M. Maton / December 2024

Proposing Legislation in Response to the Illinois Pretrial Fairness Act 1-Year Reports

An Illinois Task Force Proposal Addressing Pretrial Data Reporting and Accessibility Issues Across Illinois

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I. What is the Illinois Pretrial Fairness Act?

The Illinois Pretrial Fairness Act (PFA) was introduced as Illinois legislation in 2021 and became effective Illinois law on September 18, 2023.[1] Challenges to the introduction of the law delayed the preparation and implementation process across Illinois. The Illinois Supreme Court weighed in and upheld the law in July of 2023.[2] This marked the beginning of the official enactment of the law, and only months later the PFA was the law of Illinois that exists over a year later today.

The PFA once enacted made some major structural changes to the Illinois "criminal justice system." Most broadly, it eliminated the practice of cash bail across Illinois.[3] Within this broad removal of cash bail practices came major procedural shifts in criminal prosecution in Illinois. Because the antiquated process of cash bail was eliminated a new structure of criminal detention took its place: a hearing-based, risk assessment method of detaining defendants that primarily focuses on the current charge and defendant history and secondary "risk" standards.

Prior to the PFA, defendants charged with felony or misdemeanor crimes in Illinois would appear before a judge for a bond hearing. At this hearing, defendant outcomes were generally restricted to three categories: detained without bond, detained with bond, or released without bond.[4] Under this cash bond system, 51% of defendants were detained following this initial hearing.[5] The new system has reduced the percentage of those detained at the initial hearing. Following the PFA, a new flow of detention eligibility and detention criteria exists:

1. To be detention eligible, you must first be charged with an "eligible" offense under the PFA. Eligible offenses include most felonies, domestic charges and sex charges.
2. Once charged with a detention eligible offense, the state then has 21 days to file a "petition to detain."[6] If a petition to detain is not filed, the defendant will be released at a "conditions" hearing within 48 hours. If a petition to detain is filed, the defendant will go before a judge at a detention hearing.
3. At a detention hearing, three criteria for determining detention will be analyzed by the judge: (1) is the crime eligible for detention? (2) is the defendant a threat to an individual or the community? (3) would any conditions of release prevent the risk/threat to the community?

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[1] Griffin, Patrick, et al. "The First Year of the Pretrial Fairness Act." *The First Year of the Pretrial Fairness Act*, 24 Nov. 2024, pfa-1yr.loyolaccj.org/.
[2] *Id*
[3] *Id*
[4] "Bond Decisions in Cook County -- Viz Tool." *Loyola University of Chicago Center for Criminal Justice*, app.loyolaccj.org/pfa/bond-decision-cook. Accessed 1 Dec. 2024.
[5] *The First Year of the Pretrial Fairness Act*
[6] *Detention Hearing Flowchart and Implementation*, Illinois Supreme Court Implementation Task Force

II. Illinois Pretrial Data Oversight Board 2022 Preliminary Report

The Illinois Pretrial Data Oversight Board (board) is a collection of Illinois criminal justice experts established by the Illinois Supreme Court to track the implementation process and real-time monitoring of the PFA with an emphasis on data collection and analysis.[7] In July 2022, prior to the implementation of the PFA, the board introduced a preliminary report that detailed the predicted implementation of the law, the predicted readiness of individual counties to effectively manage the law, and weaknesses statewide in successfully upholding quality data collection and reporting standards for transparency of the law.[8]

In this report the board highlights the most glaring points of weaknesses in the implementation of the PFA, including data accessibility limitations and lack of county-based data reporting infrastructure. These issues remain apparent today, and data accessibility is at the center of the legislative proposal found after the analysis of these PFA reports. The most relevant findings from the report as it relates to data accessibility are that the board found:

1. Few counties collect and record pretrial data[9]
2. Few counties have dedicated software for collecting and reporting pretrial data[10]
3. Most counties lack the technology infrastructure to update and implement proper pretrial data collecting and reporting software[11]

20 ILCS 3930/7.7, which creates the board, established that by July of 2022 the board must form a report including data on existing pretrial hearings. However, as the July report says, county-level reporting is "not yet possible" due to the vast majority of Illinois' 102 counties lacking the professional and technological infrastructure to collect and report data. Illinois lacks a centralized and standardized method of pretrial data collection and reporting on a statewide and county level basis. As it stands now, only six counties across Illinois have interactive and weekly updating data dashboards for pretrial data.

Due to the lack of centralized and standardized pretrial data collection methods there is an aspect of blindness to the efficiency of the PFA. As the 2022 board states, "A significant amount of work and resources are still needed across each of the 102 counties to ensure that the data management systems used by each individual Circuit Clerk, Sheriff/Jail and Pretrial/Probation Department capture the needed data elements in a consistent/usable format, before data can be transmitted to, and analyzed…"[12]

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[7] 20 ILCS 3930/7.7

[8] *Pretrial Practices Data Oversight Board Preliminary Report*, 1 July 2022, ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/068d653e-7483-401b-b2b6-9fb3ccf5a636/Preliminary%20Report%20Pretrial%20Practices%20Data%20Oversight%20Board.pdf.

[9] *Id*

[10] *Id*

[11] *Id*

[12] *Id*

III. Loyola 1-year PFA Report

The first comprehensive 1-year report of the PFA came on September 23, 2024 by the Loyola School of Criminal Justice. In the report there are several key findings that relate to the success of the PFA as well as considerations of lack of data access that can be addressed in the later legislative proposal.

The Loyola report highlights several key findings, including the central purpose of the PFA in reducing detention rates across Illinois. Per the report, "Prior to the PFA, on average 51% of defendants were detained or required to post bail; after the PFA, on average 9% of defendants were detained at their initial hearing."[13] Alongside these changing rates, the report also says that these hearings are lasting much longer than prior to the PFA. This is due to a combination of factors, including the defense having the ability to raise more substantive arguments in initial pretrial hearings and both the judge and prosecution taking more time to consider facts and issues raised. This has served a twofold effect in the goal of the PFA and on that front can be viewed as a success.

Detention rates have fallen and more substantive hearings that last longer are part of the positive effect the PFA aimed to have on communities. People are spending less time detained, defendants are getting more substantive hearings, and the burden on communities and families for individuals unnecessarily detained for profit has fallen. Despite the success in consideration of falling detention rates, the report does expand on some glaring issues on data accessibility statewide: there is "considerable variation from county to county" on detention rates, hearing lengths and the considerations of factors weighing into detention.[14] More significant gaps in data lie in county-to-county methods of electronic monitoring or data following pretrial release. Most counties use their own electronic monitoring systems which individual sheriffs offices usually manage. Electronic monitoring is the most frequently applied condition to individuals released pretrial, and data access to this method is a data point as significant as any other pretrial data point.

The report concludes that while more data is accessible in consideration of the near total lack of data mentioned in the 2022 Data Oversight Board Report, there is still a definite need for a constant flow of equally accessible and widely reported data. As the Loyola report mentioned, there is still extreme variability in petition for detention and detention rates across Illinois 102 counties. There is success in the data points so far, and as the report states, "While we lack the data needed for a causal analysis at this point, we can say at least that crime in Illinois did not go up following PFA implementation. In fact, reported violent and property crime declined in rural counties and in Cook and other large counties, though not in every county."[15] The legislative proposal for improved data accessibility will operate in response to this goal of further analysis.

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[13] *The First Year of the Pretrial Fairness Act*

[14] *Id*

[15] *Id*

Advancing Pretrial Policy and Research 1-year Report

Advancing Pretrial Policy and Research, or APPR, released a 1-year report in September of 2024 that found many similarities in the effect of the PFA that the Loyola report found. First and foremost, APPR believes that the PFA is a more effective form of justice than a cash bail system for both defendants and victims. Similarly to the findings of the Loyola report, APPR found that detention rates have fallen across Illinois, detention hearings are longer and more substantive, and the PFA has required the need for more resources at a county level in terms of data recording and output as well as more people working in pretrial and pretrial adjacent positions.[16]

APPR's report finds that the PFA as a replacement to a cash bail system prioritizes the constitutional rights of both defendants and victims. The PFA upholds constitutional protections by providing clear standards for detention. The aim of the PFA in terms of due process protections is the removal of monetary bail systems that prioritize profit over constitutional detentions- APPR finds that this goal is being achieved so far by the data that is available. The data suggests that detention hearings are longer and include more issues raised for defendants, which favors their release as opposed to the pre-PFA conditions.

Another goal APPR finds that the PFA has succeeded in so far is that through a risk based assessment judges would be given a clearer picture of the accusations against the defendant. Prior to the PFA, judges were very quick to detain without giving much of a reason at all.[17] Now, as indicated through the longer detention hearings from data analyzed by both APPR and Loyola, more issues are being raised and defendants facing the consequence of detention are given more procedural time for substantive arguments. A risk-based system accounts for considerations of the community the defendant is from, as well as other mitigating factors like family support, career ties, community ties and the criminal history of the defendant.

While the PFA is off to a successful start in terms of remedying inequities in the previous cash bail system, APPR does believe that there is much to be improved upon as far as transparency in data is concerned: "creating a state system for high-quality data collection, analysis, and reporting will require funds to integrate local systems and train local partners to ensure standardized reporting, data is vital for understanding how the PFA impacts pretrial outcomes."[18] With a policy change as dramatic as the PFA's, there should be an emphasis on accountability for both judges and defendants alike. In consideration of the Pretrial Data Oversight Board's 2022 preliminary report, the Loyola 1-year report and the APPR 1-year report, a legislative proposal for a dedicated data "unification" task force is outlined in the coming pages:

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[16] Alsdorf, Matt, and Alison Shames. "The Pretrial Fairness Act: One Year On." *Advancing Pretrial Policy & Research (APPR)*, advancingpretrial.org/announcement/the-pretrial-fairness-act-one-year-on/. Accessed 2 Dec. 2024.

[17] *Id*

[18] *Id*

M E M O R A N D U M

TO: ILLINOIS HOUSE OF
REPRESENTATIVES
FROM: M. MATON
DATE: DECEMBER 2024
RE: HB 1098, UNIFICATION TASK FORCE of the PRETRIAL FAIRNESS ACT

EXECUTIVE SUMMARY

HB 1098, as introduced in Resolution 1098, proposes the establishment of the Unification Task Force of the Pretrial Fairness Act (UPFA). This task force's primary objective is to centralize and standardize the collection and reporting of pretrial data across all 102 counties in illinois. Modeled on the framework set forth in 20 ILCS 3930/7.7, the UPFA would work to address significant gaps identified in the Loyola College of Law 1-year report[19] on the Pretrial Fairness Act (PFA), including the lack of unified and centralized data reporting.

DISCUSSION

Background

The Illinois Pretrial Fairness Act (PFA), which went into effect on September 2023, represents a major move forward in creating a fair justice system. By eliminating cash bail, the PFA seeks to reduce the racial and socioeconomic disparities that have long existed in the criminal justice system, partially systems that use the practice of cash bail.

One year after the PFA's implementation, the Loyola College of Law and the Illinois Pretrial Fairness Act Data Oversight Board highlighted a crucial shortcoming of the act: a lack of centralized, comprehensive and standardized pretrial data across Illinois' 102 counties. The lack of centralized and reliable data on pretrial hearings prevents the accurate analysis of the efficacy of the law, alongside the inability to measure and track systemic outcomes of these hearings.

In response to these challenges, HB 1098 proposes the creation of the Unification Task Force of the Pretrial Fairness Act (UPFA) with the goals of developing and implementing a statewide unified pretrial data collection and reporting system.

Purpose

[19] https://pfa-1yr.loyolaccj.org/

The primary goal of the UPFA will be to establish a standardized pretrial data collection and reporting system. With implementation and training on a county level, the goal would be the uniform adoption of a centralized data system county-wide. Many counties currently lack the infrastructure, resources or technical ability to collect and report pretrial data efficiently. The UPFA will focus on these key objectives:

1. Data standardization for unilateral collection and reporting of pretrial data.
2. Direct support and work with counties to develop pretrial recording systems.
3. Implement standardized data collection software into existing systems; or update older systems to accommodate up-to-date reporting.
4. Train employees and local law enforcement on data collection and reporting and;
5. Emphasize the importance of monitoring and real-time reporting of pretrial data within jails.

CONCLUSION

The creation of a task force in Illinois to address the current shortcomings of collecting and reporting pretrial data is necessary to ensure accountability and safety within our communities. By centralizing a data collection method, training local employees and officials on data collection and reporting, and improving county-level pretrial support, the UPFA will ensure transparency and efficiency across Illinois.

RESOLUTION ON NEXT PAGE

HOUSE RESOLUTION 1098

RESOLUTION CREATING A TASK FORCE TO OVERSEE THE IMPLEMENTATION OF CENTRALIZED DATA COLLECTION SOFTWARE FOR TRANSPARENCY OF THE PRETRIAL FAIRNESS ACT (UNIFICATION TASK FORCE of the PRETRIAL FAIRNESS ACT)

WHEREAS, The Illinois Pretrial Fairness Act (PFA), enacted in 2021 and effective September 2023, aims to create a fairer criminal justice system through the elimination and replacement of cash bail by a risk-based pretrial assessment metric; and

WHEREAS, A critical aspect of PFA evaluation is the collection of data relating to race, gender, criminal history, detention criteria, and subsequent detention outcomes; and

WHEREAS, The majority of Illinois counties do not report this data, and Illinois lacks a centralized data collection network for upload on the Pretrial Fairness Data Oversight Board; and

WHEREAS, The success of the PFA relies on a unified data collecting and reporting system, available to the public, to ensure accountability and fairness to the state and defendants alike; therefore, be it

RESOLVED, There is hereby established the UNIFICATION TASK FORCE of the PRETRIAL FAIRNESS ACT, which shall be tasked with collaborating with the previously established PRETRIAL DATA OVERSIGHT BOARD, 20 ILCS 3930/7.7, to manage the implementation of a unified software collection and reporting software across all 102 Illinois counties; and be it further

RESOLVED, UNIFICATION TASK FORCE will be appointed from the Administrative Office of the Illinois Courts, and serve until 2030 of which unification goal progress will be monitored by the Illinois Pretrial Fairness Data Oversight Board.