TWQB]) (last visited Nov. 18, 2023).

61. *Id.* The RJCC provides adults between 18 and 26 the opportunity to have their non-violent felony or misdemeanor charges dismissed and their court record expunged. *Id.*

62. *See Problem-Solving Courts*, COOK COUNTY COURT [www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts \[perma.cc/HPG9-B7SV\]](http://www.cookcountycourt.org/ABOUT-THE-COURT/Problem-Solving-Courts [perma.cc/HPG9-B7SV]) (last visited Nov. 18, 2023).

63. Bernadette Rabuy & Daniel Kopf, *Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time*, PRISON POLY INITIATIVE (May 10, 2016), [www.prisonpolicy.org/reports/incomejails.html \[perma.cc/T42X-7DK2\]](http://www.prisonpolicy.org/reports/incomejails.html [perma.cc/T42X-7DK2]).

64. Illinois State Police, Office Code Index, 7 (effective Jul 1, 2020) [isp.illinois.gov/StaticFiles/docs/LawEnforcementResources/Offense%20Code%20Index%20\(Effective%20July%20201,%202020\).pdf](http://isp.illinois.gov/StaticFiles/docs/LawEnforcementResources/Offense%20Code%20Index%20(Effective%20July%20201,%202020).pdf); *Accord.* Secretary of State, 2022 Offense Code Index, 4 (2022) https://www.ilsos.gov/publications/pdf_publications/sos_dop10.pdf. Prior to the PFA taking effect, not every arrestee was sent to bond hearings. If a misdemeanor or petty offense was committed, the Illinois Supreme Court had predetermined bond amounts the arrestee could post for those offenses. *Id.* The only exception was misdemeanor domestic battery, violations of orders of protections, “or any similar violation of a local ordinance.” *Id.*

65. *Id.*

66. Kiran Misra, *A History of Bail Reform*, S. SIDE WKLY. (Jan. 31, 2018), [www.southsideweekly.com/a-history-of-bail-reform/ \[perma.cc/V7DZ-2RPS\]](http://www.southsideweekly.com/a-history-of-bail-reform/ [perma.cc/V7DZ-2RPS]).

first is a Recognizance Bond (I-Bonds).⁶⁷ I-Bonds assign a detained person a monetary amount if they fail to appear in court.⁶⁸ Second, is a Cash Bond (C-Bonds).⁶⁹ C-Bonds require detained individuals to pay a specified amount in order to be released pretrial.⁷⁰ Third, is a Detainer bond (D-Bonds) which requires the defendant to pay 10% of the total amount of bond specified by the judge in order to be released pretrial.⁷¹ The judge can order one of the three types of bonds described above or could condition the release by other means.⁷²

If the judge decides to set a bail amount, 10% of that amount will need to be paid in order to be released.⁷³ Once the condition is established or 10% of bail is paid, the individual will be released pending their trial.⁷⁴ If the accused cannot afford to post bail, similar to Jessica Preston's story, the individual will be detained in jail until trial.⁷⁵

Another option is for the judge to deny the accused all forms of conditional release, and the individual will be detained pretrial.⁷⁶ With this option, the judge has determined that the accused individual poses a high flight risk and/or threat to the community at large.⁷⁷ If individuals are denied cash bail, they will be held in pretrial detention until their trial is scheduled and a judgement is given.⁷⁸ With this system set in place, those with financial means can pay for their own freedom, while others remain incarcerated

67. *Id.* I-Bonds do not condition your pretrial release based on a cash amount. *Going to Bond Court*, ILL. LEGAL AID ONLINE (Aug. 5, 2022), www.illinoislegalaid.org/legal-information/going-bond-court [perma.cc/N6AS-QETJ].

68. Misra, *supra* note 66.

69. *What is the Bail Bond. System, and How Can I Get Out of Jail?* ILL. DEF. (Apr. 9, 2019), ildefense.com/what-is-the-bail-bond-system-and-how-can-i-get-out-of-jail/. [perma.cc/3MT3-U9YH]

70. Misra, *supra* note 66.

71. *Id.*

72. *Id.*

73. 725 ILL. COMP. STAT. 5/110-7 (2023).

74. *Id.* The only national data on pretrial detention comes from the Bureau of Justice Statistics' Felony Defendants in Large Urban Counties. Brian Reaves, *Felony Defendants in Large Urban Counties*, BUREAU OF JUST. STAT. (Dec. 2013), bjs.ojp.gov/library/publications/felony-defendants-large-urban-counties-2009-statistical-tables [perma.cc/AU2Z-5ZAY]. In 2009, 34% of defendants were detained pretrial because they could not post money bail. *Id.*

75. *Stories from a Broken Jail System*, *supra* note 6.

76. Rabuy & Kopf, *supra* note 63. There are a small number of defendants who are denied bail completely. *Id.* This typically happens when a court finds that an individual is likely to commit an offense if released or is a flight risk. *Id.*

77. Jonathan Franklin, *Illinois Supreme Court Rules in Favor of Ending The State's Cash Bail System*, NPR (Jul. 18, 2023, 5:18 PM) www.npr.org/2023/07/18/1188349005/illinois-ends-cash-bail-system-state-supreme-court#:~:text=Under%20the%20new%20law%2C%20judges,required%20to%20stay%20in%20jail [perma.cc/CXZ2-JA2E].

78. 725 ILL. COMP. STAT. 5/110-1.5 (e) (2023).

regardless of their guilt or innocence.⁷⁹

In addition to the increase of cash bail across the United States, the cash bail industry has become highly profitable.⁸⁰ Many states across the country have allowed corporations to “profit from people who are legally innocent and at risk of being incarcerated pretrial.”⁸¹ People who are arrested can work directly with commercial bail agents who initiate the contractual relationship between the person arrested and the bail company who enforces the bail contract.⁸² “In exchange for a nonrefundable premium—a fee typically equal to 10 percent to 15 percent of a cash bail assignment”, an agreement is established between the bail agent and the court to pay the arrested person’s bail if they fail to appear on their court date.⁸³ While many states continue to use bail companies and commercial bail bondsmen, Illinois recognized the problematic nature of the commercial money bond system and abolished the practice in 1963.⁸⁴

79. Rabuy & Kopf, *supra* note 63.

80. *Selling Off Our Freedom*, ACLU (May 1, 2017), www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system [perma.cc/4MQJ-VHQ4]. “Across the 95 Illinois counties that provided data, bond payments processed and disbursed in criminal cases totaled \$153.2 million in 2016.” *Elimination of Cash Bail in Illinois: Financial Impact Analysis*, CIVIC FED’N (Sept. 2021), www.civicfed.org/eliminationofcashbailinillinois [perma.cc/4BR7-XKKF] (explaining that the amount of \$153.2 million decreased to \$121.9 million in 2020). Out of the majority of total bond disbursements, “70% were applied to satisfy court ordered fees, 10% were applied to satisfy fines and restitution payments, and the remaining 20% were refunded to the person who paid the bond or paid to private attorneys that represented the defendant.” *Id.*

81. *Selling Off Our Freedom*, ACLU (May 1, 2017), www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system [perma.cc/FU4X-Q36B]. The for-profit bail industry has profited from the criminal justice system by targeting low-income, and Black and Brown communities, regardless of the individual being guilty or innocent. *Id.* The ACLU Campaign for Smart Justice reported that many defendants pled guilty “regardless of the case against them and suffer the long-running consequences” as a result. *Id.* To avoid pleading guilty for something they did not do, many individuals and family members are convinced to enter into an exploitive arrangement with bail bond corporations that often charge a “nonrefundable fee of 10% of the full bail amount” and are subsequently “trapped in a cycle of debt and fees related to their payment to the bond company.” *Id.*

82. Allie Preston, *Fact Sheet: Profit Over People: Inside the Commercial Bail Bond Industry Fueling America’s Cash Bail Systems*, AM. PROGRESS (July 6, 2022), www.americanprogress.org/article/fact-sheet-profit-over-people/ [perma.cc/34YQ-QYQQ].

83. *Id.*

84. *Creation of the Office of Statewide Pretrial Services*, ILL. CTS. www.illinoiscourts.gov/statewide-pretrial-system [perma.cc/H648-HBAN] (last visited Jan 9, 2023).

4. *Illinois Pretrial Services Act*

In July of 1987, the Illinois Pretrial Services Act went into effect, “providing the legal framework for the pretrial process in Illinois.”⁸⁵ Under the adoption of the Pretrial Services Act, “Illinois created a foundational framework for the pretrial process” that included other factors, outside of money for pretrial release.⁸⁶ This process provided “a pivotal function in collecting and verifying information to be used by a judge in determining someone’s condition of release and created an oversight of compliance with all court conditions while awaiting trial.”⁸⁷

As cash bail and the lack of useful services to assist those detained pretrial continued to disproportionately affect poor, Black and Brown communities, the Illinois Supreme Court adopted a policy statement for pretrial services in April 2017, followed by the creation of the Supreme Court Commission on Pretrial Practices (“Commission”) in November 2017.⁸⁸ The Illinois Legislature recognized that the “decision making behind pretrial release shall not focus on a person’s wealth and ability to afford monetary bail but shall instead focus on a person’s threat to public safety or risk of failure to appear before a court of appropriate jurisdiction.”⁸⁹ In an effort to accomplish this, the Commission conducted a study to determine the most effective practices in each state, sought counsel from experts in pretrial reform, held meetings to hear concerns and input from stakeholders, and analyzed the main pretrial issues from academic professionals.⁹⁰

The result of the study led to the development of the Public Safety Assessment (PSA) tool.⁹¹ The PSA is an assessment that provides evidence-based information on the defendant to help judges gauge the risk that a defendant poses to their community.⁹² The PSA gathers information to predict the likelihood that the defendant will commit a crime while released prior to trial and assess their flight risk.⁹³ The PSA is meant to function as a tool to assist judges and not replace the judicial analysis and discretion a judge needs to exercise prior to making a decision.⁹⁴ “Judges continue to be the stewards of our judicial system and the ultimate

85. *Id.*

86. Stuckert et al., *supra* note 21, at 17.

87. *Id.*

88. *Id.* at 5.

89. Stuckert et al., *supra* note 21, at 17; 2017 Ill. Pub. Acts. 100-0001 (“Illinois Bail Reform Act”).

90. Stuckert et al., *supra* note 21, at 5.

91. *Id.* at 17.

92. *Public Safety Assessment: Risk Factors and Formula*, LAURA & JOHN ARNOLD FOUND. (Nov. 7, 2018), napco4courtleaders.org/wp-content/uploads/2018/11/PSA-Risk-Factors-and-Formula [perma.cc/GDN9-LJVE].

93. *Id.*

94. *Id.*

arbiters of the conditions that should apply to each defendant.”⁹⁵

5. *Development of the SAFE-T Act*

For many Americans who do not present a danger to society, money is the deciding fact in their pretrial freedom.⁹⁶ This leads to part of the problem the Illinois criminal justice system was facing.⁹⁷ Those who were poor and potentially dangerous would likely be detained, but those who were poor and posed little to no threat could also be detained.⁹⁸ The cash bail system became an inaccurate and unjust metric to determine whether someone should be detained.⁹⁹ The growing trend of the elimination of cash bail sparked a nationwide movement across the country.¹⁰⁰ Those in support of the movement argued that our justice system should move towards a more fair and equitable system where those in poverty or with limited means are not incarcerated solely based on their inability to post bail.¹⁰¹ On the other hand, those against the elimination of cash bail argue that criminals would be emboldened if cash bail was eliminated and would be more likely to commit violent crimes.¹⁰²

In recognizing the disparate impact cash bail was having on classes of people, Governor Pritzker signed into law, the Illinois Safety, Accountability, Fairness and Equity Today Act, otherwise known as the SAFE-T Act.¹⁰³ This Act reforms many aspects of the justice system including: “pre-arrest diversion, policing, pretrial, sentencing and corrections.”¹⁰⁴ The Illinois Criminal Justice Information Authority (ICJIA) is responsible for the implementation process of the Act’s provisions and highlight research and updates to fill in the holes of pretrial detention and

95. *Id.*

96. *Id.*

97. *Id.*

98. Rabuy & Kopf, *supra* note 63, at 4.

99. The Civic Federation, *Elimination of Cash Bail in Illinois: Financial Impact Analysis*, CIV. FED. FOR THE ILL. SUP. CT. 8 (Sept. 2021), www.civiced.org/EliminationofCashBailinIllinois [perma.cc/YQW6-S6LQ].

100. Rabuy & Kopf, *supra* note 63, at 1.

101. *Id.* at 18.

102. Mike Miletich, *Pritzker, Bailey Spar over SAFE-T Act*, 23 WIFR (Sept. 14, 2022, 5:50 PM), www.wifr.com/2022/09/14/pritzker-bailey-spar-over-safe-t-act/ [perma.cc/2QQN-7J7Q].

103. *Governor Pritzker Signs Safe-T Act Amendment*, ILL. GOV. (Dec. 6, 2022), www.illinois.gov/news/press-release.25766.html [perma.cc/D296-94U4]. Since Governor Pritzker signed the SAFE-T Act in 2021, there have been several amendments made to the Act. *Id.* The goal of the amendments was to clarify aspects of the Act, outline specific guidelines for trespassing, and strengthen the original intention of the Act, which is “to ensure that individuals who pose a risk to the community aren’t released from jail just because they are able to pay bail while people without financial means sit in jail regardless of whether they pose a risk at all.” *Id.*

104. Reichert et al., *supra* note 14.

policing practices.¹⁰⁵

Under the Pretrial Fairness provision of the SAFE-T Act, Illinois is the first state to completely abolish cash bail.¹⁰⁶ Detention will only be imposed when the defendant is charged with a violent crime, poses a specific real and present threat to a person, or has a high likelihood of willful flight.¹⁰⁷ In addition to cash bail being abolished, the Pretrial Fairness Act provision requires an updated notice to crime victims regarding pretrial hearing and a Pretrial Data Oversight board must be created under the administrative office of the Illinois courts.¹⁰⁸

The role of the Data Oversight Board is to “(1) identify existing pretrial data collection processes in local jurisdictions; (2) define, gather and maintain records of pretrial data from applicable criminal justice system agencies; (3) identify resources necessary to systematically collect and report data as defined in the SAFE-T Act; and (4) develop a plan to implement data collection processes sufficient to collect data as defined in the Act.”¹⁰⁹ While the SAFE-T Act requires many subcommittees to implement different parts of the Act, many questions remain as to how the implementation of the Act will be effective and how the Act will keep dangerous and high flight risk individuals detained.¹¹⁰

In pursuit of a more just system, the Act is silent regarding the overload of cases judges have to quickly decide on which made using cash bail more popular for prosecutors and judges.¹¹¹ Judges have minimal time to thoroughly look through each case, and prosecutors and defenders have minimal time to gather information and present their case before a bond hearing.¹¹² Additionally, the implementation of the PFA leaves many concerned that violent offenders will be released more quickly due to the lack of time given

105. *Id.*

106. *Id.*

107. 725 ILL. COMP. STAT. 5/110-2 (2023).

108. Pretrial Practices Data Oversight Board, *Preliminary Implementation Plan*, ILL. CTS. (July 1 2022), www.illinoiscourts.gov/News/1116/Pretrial-Practices-Data-Oversight-Board-releases-preliminary-report/news-detail/ [perma.cc/UH93-YE25]. In forming the Pretrial Data Oversight board, members of the board include: circuit court clerks, directors of the Sheriff's association, professors, probation court services directors, appellate defenders, professors of criminal justice, behavioral health administrators, deputy directors, and others.

Id.

109. *Id.*

110. David C.L. Bauer, *Police and Prosecutors Warn Consequences of Ending Cash Bail*, GOVERNING THE FUTURE OF STATES AND LOCALITIES (Sept. 8, 2022), www.governing.com/now/police-and-prosecutors-warn-consequences-of-ending-cash-bail [perma.cc/BQ53-FJRF].

111. See generally K. Babe Howell, *Prosecutorial Discretion and the Duty to Seek Justice in an Overburdened Criminal Justice System*, 27 GEO. J. LEGAL ETHICS 285, 291 (2014) (discussing the impact of overburdened and underfinanced court systems).

112. *Id.*

to each case and the heavy case load on judges' dockets.¹¹³

III. ANALYSIS

This section provides an in-depth analysis of the main components of the PFA as well as the common misconceptions surrounding the PFA. Section A will discuss the abolishment of cash bail and discuss the efficacy of different risk assessment tools. Section B will address how the PFA impacts domestic violence advocacy. Section C will discuss how law enforcement will be instructed to issue citations in lieu of making arrests for certain offenses and what that will look like in practice. Section D will discuss the Illinois Supreme Court's creation of the Data Oversight Board and Illinois Task Force and how these boards make the PFA unique among other bail reform laws. Section E puts the PFA to the test by examining how Darrell Brooks, a man released on bail in Wisconsin and poster child against the PFA, would have been analyzed through the PFA. Finally, section F will address arguments from critics of the PFA and how misinformation campaigns have skewed discussions concerning bail reform.

A. Cash Bail & Other Reform Measures

1. Cash Bail

The SAFE-T Act is over 700 pages long with many levels of reform covering various areas within the criminal justice system. One of the issues that has received pushback from law enforcement officials and sparked debate across social media is the PFA's abolishment of cash bail.¹¹⁴ The PFA can be found in section 2 of HB3653.¹¹⁵ The language of Section 2 of HB3653 has been updated excluding all requirements of bail bond or the deposit of cash bail as a condition to be released pretrial.¹¹⁶ This means that the conditions

113. *Id.*

114. 725 ILL. COMP. STAT. 195/2 (2023). In September of 2022, Kankakee State's Attorney, James Rowe filed several lawsuits against Illinois Attorney General Kwame Raoul, Governor J.B. Pritzker, and others, claiming the SAFE-T Act, specifically abolishing cash bail, was unconstitutional. *Rowe v. Raoul*, 2023 IL 129248, ¶7 (Ill. 2023). After a Kankakee judge ruled in Rowe's favor, the Illinois Supreme Court paused the January 1, 2023, roll-out date and agreed to hear the case. Benjamin Cox, *Illinois Supreme Court Puts Stay On Implementation of Pretrial Fairness Act*, WLDS (Dec. 31, 2022), wlds.com/illinois-supreme-court-puts-stay-on-implementation-of-pretrial-fairness-act/ [perma.cc/SG6N-EHFR]. On July 18, 2023, the Illinois Supreme Court rejected every argument from Rowe and held that the SAFE-T Act was constitutional. 2023 IL 129248 at ¶51.

115. Bill Status of HB3653, Ill. Gen. Assemb., Ch. 38 par. 1003-14-1.

116. *Id.*

of pretrial release can no longer include any form of cash bail.¹¹⁷

2. Risk Assessment Tools

With cash bail being abolished, courts will have to look to other means to determine whether a defendant should be detained pretrial. One tool that has been encouraged across states is a risk assessment tool.¹¹⁸ Under 110-5(b), Illinois courts are permitted (but not required) “to use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release.”¹¹⁹ While the tool cannot be the only basis to reject pretrial release, if a court uses it, the defendant is entitled to information including which tool was used, the scoring system, and factors that aided in determining release.¹²⁰ The defendant also “retains the right to challenge the validity of a risk assessment tool used by the court and to present evidence relevant to the defendant’s challenge.”¹²¹

B. Domestic Violence Advocacy

Critics against the PFA argue that the law overlooks victims of domestic violence.¹²² However, the PFA is a unique bill due to its

117. *Id.*

118. Amber Widgery, *Trends in Pretrial Release: State Legislation*, NAT’L CONF. OF STATE LEGIS. (Mar. 2015), [nicic.gov/resources/nic-library/all-library-items/trends-pretrial-release-state-legislation](https://www.nicic.gov/resources/nic-library/all-library-items/trends-pretrial-release-state-legislation) [perma.cc/666V-TC7H]; see also Sarah L. Desmarais et al., *Pretrial Risk Assessment Tools*, SAFETY + JUST. CHALLENGE (Feb. 2019), safetyandjusticechallenge.org/resources/pretrial-risk-assessment-tools-a-primer-for-judges-prosecutors-and-defense-attorneys/ [perma.cc/68DF-3P37] (explaining there are currently almost two dozen different risk assessment tools used across different states).

119. 725 ILL COMP. STAT. 5/110-5 (2023); Illinois Supreme Court Implementation Task Force, *Setting Release Conditions*, IL CTS. (Dec. 12, 2022), www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/QBB4-DG92]. The “Draft Flowcharts and Considerations” subheading contains a list of flowcharts such as the “Setting Release Conditions” laying out the foundation as to how law enforcement determines setting release conditions. *Id.*

120. *Pretrial Release: Risk Assessment Tools*, NCLS (June 20, 2022), www.ncsl.org/civil-and-criminal-justice/pretrial-release-risk-assessment-tools [perma.cc/RP8H-UF7G].

121. Alex Chohlas-Wood, *Understanding Risk Assessment Instruments in Criminal Justice*, BROOKINGS (June 19, 2020), www.brookings.edu/research/understanding-risk-assessment-instruments-in-criminal-justice/ [perma.cc/MA75-NSHC]; *Pretrial Release: Risk Assessment Tools*, *supra* note 120.

122. Jerry Nowicki, *Advocates Oppose Safe-T Act Changes Proposed by Democratic Senator*, NPR ILL. (Oct. 18, 2022), www.nprillinois.org/illinois/2022-10-18/advocates-oppose-safe-t-act-changes-proposed-by-democratic-senator [perma.cc/VJ38-JRGA]. Kaethe Morris Hoffer, Executive Director of the Chicago Alliance Against Sexual Exploitation, stated in a news conference that “[a] lot of legislators are trying to substitute being tough on crime for what we want, which is tough against violence. And the Pretrial Fairness Act allows

high participation and input from the Illinois Coalition Against Domestic Violence and other anti-sexual assault advocate organizations.¹²³ Under the newly passed law, the safety of survivors will be prioritized through the use of comprehensive, detailed hearings for those accused for the court to make informed decisions about pretrial release, factoring in the safety of the victim.¹²⁴ Victims will not be required to participate in the hearing, but they will always have the choice.¹²⁵ Attorneys and domestic violence advocates will be able to go to hearings on victims' behalf.¹²⁶

Under the PFA, victims will be adequately notified of when the court dates are taking place, when the pretrial hearings are happening, and their right to file an order of protection if they choose.¹²⁷ Additionally, any individual accused of domestic violence can be held up to forty-eight hours to allow prosecutors time to gather research and evidence on whether detaining the accused is necessary to keep the victim and the community safe.¹²⁸

The timing and provisions listed within the PFA are important because many experts and advocates have noted that lawmakers have needed to address the unduly fast timeline for pretrial hearings with little to no information given to the victims.¹²⁹ Further, prior to the implementation of the SAFE-T Act, those accused of domestic violence could more easily be released on bail if they had the monetary means to do so.¹³⁰ The Act will now require the defendant to be held if they pose a threat to an individual. With victims and survivors of domestic violence given a voice in the

our system to improve its capacity to really focus attention on violent crimes.” *Id.* The article discusses the components of a proposed amendment to the SAFE-T Act sponsored by Senator Scott Bennett which could have a negative impact on victims of domestic violence. See Jerry Nowicki, *Advocates Oppose SAFE-T ACT Changes Proposed by Democratic Senator*, CAPITAL NEWS ILL. (Oct. 18, 2022), www.capitolnewsillinois.com/NEWS/advocates-oppose-safe-t-act-changes-proposed-by-democratic-senator [perma.cc/KYK5-VQX2] (explaining how the proposed amendment removed language that required state’s attorneys to notify victims of upcoming detention hearings). Advocates have argued that this notice is necessary to ensure victims do not slip through the cracks during the administration process of the pretrial detention hearing. *Id.*

123. Nowicki, *supra* note 122.

124. Mike Miletich, *SAFE-T Act: Illinois Victim Advocacy Groups Ensured Protections for Survivors* WGEM (Sept. 28, 2022), www.wgem.com/2022/09/29/safe-t-act-illinois-victim-advocacy-groups-ensured-protections-survivors/ [perma.cc/3EUS-27DX].

125. *Id.*

126. *Id.*

127. 625 ILL. COMP. STAT. 5/6-209.1 (2023).

128. 730 ILL. COMP. STAT. 5/5-8A-4.1(a) (2023).

129. *Id.*

130. Rita Ocegüera, *Lack of Statewide Pretrial Data is an impediment to Reforms, Advocates Say*, INJUST WATCH, (Sept. 9, 2022), www.injusticewatch.org/news/2022/pretrial-data-oversight-board-delays/ [perma.cc/GPT3-5NCA].

creation, development, and implementation of the PFA, this will create better boundaries to protect current and future victims of domestic violence.

C. Citations in Lieu of Arrest

This next section discusses a highly contested and controversial aspect of the Act, which is the requirement of law enforcement issuing citations in lieu of custodial arrest.¹³¹ Under the SAFE-T Act, law enforcement will be required to issue citations “in lieu of custodial arrest [upon proper identification] for those accused of traffic, Class B, or C criminal misdemeanor offenses, or of petty and business offense, who pose no obvious threat to the community or any person, and who have no obvious medical or mental health issues that pose a risk to their own safety.”¹³²

Thus, any violent crime that causes or has caused harm against a person or property will be grounds for arrest but nonviolent crimes such as driving without insurance, speeding, or trespassing will receive a citation and specified court date.¹³³ The key word here is nonviolent. The Act does not prohibit officers from forcibly removing and arresting someone who criminally trespasses on private property if the officer believes that person poses a violent threat to themselves or the surrounding community.¹³⁴ Further, if

131. 725 ILL. COMP. STAT. 5/109-1(a-1) (2023).

132. *Id.* The Illinois Supreme Court Implementation Task Force created a flow chart for law enforcement officers and the general public to view when an arrest is permitted. Illinois Supreme Court Implementation Task Force, *Release by Citation*, IL CTS. (Dec. 12, 2022) <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b3d911ef-bd4e-4263-b86b-0b16fe032ac9/Pretrial%20Fairness%20Act%20Release%20by%20Citation%20Flowchart%20and%20Implementation%20Considerations.pdf> [perma.cc/E5SY-WZQN]. For example, if an individual commits a misdemeanor but cannot be properly identified or the individual persists “after issuance of a citation” law enforcement is permitted to arrest the individual and bring them in custody for booking. *Id.*

133. 720 ILL. COMP. STAT. 5/ Crim. Code of 2012. During a Pretrial Town Hall meeting, eleven categories of offenses were broken down in Illinois. *Pretrial Implementation Task Force Town Hall No. 2*, ILL. CTS. at 7 (July 21, 2022, 12:00 PM), www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/8ZQR-SKAA]. A Class M offense is a first-degree murder charge. *Felony Class and Mandatory Minimums*, Restore Justice www.restorejustice.org/legal-explainer/explainer-felony-class-mandatory-minimums/ [perma.cc/3UTC-SB5Z] (last visited Nov. 17, 2023). Class X offenses are just shy of first-degree murder including but not limited to: aggravated kidnapping, aggravated battery with a firearm, home invasion, aggravated criminal sexual assault, armed robbery, among others. *Id.* A Class 1 felony includes residential burglary, criminal sexual assault by force and second-degree murder. *Id.* Examples of Class 2 felonies in Illinois are arson, witness harassment, and kidnapping. *Id.* Class 3 felonies include aggravated battery in public property or places of worship, theft, and forgery. *Id.* Class 4 felonies include: domestic battery, obstruction of justice and theft under \$300. *Id.*

134. *Pretrial Implementation Task Force Town Hall No. 2*, *supra* note 133, at 7.

the trespasser persists after receiving a citation, law enforcement officers are permitted to arrest them.¹³⁵

1. Misdemeanor Classifications

Misdemeanors are grouped into Class A, Class B, or Class C.¹³⁶ All misdemeanors can be elevated to felony charges depending on whether the defendant has a previous conviction of the same crime or if the crime was committed in a certain location.¹³⁷ Class A misdemeanors include: shoplifting up to \$300, simple battery, violating a domestic violence protective order or anti-stalking no contact order.¹³⁸ Those accused of Class A misdemeanors can be taken into custody.¹³⁹ Class B misdemeanors include possessions of more than ten but less than thirty grams of cannabis, cyberbullying, and dumping garbage on someone else's property without consent.¹⁴⁰ Class C misdemeanors are the least serious crimes in Illinois including action that makes someone fear they may be hurt, illegal storage of a gun, and disorderly conduct.¹⁴¹

When it comes to determining arrests or citations under PFA, those who commit felonies and Class A crimes will still be arrested. However, those accused of nonviolent traffic offenses, Class B, or Class C misdemeanor offenses will be issued a citation rather than arrest unless the accused poses an obvious threat to themselves or the community.¹⁴² The key language in this provision is “those who

135. Illinois Supreme Court Implementation Task Force, Release by Citation, IL Cts. (Dec. 12, 2022) <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b3d911ef-bd4e-4263-b86b-0b16fe032ac9/Pretrial%20Fairness%20Act%20Release%20by%20Citation%20Flowchart%20and%20Implementation%20Considerations.pdf> [perma.cc/E5SY-WZQN].

136. 730 ILL. COMP. STAT. 5/5-4.5-85 (2009).

137. Paul Bergman, *Felonies, Misdemeanors, and Infractions: Classifying Crimes*, NOLO, www.nolo.com/legal-encyclopedia/crimes-felonies-misdemeanors-infractions-classification-33814.html [perma.cc/BVA8-3AQT] (last visited Oct. 29, 2022).

138. 720 ILL. COMP. STAT. §§ 5/12-3, 5/12-3.2, 5/12-3.4, 5/12-3.9, 5/16-1, 5/16-25 (2021); 730 ILL. COMP. STAT. §§ 5/5-4.5-55, 5/5-4.5-85 (2020). Class A misdemeanors include less than a year in jail or periodic imprisonment, up to two years of probation, and a fine between \$75 and \$2,500. *Id.*

139. *Pretrial Implementation Task Force Town Hall No. 2*, *supra* note 133, at 9. Categorically, Class A misdemeanors do not fall in the categories of charges where a citation can be issued instead of an arrest. *Id.* Due to the violent nature of the crimes in Class A, those who commit Class A offenses are arrested. *Id.* This goes back to the main purpose of the SAFE-T Act which is to detain those who pose a danger and release nonviolent offenders who pose a low flight risk. *Id.*

140. 720 ILL. COMP. STAT. §§ 5/26.5-3, 5/26.5-5, 5/47-15, 550/4 (2021); 730 Ill. Comp. Stat. § 5/5-4.5-60 (2020).

141. 720 ILL. COMP. STAT. §§ 5/12-1, 5/24-9, 5/26-1(2021); 730 ILL. COMP. STAT. § 5/5-4.5-65 (2020).

142. 725 ILL. COMP. STAT., 109-1(a-1) (2021). This point is highly contested with significant misinformation spread regarding officers being required to issue tickets as opposed to making arrests for certain offenses. *See Hype and*

pose no obvious threat to the community or any person, or who have no obvious medical or mental health issues that pose a risk to their own safety.”¹⁴³ This language included in the provision show that police officers will have to use reasonable discretion to determine whether an individual poses an obvious threat to themselves or their community.¹⁴⁴ In order to assist officers with determining who will be released by citation and who can be arrested, the Implementation Task force created a flowchart to be used in training and in live scenarios to help officers take reasonable and appropriate action.¹⁴⁵

2. *Danger of Unnecessary Pretrial Detention*

The subcommittees under the Implementation Task Force have determined from nationwide studies that “pretrial detention of any length of time is harmful” both to individuals accused and their families.¹⁴⁶ Studies reveal that pretrial detention for even a short amount of time can disrupt employment and family ties. Also, detention is likely to have a worse outcome in the case, which will lead to destabilization and increases the risk of recidivism.¹⁴⁷

Further, fewer people held in pretrial detention reduces costs to the judicial court system and fewer people being processed in jails

Hip Hop (@hypeandhiphop), INSTAGRAM, www.instagram.com/p/CiVT0-YrjgV/ [perma.cc/R6CM-JJED] (last visited Jan. 11, 2023) (showing one of many posts that contain false information surrounding the Act). The Instagram post contains an infographic detailing Illinois’ alleged non-detainable offenses as a result of the SAFE-T Act. *Id.* The list includes aggravated battery, kidnapping, robbery, and arson, among other violent acts. *Id.* Not only is the infographic not true, it is spreading false information that goes entirely against the purpose of the Act itself. In response to this proliferation of misinformation, Governor Pritzker signed an updated SAFE-T Act and stated that the goal of the amendments was to “address misinformation and make clarifications that uphold the principle we fought to protect: to bring an end to a system where wealthy violent offenders can buy their way out of jail, while less fortunate nonviolent offenders wait in jail for trial”. *Governor Pritzker Signs SAFE-T Act Amendment*, ILL. GOV. (Dec. 6, 2022), www.illinois.gov/news/press-release.25766.html [perma.cc/NK7L-DBJ9].

143. 725 ILL. COMP. STAT., 109-1(a-1) (2021).

144. *Id.*

145. *Pretrial Implementation Task Force Town Hall No. 2*, *supra* note 133, at 7. Some of the questions listed on the chart focus on “(1) whether there is proper identification of the individual, (2) whether the person committed a traffic, B, or C misdemeanor, and whether the person has an obvious medical or mental health issue that could pose a risk to their own safety.” *Id.* If the person committed a petty/business offense for example, but requires immediate medical attention, the chart indicates they should be transferred to the required services for assistance. *Id.* Once the person has been cleared, a citation is issued scheduling the person to appear in court within twenty-one days. *Id.*

146. *Pretrial Implementation Task Force Introductory Town Hall*, ILL. CTS. 10 (June 7, 2022), www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/2T8Z-82R7].

147. *Id.*

frees up law enforcement officers to be more active in communities.¹⁴⁸ While the statute itself does not explicitly define what is considered an “obvious threat or obvious mental health issue”, law enforcement agencies will be required to create guidance, such as the flow charts, to ensure consistency among law enforcement agencies on how best to determine these factors.¹⁴⁹

D. Implementation and Role of the Illinois Task Force

1. Subcommittees Within the Illinois Task Force

With cash bail being abolished and many other methods in the criminal justice system being reformed, the implementation of the PFA will be uncharted territory for Illinois courts.¹⁵⁰ Consequently, in 2020, the Illinois Supreme Court created the Pretrial Implementation Task Force in order to prioritize and implement the recommendations from the Supreme Court Commission on Pretrial Practices to help prepare the justice system for the changes required under the PFA.¹⁵¹ Additionally, in February of 2021, the Illinois Supreme Court created the Pretrial Practices Data Oversight Board which “was tasked with developing a strategy to oversee the collection and analysis of data regarding pretrial practices in circuit court systems.”¹⁵²

The task force is made up of six subcommittees with over 100 members all around Illinois.¹⁵³ The subcommittees comprise of judges, sheriffs, police chiefs, state’s attorneys, public defenders, pretrial officers, domestic violence advocates, victim rights advocates, community members with lived experience in the pretrial system, researchers, behavioral health and substance abuse groups, among others.¹⁵⁴ The six subcommittees within the task force are the Guidelines Subcommittee, the Pilot Sites Subcommittee, the Education Subcommittee, the Communications Subcommittee, the Pretrial Assessment Tools Subcommittee, and

148. *Id.*

149. E.A. Gjelten, *Illinois Misdemeanor Crimes by Class and Sentences*, CRIM. DEF. LAW., www.criminaldefenselawyer.com/resources/illinois-misdemeanor-crimes-class-and-sentences.htm [perma.cc/235Q-MWN6] (last visited Nov. 9, 2022).

150. Reichert et al., *supra* note 14.

151. *Pretrial Implementation Task Force Town Hall No. 2*, *supra* note 133 at 4.

152. *Pretrial Practices Data Oversight Board Preliminary Implementation Plan*, ILL. CTS. (July 1, 2022), www.illinoiscourts.gov/News/1116/Pretrial-Practices-Data-Oversight-Board-releases-preliminary-report/news-detail/ [perma.cc/8VUW-SDXE].

153. *Pretrial Implementation Task Force Town Hall No. 2*, *supra* note 133, at 5.

154. *Id.*

the Legislative Subcommittee.¹⁵⁵

“The purpose of the Pretrial Fairness Act Guidelines Subcommittee is to develop a model process, guidelines, and related resources for counties to use as a guide to implement the Pretrial Fairness Act.”¹⁵⁶ The Pilot Sites subcommittee’s purpose is to identify and provide technical assistance to Illinois counties to support their implementation of the PFA.¹⁵⁷ Its role also includes sharing and teaching its tools, templates, and research with other counties so that all Illinois counties are fully prepared to implement the provisions of the PFA.¹⁵⁸ The Education Subcommittee’s role is to “develop a comprehensive educational plan to support the implementation of the PFA.”¹⁵⁹

“The purpose of the Communications Subcommittee is to develop a plan and resources to educate diverse internal and external audiences about the PFA.”¹⁶⁰ The Pretrial Assessment Tools Subcommittee will develop, tweak and approve guidelines for judges and pretrial officers for “scoring and using assessment tools related to the Pretrial Fairness Act.”¹⁶¹ Finally, the Legislative Subcommittee’s main role is to review pretrial related legislation for areas of improvement and clarity.¹⁶²

2. *Benefit of the Illinois Task Force*

Proponents of the PFA assert that the PFA committees and task force should ease the mind of Illinois residents because their needs are being represented in these committees. With input from former officers, public defenders, behavioral health experts, psychologists, among others, the committees will help provide a well-rounded implementation plan that prioritize the safety needs of the community.

Despite the many benefits the PFA may have, a crucial element

155. *Id.* at 7-8.

156. *Id.*

157. *Rising to the Occasion Lessons Learned from Kane County*, CTR. FOR EFFECTIVE PUB. POL’Y (Nov. 18, 2022) img1.wsimg.com/blobby/go/d11c7205-9708-461c-8626-3e0992f92beb/downloads/Kane%20County%20Guide.pdf?ver=1692821297275 [perma.cc/CF6B-7NS7].

158. *Pretrial Implementation Task Force Introductory Town Hall No. 2*, *supra* note 133, at 7. The listed pilot sites are Kane, Hancock, McDonough, Gallatin, and Franklin Counties. *Id.*

159. *Id.*

160. *Id.* at 8. Part of the communications subcommittee’s role is to provide legal and evidence-based practices that will support the successful implementation of the law. *Id.*

161. *PFA Implementation: Implementing the Pretrial Fairness Act*, CEPP CTR. FOR EFFECTIVE PUB. POL’Y, cepp.com/project/illinois-pretrial-fairness-act-project/ [perma.cc/8WZR-QY4M] (last visited Nov. 20, 2022).

162. *Pretrial Implementation Task Force Introductory Town Hall No. 2*, *supra* note 133, at 8.

is missing. The PFA remains silent on addressing the overburdened court system.¹⁶³ Due to the load of dockets that are backlogged and the number of judicial officers with full loads, there is not sufficient time for judges to adequately review pretrial cases, for prosecutors to analyze the facts and prepare a case or for public defenders to develop a defense for their client.¹⁶⁴ If this need isn't addressed, more problems will arise in the court system.

E. Pretrial Fairness Act through the Lens of Darrell Brooks

Opponents of the PFA have used the case of Darrell Brooks as a strategy to argue against the PFA's implementation.¹⁶⁵ On November 5, 2021, Brooks was accused of running over the mother of his child in a nearby gas station parking lot in Wisconsin.¹⁶⁶ Despite his past criminal history, Brooks was released on a \$1,000 bail.¹⁶⁷ Sixteen days later, Darrell Brooks got into a physical altercation with his ex-girlfriend and fled in his SUV.¹⁶⁸ Brooks drove his SUV into the annual Christmas day parade in Waukesha, Wisconsin killing 6 people and injuring dozens.¹⁶⁹

Even though the case of Darrell Brooks took place in Wisconsin, many opponents against the PFA have argued that bills like the PFA are the reason why Mr. Brooks was released. However, using the framework from the PFA can give a better understanding of the how the PFA works in practice. If the factors of Brooks' case are analyzed through the PFA's requirements, you get a much different result.¹⁷⁰ The PFA states that "courts may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release."¹⁷¹ As stated earlier, courts must

163. Howell, *supra* note 111.

164. Nancy S. Marder, *Answering Jurors' Questions: Next Steps in Illinois*, 41 LOY. U. CHI. L. J. 727, 733 (2010).

165. Martin Kaste, *There's a Backlash Brewing Against Bail Reform After the Parade Tragedy in Waukesha*, NPR (Nov. 25, 2021), www.npr.org/2021/11/25/1059019616/theres-a-backlash-brewing-against-bail-reform-after-the-parade-tragedy-in-waukesha [perma.cc/6YBJ-JHZE].

166. Gina Tron, *Parade Crash Suspect Allegedly Ran Over Mother of His Child with SUV Weeks Earlier*, OXYGEN TRUE CRIME (Dec. 2, 2021), www.oxygen.com/crime-news/darrell-brooks-allegedly-ran-over-mother-of-child-weeks-before-waukesha-parade [perma.cc/YXB7-Y8WS].

167. *Id.*

168. *Id.*

169. Eric Levenson & Rebekah Riess, *Waukesha Parade Attack Defendant is Representing Himself*, CNN (Oct. 7, 2022), www.cnn.com/2022/10/06/us/waukesha-parade-attack-trial/index.html [perma.cc/UM6R-59HC].

170. *Id.*

171. 725 ILL. COMP. STAT. 5/110-4 b; The Illinois Supreme Court Implementation Task Force created a flow chart for law enforcement officers and the general public to view when an arrest is permitted. Illinois Supreme Court Implementation Task Force, *Release by Citation*, IL Cts. (Dec. 12, 2022)

look at the totality of the circumstances surrounding the person, the crime they were charged with, and safety of the community.¹⁷² If the factors of Brooks' case are analyzed through the Act's requirements, Brooks would have remained detained.

1. Criminal History of Darrell Brooks

Looking through Darrell Brooks' criminal history shows that he was not only a consistent threat to his community, but his past indicates he has a troubling history of mental health issues and violent interactions with people around him.¹⁷³ The following details below describe Brooks' criminal history between 1999 and 2021 and the punishments that followed.

In September of 1999, Brooks was charged with substantial battery and intent to cause bodily harm.¹⁷⁴ After a judge found Brooks guilty, he was sentenced to two years in prison.¹⁷⁵ In February of 2005, Brooks was charged with resisting and obstructing a police officer.¹⁷⁶ In November of 2006, Brooks was convicted of statutory sexual seduction after impregnating a 15-year-old girl.¹⁷⁷ Brooks was required to register as a sex offender.¹⁷⁸

<https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b3d911ef-bd4e-4263-b86b-0b16fe032ac9/Pretrial%20Fairness%20Act%20Release%20by%20Citation%20Flowchart%20and%20Implementation%20Considerations.pdf> [perma.cc/E5SY-WZQN]. The flowchart is one of many to help law enforcement and court officials decide who should be detained pretrial. *Id.* The flowcharts are always subject to change as more research is conducted. *Id.* Those with questions, concerns or even suggestions are encouraged to email pretrialtaskforce@illinoiscourts.gov. *Id.*

172. *Id.*

173. FOX6 News Digital Team, *Darrell Brooks Trial: Criminal History Dates Back to 1999*, FOX 6 NOW (Sept. 29, 2022), www.fox6now.com/news/darrell-brooks-trial-waukesha-christmas-parade-criminal-history [perma.cc/QW2B-QAW3].

174. *State of Wisconsin v. Darrell Brooks*, No. 1999CF004470 Wi. Cir. Ct. (Sept. 5, 1999), wcca.wicourts.gov/caseDetail.html?caseNo=1999CF004470&countyNo=40&index=0&mode=details [perma.cc/43MK-2UJE].

175. *Id.*

176. *State of Wisconsin v. Darrell Brooks*, No. 2005CM000151 Wi. Cir. Ct. (Feb. 21, 2005), wcca.wicourts.gov/caseDetail.html?caseNo=2005CM000151&countyNo=36&index=0&mode=details [perma.cc/9VZQ-PB27].

177. Nevada Department of Public Safety, NEV. SEX OFFENDER PUB. WEBSITE, rccd.nv.gov/About/Sex-Offender-Community-Notification/ [perma.cc/EGL4-83KD] (last visited Oct. 30, 2022).

178. Michael Reynolds, *Crystal Darkness*, YOUTUBE (2006), www.youtube.com/watch?v=BbyeFUJrqBY [perma.cc/P2JA-HUJS]. In 2006, a documentary about methamphetamine addiction was released featuring an interview with Brooks while incarcerated in Reno Nevada. *Id.* In this documentary, Brooks commented on his drug addiction stating, "You actually become the drug. Not even a human being. That's how I felt. Like I wasn't a human anymore. I was just something vile, disgusting, despicable. But that's what's I became." *Id.* at 10:46. Brooks' statement shows clear evidence of substance abuse and mental health problems that he needed to be treated for.

In March of 2011, Brooks was charged with resisting an officer in Milwaukee County after fleeing a traffic stop.¹⁷⁹ During the stop, Brooks put his car in drive making the responding police officer think Brooks was going to run him over.¹⁸⁰ Brooks' probation was revoked, and he was sentenced to eleven months in jail.¹⁸¹

In July of 2020, Brooks was charged with several felonies including: 2nd degree reckless endangerment for firing a gun at his nephew, use of a dangerous weapon, and possession of a firearm as a convicted felon.¹⁸²

Finally, In November of 2021, Brooks was charged with reckless endangerment for running over his girlfriend with his car.¹⁸³ Cash bond was set for \$10,000, and Brooks was released after \$1,000 was paid on his behalf.¹⁸⁴ Sixteen days later, Brooks drove through the Waukesha Christmas parade with his SUV killing six people.¹⁸⁵ Brook's criminal history between 1999 and 2021 reveals that he consistently used his vehicle as a weapon and was a safety threat to his community.

2. *Darrell Brooks under the Pretrial Fairness Act*

While Brooks' case was in Wisconsin, a state that still uses cash bail, his story has been used as an argument against bail reform measures like the PFA.¹⁸⁶ However, an analysis under the PFA shows that it is unlikely Brooks would have been released. For

See Ashley Lutheran, *A History of Waukesha Parade Suspect Darrell Brooks' Criminal Record*, MILWAUKEE J. SENTINEL (Oct. 1, 2022), www.jsonline.com/story/news/crime/2022/10/01/history-waukesha-parade-suspect-darrell-brooks-and-law-enforcement/10440943002/ [perma.cc/ET4X-6MU4]. (reporting that after serving his sentence, Brooks was released back into the community despite his mental health problems and claimed substance abuse problems).

179. State of Wisconsin v. Darrell Edward Brooks, No. 2011CM001812 Wi. Cir. Ct. (Mar. 25, 2011); FOX6 News Digital Team, *supra* note 173.

180. Ashley Luthern, *A History of Waukesha Parade Suspect Darrell Brooks' Criminal Record*, MILWAUKEE J. SENTINEL (Oct. 1, 2022), www.jsonline.com/story/news/crime/2022/10/01/history-waukesha-parade-suspect-darrell-brooks-and-law-enforcement/10440943002/ [perma.cc/ET4X-6MU4].

181. *Id.*

182. Wisconsin v. Brooks, No. 2020CF002550 Wi. Cir. Ct. (Jul. 27, 2020); *Milwaukee DA Chisholm: Statement Re: Darrell E. Brooks*, WIS POLITICS (Nov. 22, 2021) www.wispolitics.com/2021/milwaukee-da-chisholm-statement-re-darrell-e-brooks/ [perma.cc/2TD5-WLKQ].

183. Wisconsin v. Brooks, No. 2021CF004596 Wi. Cir. Ct. (Nov. 5, 2021) Nov 5, 2021); Bill Miston, *Darrell Brooks in Milwaukee County; Hearing on Domestic Violence Charges*, Fox6 (Jul 28, 2022) www.fox6now.com/news/darrell-brooks-milwaukee-county-hearing-domestic-violence-charges [perma.cc/HS5H-478Q].

184. *Id.*

185. Lutheran, *supra* note 180.

186. Phillip Jackson, *National Republicans are Bringing Back Willie Horton-Style Advertisements in Wisconsin*, HUFFPOST (Sept. 14, 2022), www.huffpost.com/entry/mandela-barnes-ad-willie-horton-wisconsin-crime_n_63226fccc4b000d98857c4de [perma.cc/3N46-WB9A].

example, in November of 2021, Brooks was charged with two felonies and three misdemeanors including domestic violence against his girlfriend.¹⁸⁷ Under the release by citation flowchart used for law enforcement officers, Brooks' offenses were not traffic, class B or C misdemeanors.¹⁸⁸ Upon stating no to the previous question, the next question that must be asked is whether the offenses are one in which pretrial release can be denied under the SAFE-T Act provisions.¹⁸⁹ Under this statute, "if the defendant's pretrial release poses a real and present threat to the physical safety of any specifically identifiable person or persons," pretrial release must be denied.¹⁹⁰

The events that led to Brook's arrest in November of 2021 show that there was a real and present threat to the safety of Brooks' girlfriend since he tried to run her over with his car.¹⁹¹ Further, with insight and guidance from individuals within the substance abuse department of the Implementation Task Force, Brooks demonstrated a threat to himself, and the community. Therefore, it is likely his bail would be denied and further mental health options such as a drug rehabilitation facility would be pursued.¹⁹²

Application of the PFA presents a different outcome than Brooks' freedom being purchased for \$1,000 regardless of his danger to the community. Critics against the Act fail to recognize the intentionality and collaboration that goes into each pretrial decision instead of seeking mindless monetary means to decide whether someone will be released.

The PFA was created specifically for Illinois and the research gathered and implemented was focused towards Illinois counties. However, Wisconsin and other states should follow suit and create their own PFA that abolishes cash bail and collaborates with organizations, law enforcement, domestic violence advocates, and mental health experts to achieve the goal of a fair and just system.

This article began by discussing the story of Shannon Brandt

187. Fox6 News Digital Team, *supra* note 173.

188. *Pretrial Implementation Task Force Town Hall No. 2*, *supra* note 133, at 7.

189. 725 ILL. COMP. STAT. 5/110-6.1 (2023).

190. *Id.*

191. Fox6 News Digital Team, *supra* note 173.

192. *Crystal Darkness*, YOUTUBE (Global Studios, 2006), www.youtube.com/watch?v=BbyeFUJrqBY [perma.cc/MWR9-D9T3]. In 2007, a documentary about methamphetamine addiction was released featuring an interview with Brooks while incarcerated in Reno Nevada. *Id.* In this documentary, Brooks commented on his drug addiction stating, "You actually become the drug. Not even a human being. That's how I felt. Like I wasn't a human anymore. I was just something vile, disgusting, despicable. But that's what I became." *Id.* at 10:46. Brooks' statement is important because it reveals compelling evidence of substance abuse and mental health problems that he needed to be treated for, but after serving his time, Brooks was released back into the community despite his mental health problems and claimed substance abuse problems. Luthern, *supra* note 180.

and Ivan Cheung, two men who committed violent and heinous crimes, yet both were released because they or someone close to them had the monetary means to be released. The initial goal of instituting cash bail was to prevent flight risks and prioritize community safety. However, as seen in Brandt and Cheung's stories, violent crimes were committed, both Brandt and Cheung were released and there has been no outcry of the lack of community safety. In the Wisconsin case, Brooks was charged with several violent crimes, yet was released because he had access to the financial means to do so. The determining factor for each person's pretrial release was money.

F. Critics of the Pretrial Fairness Act

1. Bail Reform in Other States

Many have vocalized concerns surrounding the PFA and how the abolishment of cash bail will lead to increased crime rates in Illinois and initiate the beginning stages of *The Purge*.¹⁹³ Critics of the PFA warn that it will exacerbate the issue of rising crime in Illinois and the PFA itself is unconstitutional.¹⁹⁴

Opponents of the PFA have also looked to other states who have implemented some measure of bail reform but saw crime rates increase in the following year.¹⁹⁵ In 2019, New York passed a sweeping bail reform law prohibiting cash bail for all but the most serious misdemeanors and felonies.¹⁹⁶ New York State judges are precluded by law from holding defendants based on their apparent dangerousness, “and are only required to use the least restrictive means of ensuring defendants return to court.”¹⁹⁷

This approach spoke to New York's goal of preserving the

193. Charles Fain Lehman, *Yes, New York's Bail Reform has Increased Crime*, CITY J. (Sept. 22, 2022), www.city-journal.org/new-yorks-bail-reform-has-increased-crime [perma.cc/6NLE-ZEVX].

194. John Clark, *Winnebago, Boone, Stephenson Counties Sue Pritzker over SAFE-T Act*, MY STATELINE (Oct. 6, 2022), www.mystateline.com/news/local-news/winnebago-boone-stephenson-counties-sue-pritzker-over-safe-t-act/ [perma.cc/L3SJ-7DUJ]. Many Illinois law enforcement agencies are warning the public that the Act will “embolden criminals and make it harder for police to keep offenders off the streets.” *Id.* If the elimination of cash bail does not prove to benefit the state, Illinois could create legislation amending the pretrial release system. *Id.* Currently Loyola University and the National Institute of Justice are studying the SAFE-T Act's implementation and analyzing the effectiveness of the new pretrial release throughout 2023.

195. Lehman, *supra* note 193.

196. Ames Grawert & Noah Kim, *The Facts on Bail Reform and Crime Rates in New York State*, BRENNAN CTR. FOR JUST. (Mar. 22, 2022), www.brennancenter.org/our-work/research-reports/facts-bail-reform-and-crime-rates-new-york-state [perma.cc/4NJ5-4DJL].

197. *Id.*

presumption of innocence and reduce racial biases against defendants.¹⁹⁸ However, its goals were stunted and overshadowed by rising crime rates from 2020 to 2021 and many blamed this rise on the new bail reform law.¹⁹⁹ Most notably, there was a stark increase in murders which rose from 319 in 2019 to more than 450 in 2020.²⁰⁰ Shooting incidents in the city almost doubled during the same period.²⁰¹ While many critics were quick to blame the change in law as the reason for the increased crime rates, a statewide analysis showed that violent crimes rose everywhere and was largely attributable to the pandemic.²⁰²

2. Pretrial Fairness Act as a Political Tool

Throughout local and statewide elections, many have tried to target opponents who support the PFA.²⁰³ On September 2, 2022, the national republican senatorial committee began airing a \$1.2 million advertisement campaign attacking Mandela Barnes, a Democrat running for a state senate position in Wisconsin.²⁰⁴ The

198. *Id.*

199. Grawert & Kim, *supra* note 196.

200. *Id.*

201. *Id.*

202. Patrick Sharkey & Alisabeth Marsteller, *The Recent Rise in Violence has Been Concentrated in Areas Characterized by Poverty and Racial Segregation*, VITAL CITY (Mar. 2, 2022), www.vitalcitynyc.org/articles/violence-and-urban-inequality [perma.cc/999M-797F].

203. People Who Play by the Rules, *The Summer of Joy*, YOUTUBE (Aug. 15, 2022), www.youtube.com/watch?v=VlFVPhKtnKM [perma.cc/Q95Z-EA4Y]. This political campaign ad attempts to showcase a dichotomy between the light words of Mayor Lori Lightfoot proclaiming Chicago will experience a summer of joy contrasted by startling images and clips of violence and state's attorneys proclaiming "their hands are tied." *Id.* The video shows false information that those who have committed violent crimes such as: arson, burglary and aggravated battery will be released and back on the street. *Id.* For someone who has no knowledge of the Pretrial Fairness Act, being exposed to this video not only provides false information surrounding the Act but incites unmerited fear into communities. It is a strong tactic that many political figures utilize to establish themselves as the law-and-order candidate, and a political candidate who prioritizes public safety over their counterpart.

204. Jackson, *supra* note 186; Peter Baker, *Bush Made Willie Horton an Issue in 1988, and the Racial Scars are Still Fresh*, N.Y. TIMES (Dec. 3, 2018), www.nytimes.com/2018/12/03/us/politics/bush-willie-horton.html [perma.cc/U9ZD-E8B6]. In April of 1987, Willie Horton, was released on furlough while serving his sentence for murder. *Id.* While on furlough, Horton committed several new crimes, including rape. *Id.* George Bush' presidential campaign introduced Horton in a television advertisement slamming presidential candidate Michael Dukakis for letting Horton out on furlough as part of the Prison Furlough program. *Id.* The advertisement used fear of violence for political power against Dukakis which ended up being successful. Jessica Jackson, *Clemency Pardons and Reform: When People Released Return to Prison*, 16 U. ST. THOMAS L.J. 373, ___? (2020). The tactic and outcome from the Bush administration shaped criminal justice and revealed that combining justice with mercy would not be tolerated unless it was associated with perfect

ad uses footage of Darrell Brooks' SUV plowing into a crowd gathered for a Christmas parade in Waukesha, Wisconsin in 2021.²⁰⁵ As stated earlier, Brooks was released on a \$1,000 bail.²⁰⁶ With Barnes's support of the PFA, the ad connected the tragedy in Wisconsin to Barnes's affirmative stance on the PFA. Those in opposition claim the safety of their communities is at risk as a result of the Act and those who support it.²⁰⁷

This tactic spreads misinformation and makes the argument that the PFA does not consider or prioritize the safety of the community or victims. However, both the wording and implementation in the PFA focuses on detaining violent offenses pretrial over misdemeanor nonviolent acts. The PFA prioritizes the safety of the community, the lives of victims, and the lives of those accused. The tactics described above incite fear and distrust among communities leading them to believe that their safety is not being valued. When communities feel unsafe, this can lead to individuals taking matters into their own hands through violence and do it in the name of "protecting their community."²⁰⁸

IV. PROPOSAL

Through programs such as the RJCC and the Problem-Solving Courts, it is evident that Illinois is not afraid to step outside the box to work towards a more just system.²⁰⁹ In an effort to address the overburdened judicial system, this next section proposes that the RJCC should be given judicial power through the PFA to make decisions on offenders who commit class B, C, and petty misdemeanor offenses.

A. Restorative Justice Community Courts

Implementation of the PFA through Restorative Justice Community Courts rights past constitutional wrongs. The Eighth

public safety outcomes. *Id.*

205. See Jackson, *supra* note 186 (explaining how the campaign ad showing Brooks driving through the parade was a political tactic similar to Willie Horton back in 1987, creating the strong implication that Brooks would not have committed the parade massacre if not for the bail reform measures in Milwaukee and the candidates who support it). In this particular campaign ad, the Lieutenant Governor of Wisconsin, Mandela Barnes, was targeted for his support of the cash bail reform and his proposed cash bail plans for Wisconsin dating back to 2016. *Id.* Mandela Barnes lost his campaign to his Republican counterpart in the 2022 U.S. Senate election. *Id.*

206. Tron, *supra* note 166.

207. *Id.*

208. Katie Edmondson, *So the Traitors Know the Stakes: The Meaning of Jan. 6 Gallows*, N.Y. TIMES (June 16, 2022), www.nytimes.com/2022/06/16/us/politics/jan-6-gallows.html [perma.cc/9JWC-DD8H].

209. Cook County Court, *supra* note 62.

Amendment states that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”²¹⁰ Any bail amount that keeps an individual detained who poses no flight risk or threat to their community should be interpreted as a constitutional violation. The PFA seeks to amend this problem through eliminating cash bail and encouraging the use of other risk assessment tools to determine who should be released and on what conditions.²¹¹

Under the PFA, pretrial release “may only be denied when a person is charged with an offense listed in 110-6.1 or when the defendant has a high likelihood of willful flight.”²¹² It is through the

210. U.S. CONST. amend VIII. Neither the state nor the federal government can impose harsh penalties on criminal defendants in order to be released pretrial or as a punishment for a crime after conviction. *Compare* *Sammons v. Snow*, 340 Ill. 464, 173 N.E. 8 (1930) (holding that bail is excessive where its only purpose is to keep an individual confined) *with* *Graham v. Florida*, 560 U.S. 48, 91 (2010) (holding that a sentence of life without parole for a juvenile is considered a cruel and unusual punishment).

211. *Correcting Misinformation about Illinois Pretrial Reforms: What the Pretrial Fairness Act Does and Does Not Do*, CIVIC FED’N (Sept. 16, 2022), www.civiced.org/civic-federation/blog/correcting-misinformation-about-illinois-pretrial-reforms-what-pretrial [perma.cc/WQ45-R4BW]. In order for the court to grant pretrial detainment of an individual, the state must file a verified petition to detain that individual. Pretrial Implementation Task Force, *Town Hall No. 6*, ILL. CTS. 11-12 (Oct. 27, 2022), www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/35S3-A8W9]. The petition must include the following: verification by the state, grounds upon which it contends the defendant should be denied pretrial release, including the identity of the person the state believes the accused poses a threat to, the petition must be time stamped, and it must be filed at the time of the first appearance. *Id.* If the prosecutors choose not to file a petition, the individual must be released. *Id.* Once the petition is filed, under the Act, there will be an immediate hearing or continuance based on the facts of the situation. *Id.* If the continuance is granted, the individual will be held up to 48 hours for Class X, 1, 2, or 3 charges. *Id.* All other non-violent misdemeanor charges will receive a 24-hour continuance. *Id.*

Further, prior to the official pretrial hearing, the state is required to provide copies of the defendant’s criminal history, any written or recorded statements the state plans on using, substance of any oral statement, and any police reports in the state’s possession at the time of the hearing. *Id.* After the hearing is conducted, if the court decides to detain the defendant, the court must provide a written finding as to why less restrictive means of conditional release would not provide safety to the community or would increase the defendant’s flight risk. *Id.*

212. 725 ILL. COMP. STAT. 5/110-6.1(e) (2023). In order to determine what qualifies as a detainable offense, courts use a dangerousness test and a willful flight standard test. *Id.* The dangerousness standard requires the state to prove by “clear and convincing evidence” that (1) the proof is evidence or the presumption is great that the defendant has in fact committed the crime he is being accused of that falls under the detainable offense list and (2) the defendant poses a real and present threat to the physical safety of any person individually or the community at large. *Id.* If the state fails to prove the above two, their second route is to show that no condition will be able to mitigate the real and present threat to the community if released pretrial. *Id.*

collaboration of the Pretrial Fairness Implementation Task force and the Data Oversight board that Illinois has a basis to address what the PFA will look like in practice. To make the PFA even more effective and address the overburdened court systems, the PFA should grant judicial making power to the RJCC to handle all Class B and C Misdemeanor offenses.

In transferring this type of judicial power to the RJCC, this will not only lighten the load off of judges but will give power back to the communities that are being served and affected by the justice system.

With the implementation of the PFA issuing citations in lieu of arrest for non-violent misdemeanor offenses, when a non-violent offender is issued a court date, they should be directed to a RJCC instead of the typical court system. RJCC will ease the burden off of judges who need time to review violent charges and determine whether someone should be released pretrial. The transfer of power to make judgment decisions on those who commit misdemeanor offenses would not be a small or easy transition. What makes this task attainable is the groups that were formed as a result of the passing of the PFA.

The Data Oversight Board and Implementation task force are monumental groups that can collaborate with the RJCC to offer recommendations based on their expertise. What makes these boards unique and unlike anything this country has ever seen before is the background of people who are members and their willingness to work with others they typically do not associate with.²¹³ Both the Oversight Board and Implementation task force will apply a revolutionary perspective on justice and due process, which is why these boards should have the power to collaborate with the RJCC if the PFA expanded and granted power to these courts.

B. Transfer of Power in Practice

The Oversight Board and Task Force unify people from different backgrounds and viewpoints to come together and brainstorm how the PFA will be implemented in practice. The subcommittees are “made up of over 100 members from around the state and include judges, sheriffs, police chiefs, state’s attorneys,

213. Mike Miletich, *SAFE-T Act: Illinois Victim Advocacy Groups Ensured Protections for Survivors*, WGEM (Sept. 28, 2022), www.wgem.com/2022/09/29/safe-t-act-illinois-victim-advocacy-groups-ensured-protections-survivors/ [perma.cc/3EUS-27DX]. Legal Director of the Chicago Alliance Against Sexual Exploitation stated that the Act, “is going to take into account all of the many unique circumstances that exist in a relationship. And when you’re talking about intimate partner violence, those unique and specific circumstances can be the difference between life and death.” *Id.* Some state’s attorneys have argued that the Act puts many victims in danger who believe their abusers will be released, but many domestic violence advocates argue the opposite. *Id.*

public defenders, circuit clerks, pretrial officers, domestic violence advocates, community members and researchers.”²¹⁴ .

The Task Force and Data Oversight Board are not required to be advocates for or against the PFA. The job of these boards is to provide guidance to help Illinois counties prepare for implementation of the already established law.²¹⁵ Both proponents and opponents of the PFA have chosen to come together to find common ground on what the Act will look like in practice. In doing so, the committees have an opportunity to address the concerns of those who are hesitant about the implementation of the Act and clarify the misinformation that is fueling a lot of the resistance.

With successful implementation as the goal, the Oversight Board runs into a barrier within its established parameters.²¹⁶ The Oversight Board and Task Force does not have the final say in any official criminal proceeding or matter.²¹⁷ The board’s main purpose is to provide suggestions and recommendations as to how the PFA should be handled and interpreted, but do not have any power to assert those recommendations surrounding statutory interpretation.²¹⁸ If the RJCC was given judicial power to hear misdemeanor cases, the Data Oversight Board and Implementation Task force should be given power to submit recommendations before the RJCC before that court moves forward in their decision.

C. Collaboration from Law Enforcement and Guidelines Subcommittee.

One of the provisions under the PFA is law enforcement’s increased use of issuing citations instead of making an arrest.²¹⁹

214. *Pretrial Implementation Task Force*, IL CTS www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/Y67Y-J7NZ]

215. *Pretrial Implementation Task Force Town Hall No. 3*, ILL. CTS. 5 (Aug. 18, 2022, 12:00 PM), www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/Y67Y-J7NZ].

216. *Pretrial Implementation Task Force Town Hall No. 6*. While many provisions in the Pretrial Fairness Act are subject to interpretation and require further review, the role and boundaries set for the task force is quite clear. *Id.* The Oversight Board and subcommittees within the Task Force do not engage in any type of advocacy in support or against the act. *Id.* These groups do not have the power to clarify any statutory interpretation which will be decided by the courts. *Id.* The Data Oversight Board and Implementation Task Force were created by the Illinois Supreme Court, and their main duty is to guide in the implementation of the Act and not take any official position on the Act. *Id.*

217. *Id.*

218. *Pretrial Implementation Task Force Town Hall No. 3*, *supra* note 215 at 5. “As is the case with any new law, some questions—particularly around statutory interpretation—will be decided by the courts, and the Task Force cannot weigh in on these issues.” *Id.*

219. *Correcting Misinformation about Illinois Pretrial Reforms: What the Pretrial Fairness Act Does and Does Not Do*, CIVIC FED’N (Sept. 16, 2022),

The language in the bill states that law enforcement will issue a citation in lieu of arrest for charges that are (1) nonviolent, (2) nonthreatening and (3) the officer presumes that the accused does not pose any clear medical or mental health problems.²²⁰

The statute will address the problem of detaining nonviolent people who have not been convicted of a crime, but the statute leaves some questions unanswered. The statute does not define “proper identification,” “obvious threat,” or “obvious medical or mental health issues.”²²¹ With the statute giving greater discretion to law enforcement when making an arrest, this could leave to many subjective interpretations of the undefined terms listed above.

One of the subcommittees within the task force is the Guidelines Committee whose main purpose is to develop a model process and guidelines for Illinois counties to use and implement from the PFA. The Guidelines Committee should publicly collaborate with law enforcement and the Illinois General Assembly to create a process on how officers can determine when someone poses an obvious threat or has medical or mental health issues and publish that information online for people to access. While the current Task Force has police chiefs and sheriffs who are helping to address these concerns, law enforcement officers need to be more involved. The regulatory changes described in the PFA have a substantial impact on how law enforcement officers will be able to do their job, and the law on paper can look different from the law in practice.²²² The PFA directly affects how officers will approach and detain citizens.²²³ Police departments need to be involved in understanding what an “obvious threat” looks like and should be trained for what to look for in practice. This can be done through seminars, presentations, or monthly trainings.

Similar to the Pretrial Task Force, which hosted several recorded townhalls throughout 2022 regarding the Act, the

www.civiced.org/civic-federation/blog/correcting-misinformation-about-illinois-pretrial-reforms-what-pretrial [perma.cc/WQ45-R4BW].

220. 725 ILL. COMP. STAT. 5, 109-1 (a-1) (2023).

221. Pretrial Implementation Task Force Town Hall No. 2, *supra* note 133, at 11.

222. *Compare* Pretrial Town Hall No. 2 at 7 with Illinois Supreme Court Implementation Task Force, *Release by Citation*, IL Cts. (Dec. 12, 2022) <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b3d911ef-bd4e-4263-b86b-0b16fe032ac9/Pretrial%20Fairness%20Act%20Release%20by%20Citation%20Flowchart%20and%20Implementation%20Considerations.pdf> [perma.cc/E5SY-WZQN]. The original “Release by Citation” flowchart did not include a step for what an officer should do if the offender persists in the criminal activity after they were issued a citation. As a result of collaboration and feedback from those in the Illinois Supreme Court Implementation Task Force, they were able to recognize a gap in the PFA and revise it to create a better system. *Governor Pritzker Signs SAFE-T Act Amendment*, ILLINOIS.GOV (Dec. 6, 2022) www.illinois.gov/news/press-release.25766.html [perma.cc/728P-SYSJ]

223. *Id.*

Guidelines Committee should do something similar in collaboration with law enforcement for the public.²²⁴ The task force has members who are experts in behavioral health and substance abuse as well as domestic violence advocates. Partnering with those who have been trained to recognize when someone is a threat to their community and show substance abuse problems can clear up confusion among law enforcement and allow the officers greater accuracy in protecting their community. With the Data Oversight Board monitoring pretrial statistics, this research and data can extend to law enforcement measures created by both the task force and law enforcement. In reviewing the success and areas of improvement from this collaboration, similar boards and task forces can be replicated across all Illinois counties.

D. The Pretrial Fairness Act will no longer be used as a political football.

The PFA has been promoted negatively as a marketing tactic to spread false information surrounding it in an effort to prove that those who support the PFA support violence in communities.²²⁵ Many politicians have used those who support the PFA as an opportunity to condemn their political opponent and assert the idea that their opponent does not value or prioritize public safety.²²⁶ However, the Data Oversight Board and Implementation Task force show the very opposite. With the diversity within the boards and task forces, you can see a clear goal to address public safety, give justice to victims, and refrain from violating the constitutional rights of those accused.

The PFA does not allow violent criminals out of jail and for people to recklessly trespass on your property.²²⁷ The PFA calls for higher discretion to be used among police officers instead of seeking unnecessary arrests as the default method.²²⁸ If the Task Force and

224. *Town Hall Meetings*, IL. CTS. www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/ [perma.cc/34LM-5E3G] (last visited Nov. 21, 2023). If users scroll to the bottom of the page, there is a town hall meeting section where users can watch recorded townhall meetings discussing aspects of the PFA including an introduction and purpose of the task force, evidence-based pretrial assessments, detention processes, and changes to the SAFE-T Act made by the legislature. *Id.* As shown in the recordings, individuals who attended the meeting could ask questions or put their questions in the chat throughout the Zoom meeting. *Id.* An email was also provided for any follow-up questions or concerns that were not answered during the town hall. *Id.*

225. *Correcting Misinformation about Illinois Pretrial Reforms: What the Pretrial Fairness Act Does and Does Not Do*,

226. Jackson, *supra* note 186.

227. *Id.*

228. Frank Main et al., *New Illinois Law Will Give Cops Choice Not to Jail Over Small Amounts of Drugs*, MY J. COURIER (Nov. 15, 2022), www.myjournalcourier.com/news/article/New-Illinois-law-will-give-cops-

RJCC have judicial decision making power on all misdemeanor low level offenses, the court can give more time and attention to examining more violent charges and provide ample opportunity for the state and defense to present their case.

V. CONCLUSION

The PFA is a powerful piece of legislation that Illinois has the privilege of pioneering for other states to follow. With the implementation of the Data Oversight Board and Pretrial Fairness Implementation Task Force, the PFA brings together advocates of different backgrounds across political party lines to achieve the goal of a successful implementation.

Community safety and a just society will never be attained when money is the metric used to determine an individual's freedom pretrial. The PFA takes a step in the right direction by abolishing cash bail and focusing on other factors to determine pretrial release.

The PFA re-shifts the focus of the Illinois criminal justice system to the actual crime that was committed, where those who commit more violent crimes are now more likely to be detained regardless of how much money they have access to.

Further, expanding judicial power to the RJCC can ease the burden of the court system. In doing so, a chain reaction will happen where judges have more time to evaluate the cases before them, law enforcement officers will be trained to use better discretion instead of making unnecessary arrests, and communities will feel empowered knowing there is a balanced system hearing their cases and making insightful critical decisions. The PFA is not *The Purge*. The only purge that is taking place is the outdated practice that connects someone's freedom to their bank account.