



Law Enforcement and Judicial Power Under the Illinois Pretrial Fairness Act

Law Enforcement Discretion and Power to Arrest

1. Police are able to arrest any person who is breaking the law.
2. The Pretrial Fairness Act creates a presumption that people accused of the lowest-level offenses (Class B and C misdemeanors and ordinance violations) like trespassing, jaywalking, and traffic offenses should be ticketed and given a notice to appear in court rather than arrested. Police can still arrest any person charged with any offense if they pose an obvious threat to the community or to themselves.
3. Under past Illinois law, police had the discretion to release people accused of misdemeanors from their custody with a court date without first sending them before a judge. Under the Pretrial Fairness Act, this same permission will also apply to some felonies.

Core Judicial Powers in Pretrial Release and Detention Decisions

1. Judges can order a person to be detained for safety reasons in cases involving:
 - a. Serious violent crimes (any forcible felony where probation will not be an option at sentencing - including carjacking, armed robbery, murder, and other offenses);
 - b. Sex offenses (including incest);
 - c. Domestic violence and violations of orders of protection (both felony and misdemeanor);
 - d. Most gun-related felonies, including discharge of a firearm, felon in possession of a firearm, sale of firearms, and possession of armor piercing bullets; and
 - e. Human trafficking charges.
2. Judges can order a person to be detained for any serious felony if the judge finds the person poses a high likelihood of willful flight from prosecution.
3. Judges can order a person to be detained for any felony or Class A misdemeanor offense that occurred while the person was on pretrial release for another case.
4. People who are on probation or mandatory supervised release (“parole”) when they are arrested for a new crime can be held in custody.
5. Judges can order a wide range of conditions of pretrial release, including but not limited to:
 - a. Check-ins with pretrial service officers;
 - b. Restrictions on travel and possession of firearms;
 - c. Curfews and house arrest with or without electronic monitoring (EM); and
 - d. Orders of protection requiring the accused to stay away from a person or place. Once in place, violations of orders of protection can result in detention until trial.
6. A person who violates their conditions of release can be punished with increased conditions or up to 30 days in jail. If they are arrested for a new Class A misdemeanor or felony charge, they can be detained until trial.
7. Pretrial conditions are not intended to serve as punishment for a crime. Judges are more limited in their power to jail someone or impose conditions pretrial because the person is presumed innocent. Once a case has been resolved, judges have the full range of sentencing options.

Judicial Power and Discretion in Specific Circumstances

Domestic Violence

1. If someone violates an order of protection in any case, the judge can deny that person pretrial release after finding they pose a real and present threat to another person.
2. If someone violates an order of protection while on pretrial release, that person must be detained pending a hearing on whether or not their pretrial release should be revoked.

Driving while Intoxicated

1. People accused of driving while intoxicated have their driver's licenses suspended immediately when they test positive for alcohol or drugs when driving, or if they refuse a breathalyzer or blood test for alcohol or drugs.
2. When considering pretrial release, judges can order drug and alcohol assessments, treatment, and testing as conditions of release.
3. To address safety concerns, judges can order people to wear SCRAM ankle monitors or use ignition interlock devices that prevent them from driving if they have consumed alcohol.

Re-Arrest

1. If someone is released pretrial on a felony or Class A misdemeanor charge and gets re-arrested on another felony or Class A misdemeanor charge, the court can detain the person if they find it is necessary to prevent the person from being arrested for another crime.
2. If someone on pretrial release is re-arrested for any new charge, the judge can also impose additional conditions of release such as more frequent check-ins or electronic monitoring.

Non-appearance in Court

1. If a person who misses court, the judge may—but is not required to—give them 48 hours to appear voluntarily. This allows people who missed court accidentally or for reasons beyond their control to come in of their own accord and saves law enforcement and court resources.
2. Judges will also have discretion to issue immediate arrest warrants when someone misses court. Judges have the discretion to jail them for up to 30 days as punishment if they find that the failure to appear was willful.