

Rising to the Occasion Lessons Learned from Kane County

On February 22, 2021, Governor Pritzker signed into law a sweeping omnibus criminal justice reform bill (HB 3653) that impacts virtually every criminal justice system agency in Illinois. The provisions of this bill can be grouped into two broad categories, policing reform and pretrial reform, the latter referred to as the Pretrial Fairness Act (PFA). Most of the PFA provisions take effect January 1, 2023.

Following passage of the PFA, the Illinois Supreme Court asked the Illinois Supreme Court Pretrial Implementation Task Force, chaired by Judge Robbin Stuckert (ret.), to assume a leadership role regarding the legislation to help local counties prepare for the changes in the PFA. The Task Force was previously created in 2020 to prioritize and implement the recommendations made by the Supreme Court Commission on Pretrial Practices in its Final Report.

The Task Force is actively working to prepare all justice system partners throughout Illinois to implement the requirements of the PFA by its effective date. To accomplish this, the Task Force, its subcommittees, and other AOIC working groups are partnering with national, state, and local experts, including the Center for Effective Public Policy (CEPP) and Justice System Partners (JSP).

One of the ways the Task Force is supporting PFA implementation is by providing technical assistance to five pilot sites. The Illinois Supreme Court selected three judicial circuits and five counties as pilot sites: 2nd Circuit (Franklin and Gallatin Counties); 9th Circuit (Hancock and McDonough Counties) and 16th Circuit (Kane County). Each pilot site was asked to immediately begin exploring how the PFA would impact traditional operations. The pilot sites' primary objective was to take the lead in developing processes, tools, and practices which may be shared to support broader statewide PFA implementation. Below are examples of lessons learned from one such pilot site: Kane County.

Kane County

The Sixteenth Judicial Circuit serves Kane County, Illinois (population 531,000 in 2020). The court has six locations within the county and comprises 14 circuit judges and 17 associate judges. Approximately 26 different law enforcement departments serve the county. The county jail, operated by the Sheriff's Office, has capacity for 600 people.

Before being selected as a pilot site, Kane County had already convened its stakeholders to begin examining the statutory changes and developing new policies and procedures consistent with the statute. The key stakeholders involved in PFA implementation planning within Kane County include: the Circuit Clerk's Office, the State's Attorney's Office, the Public Defender's Office, members of the judiciary, law enforcement agencies, pretrial services (referred to as Court Services), as well as a community-based organization that serves survivors of domestic violence.

Bringing a collaborative team together for this purpose was critical to Kane County's process. Such a team builds cross-agency and community trust and understanding. It also ensures that the system as a whole—and not just a single agency—is clarifying existing practices and identifying redundancies, gaps, and opportunities for improvement.

As Kane County stakeholders embarked on planning for implementation, they developed solutions that are tailored to the specific characteristics of their jurisdiction. The lessons learned presented below describe those solutions and are organized in the context of the PFA's major statutory provisions.

Release with Citation: 725 ILCS 5/109-1(a-1), (a-3)

Under the PFA, there is a presumption that arresting officers will cite and release defendants arrested on traffic, Class B and C misdemeanors, petty/business offenses, and local ordinance violations (109-1(a-1)). There is also a presumption that officers will release people from custody without taking them before a judge if they are arrested on offenses that cannot be detained pretrial (109-1(a-3)).

While law enforcement has always exercised discretion in whether to take someone into custody, the PFA now specifies those offenses which should presumptively be released with a citation, rather than arrested. The law also requires law enforcement to confirm that the person has "proper identification" and gives the officer the discretion to detain until the first appearance any defendant who poses an obvious threat to the community or any person and/or has an obvious medical or mental issue that poses a risk to his or her own safety. Additionally, the PFA requires that law enforcement schedule the person released into court within 21 days.

- To ensure that law enforcement in Kane County has an opportunity to receive immediate guidance regarding cite and release decisions, the Kane County State's Attorney is hiring three additional assistant state's attorneys and one support staff. The additional staff will allow for the State's Attorney's Office to provide on-call advice to law enforcement in the field 24 hours a day, 7 days per week.

- The Kane County Circuit Clerk's Office does not have staff outside of normal business hours to assign case numbers, court dates, and judges for felony offenses. The Clerk, working with the Kane County Information Technology Office, is in the process of finalizing an online scheduling tool. This tool will allow law enforcement in the field to issue a citation and release defendants with all necessary information (e.g., case number, court date/time/location, judge/courtroom). In case the online scheduling tool is not yet operational by January 1, 2023, the Clerk is creating an interim solution of predetermined time slots for judges so law enforcement can enter hearing dates and times.
- The Kane County stakeholders recognize that operationalizing and training on issues regarding the decision to cite and release in the field, cite and release from the station, or hold for initial appearance rests with law enforcement exclusively, including the State's Attorney's Office.

Pre-First Appearance Activities: 725 ILCS 5/109-1(f), 110-5(f), 109-1(g), 110-5(d)

The PFA requires that every defendant, with few exceptions, has an in-person initial appearance (109-1(f)) and has access to defense counsel prior to their initial appearance (109-1(g)). Additionally, the PFA authorizes the state's attorney to petition the court for the denial of pretrial release for defendants charged with certain specified offenses. If a verified Petition to Deny Pretrial Release is filed by the state's attorney, a detention hearing will follow.

- Kane County Court Services uses current bond call data to estimate the impact of the PFA on court operations. Court Services creates a monthly report for all stakeholders detailing the volume of cases which, under the PFA, will be eligible for detention. The monthly reports also provide information regarding how many detention-eligible cases are related to domestic violence charges.
- Given that there are 26 different law enforcement agencies in Kane County, a procedure was needed to define which agencies would maintain custody of defendants being held prior to their initial appearance. The Kane County Sheriff and State's Attorney worked together to develop two separate procedures – one for agencies with 24/7 holding facilities and one for agencies without 24/7 holding facilities.
 - Agencies with holding facilities will maintain custody of defendants until transporting them to the Kane County Judicial Center no later than 7:30 a.m. the following day. Custody of defendants will then be transferred to the Sheriff's Office/County Jail.

- Agencies without holding facilities will transport defendants to the Kane County Jail after charging documents are completed. Custody will then be transferred to the Sheriff's Office/County Jail.

The Pretrial Service Act (725 ILCS 185 section 7(a)) directs that pretrial services should interview all arrested defendants unless exempt by the chief judge or director of the pretrial services agency.

- Given that Kane County Court Services uses the Public Safety Assessment (PSA), which does not require an interview, the chief judge will be issuing a general order not requiring Court Services to interview defendants.
- The monthly data reports produced by Court Services estimate that over 75% of detention-eligible cases in Kane County will be domestic violence related offenses. Court Services sees this moment as an opportunity to provide more specific assessment information for domestic/intimate partner violence cases. They developed a supplemental domestic violence form (designed to gather additional information about the incident) and the state's attorney will encourage law enforcement to complete the form at the time of any domestic/intimate partner violence arrest. Law enforcement would include this additional form when submitting the charging documents and synopsis. In appropriate cases, Court Services would use the form to complete an Ontario Domestic Assault Risk Assessment (ODARA) to serve as a supplement to the information already provided to the court and parties.

Detention Hearings: 725 ILCS 5/110-6.1

Currently, Kane County holds "bond call" seven days per week with weekend judicial coverage typically provided by a rotation of criminal and non-criminal court judges. Most hearings are held via remote video technology. Under the PFA, as noted above, initial appearances must be in person and detention hearing must be held immediately or within 24 or 48 hours if a continuance is requested.

- The Kane County chief judge is directing law enforcement to ensure defendants are brought to the Judicial Center no later than 7:30 a.m. each day, allowing the public defender and court services to have access to the defendant. Initial appearance hearings will begin at 10 a.m. For those defendants whom the state's attorney is not seeking detention, release conditions will be set during the initial appearance.

- On weekdays, detention hearings will be set for 1:30 p.m. that same day, unless a continuance is requested and granted by the court. On weekends, detention hearings will be held on Sundays only and will begin as soon as practicable following the conclusion of initial appearances. Holiday schedules will be set by the presiding judge of the criminal division.
- For the first three months of 2023, weekend judicial coverage will be handled exclusively by criminal court judges familiar with the new process under the PFA.

Issuing Arrest Warrants and Orders to Show Cause: 725 ILCS 5/110-3

Kane County acknowledges that some sections of the PFA are somewhat ambiguous and/or may contradict other legal authorities. To move forward on January 1, 2023, each court is obliged to make decisions regarding those provisions. One such ambiguity is the question of whether the statute requires the court to issue an order to show cause before issuing an arrest warrant for defendants on pretrial release who violate any pretrial release condition(s), including failing to appear. Additionally, the PFA is silent as to how an order to show cause should be served, e.g., personal service, via certified mail, or by regular mail.

- The Kane County Court has concluded that each judge will retain discretion regarding whether it must first issue an order to show cause, or whether it may issue a warrant immediately, depending upon the circumstances of the case.
- In Kane County, the court has opted to allow both in-person service as well as service via certified mail.

Revocation/Sanctions/Modifications: 725 ILCS 5/110-6

The PFA describes the options available to the court if a defendant on pretrial release is suspected of violating their conditions of release. The specific path a case takes will be determined by the parties and the judge hearing the case.

- In Kane County, any party may file a motion for a defendant's pretrial release condition(s) to be modified or removed. If a defendant is found to have violated pretrial release condition(s), the court may add/increase pretrial release conditions, impose sanctions, or revoke the defendant's release, depending on the circumstances (and as allowed by the PFA).

Transition from Monetary Bond

On January 1, 2023, money bonds will no longer be used. Some argue that it is necessary to create a plan of action for cases currently being held in custody on money bond to avoid a potential logjam of cases facing the courts at the beginning of the year.

Kane County considered several complimentary strategies to address this issue:

- (1) Decrease the use of money bond for new cases with non-detainable charges prior to January 1, 2023;
- (2) Review the cases held in jail on money bond that cannot be detained as of January 1, 2023;
- (3) Review the cases held in jail on money bond that are eligible for detention after January 1, 2023, but for whom the state's attorney does not intend to seek detention; and
- (4) review cases held in jail on money bond that are eligible for detention after January 1, 2023, and for whom the state's attorney intends to seek detention.

Kane county stakeholders worked collaboratively to discuss this issue and conducted preliminary analysis of the jailed population. Subsequently, the following decisions were made:

- The Kane County state's attorney's opinion is that the PFA does not apply retroactively and therefore does not apply to anyone charged prior to January 1, 2023. Consequently, the state's attorney notified all stakeholders of their decision not to file motions regarding defendants currently held on money bond.
- The Kane County court has determined that each judge retains discretion regarding applying PFA provisions retroactively, how to respond to motions by the parties, and whether to schedule bail review hearings sua sponte.

Forms Revision and Development

The breadth of changes that the PFA brings to Illinois requires each court to modify many of their court forms. While the Illinois Supreme Court's Implementation Task Force has developed sample forms that are available on the Task Force website, every jurisdiction will need to tailor those forms (or forms previously received from other jurisdictions) to reflect their own needs and priorities.

Kane County stakeholders addressed this major task collaboratively and deliberatively, with all system partners offering suggestions and refinements over several months of review. The table below provides a list of forms developed or changed by the county partners and was used to track progress.

Illinois Pretrial Fairness Act Document Checklist			
Form / Order Title	Stakeholder / Agency	Status	Finalized? Y / N
Probable Cause Warrant	Law Enforcement / Court		
Cite & Notice to Appear	Law Enforcement / Court		
Motion to Deny Pretrial Release	State’s Attorney		
Summons to Appear	Clerk		
Order for Pretrial Conditions	Court		
Pretrial Release / Detention Order	Court		
Initial Appearance Order	Court		
Order Remanding Custody	Court		
Order to Show Cause	Court		
Motion for Revocation of Pretrial Release	State’s Attorney		
Summons to Show Cause Hearing	Clerk		
Warrant for Violation	Law Enforcement / Court		
Motion / Notice for Sanctions	State’s Attorney		
Revocation Order	Court		
Order for Sanctions	Court		

Communication and Training Dissemination

Preparing for the PFA has required all Kane County stakeholders to work collaboratively, have frank discussions regarding how to implement the new laws, and to acknowledge at times differing interpretations of substantive statutory language. This diversity of opinion, and the stakeholders' distinct roles and authority in the criminal justice process, delineate and limit the extent to which PFA policies and procedures can be standardized. To support operational implementation, the local leaders have developed a guidebook that provides staff and other partners with information and resources that define how the court is operationalizing the PFA.

The process of codifying these operational decisions into the guidebook provided another opportunity for all partners to verbalize and discuss their positions. While this was difficult, and at times contentious, the resulting conversations were an invaluable piece of PFA implementation planning. This process also highlighted the importance of creating trusting, collaborative group dynamics in the beginning of PFA implementation.

Once the court finalizes the guidebook, the court will share it with all stakeholders electronically and during an in-person, all stakeholder convening. The guidebook will effectively serve as a reference tool for all stakeholders, including the general public, to clarify how the court will implement the PFA. The court will also leverage the content as it creates additional training materials.

Conclusion

As a pilot site, Kane County assumed an early leadership role in the process of collaboratively implementing the PFA. While some of the challenges and differing interpretations of the PFA are still outstanding, Kane County stakeholders were able to move forward with implementation planning, nonetheless. Kane County's proactive and collaborative approach to PFA implementation serves as a model for the rest of Illinois.

Check <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/> for the resources and latest updates from the Task Force.

The Task Force makes the following resources available to the public on the web page:

- PFA Implementation Toolkit
- Flowcharts and Considerations documents
- Sample Orders
- Press Releases
- Announcements of Town Hall meetings
- Information about regional education seminars

Email pretrialtaskforce@illinoiscourts.gov with any questions.