

IN THE
SUPREME COURT OF ILLINOIS

In re:)
Conducting Hearings Pursuant)
to SAFE-T Act) M.R. 31888
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Order

On September 18, 2023, the pretrial release provisions of Public Acts 101-652 and 102-1104, commonly known as the Safety, Accountability, Fairness and Equity-Today Act (SAFE-T Act), will go into effect. See *Rowe v. Raoul*, 2023 IL 129248.

The pretrial release provisions establish a default rule that all persons charged with an offense shall be eligible for pretrial release on personal recognizance subject to conditions of release that a court finds to be appropriate. 725 ILCS 5/110-2 (West 2022). The SAFE-T Act sets out extensive factors that a court must consider in determining the conditions of release, and the Pretrial Services Act requires that pretrial services agencies investigate and submit written reports to assist the court in determining the appropriate terms and conditions of pretrial release, if any. 725 ILCS 5/110-5 (West 2022); 725 ILCS 185/7 (West 2022).

The SAFE-T Act requires Illinois circuit courts to conduct in-person hearings, under certain circumstances or at certain stages of a case and within statutorily specified timeframes, to determine whether a defendant should be detained or continue in detention and, if not, what conditions of pretrial release should apply (if any). See *generally* 725 ILCS 5/106D-1, 109-1, 109-2, 110-5, 110-5.2, 110-6, 110-6.1 (West 2022). Defendants have a right to counsel at these hearings. See 725 ILCS 5/110-5 (West 2022) (including a public defender or a licensed attorney appointed by the court). Accordingly, attorneys for the state and defendants must prepare for these hearings, and courts must have the necessary information to proceed with these hearings. See, *e.g.*, 725 ILCS 5/110-5 (West 2022); 725 ILCS 185/7 (West 2022).

FILED

August 30, 2023
SUPREME COURT
CLERK

The SAFE-T Act permits these hearings to be conducted by two-way audio-visual communication systems if, among other exceptions, the chief judge of the circuit orders the use of those systems due to operational challenges in conducting the hearings in person.

Obtaining the necessary information and conducting any hearings on questions of pretrial detention or conditions of pretrial release within the statutorily specified timeframes will require increased judicial, pretrial, court staff, attorney, law enforcement, and other justice partner resources. The courts will be conducting initial hearings not only for newly arrested individuals but also for the over 9,000 individuals who are currently in pretrial detention, resulting in a temporary but significant influx of these types of hearings. Courts are taking reasonable steps to address the operational challenges including, but not limited to, adding staff, training existing staff to conduct the investigations and hearings, adjusting court schedules, reconfiguring courtrooms, and planning for disbursement of the fund established by 55 ILCS 5/3-4014 (West 2022) to enhance public defender services.

Due to the anticipated volume of investigations and hearings on pretrial detention or conditions of pretrial release beginning September 18, 2023, and the current limited resources of circuit courts, state's attorneys, public defenders, and other justice partners, statewide compliance with the SAFE-T Act will only be possible with the use of two-way audio-visual communication systems. Conducting these hearings by two-way audio-visual communication systems is consistent with the Court's belief that remote appearances can be used effectively and appropriately in both civil and criminal proceedings. Under Illinois Supreme Court Rule 45 (eff. Jan. 1, 2023), the courts of this state have been undertaking remote proceedings in criminal cases consistent with constitutional protections.

FOR THESE REASONS, the Court finds there are statewide operational challenges to conducting all hearings relating to pretrial detention or conditions of pretrial release pursuant to the SAFE-T Act in-person for the six (6) months following September 18, 2023, particularly those hearings that must be done within condensed timeframes.

Therefore, in the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, §16),

IT IS HEREBY ORDERED that:

1. Due to the current statewide operational challenges documented in this Order, there is a basis for circuit courts to use two-way audio-visual communication systems to conduct any hearings relating to pretrial detention and conditions of pretrial release where necessary.

2. A chief judge who seeks to permit use of two-way audio-visual communication systems to conduct any hearings relating to pretrial detention or conditions of pretrial release shall enter a local order approving the operational challenges documented in this Order and ordering the use of two-way audio-visual communication systems in their circuit where necessary.

The chief judge shall submit these local orders to the Court, through its Administrative Office, and make them available to the public, case participants, and other justice system partners in the same manner as local rules adopted pursuant to Supreme Court Rule 45(b)(7).

3. Because the Court finds that statewide operational challenges exist and are being reasonably addressed, circuits need not submit a plan to the Administrative Office to address these challenges while this Order remains in effect.
4. Nothing in this Order impacts the provisions of the SAFE-T Act that govern the way in which hearings conducted by two-way audio-visual communication systems shall occur, including, but not limited to, the availability of a secure line over which the person in custody and his or her counsel may confer and communicate, the availability of a recording for purposes of an appeal, and the fact that confidential communications between the defendant and defense counsel shall not be recorded and shall be undertaken consistent with constitutional protections. See, *e.g.*, 725 ILCS 5/106D-1(b), 110-6.6(b), and 109-1(g) (West 2022).
5. This Order shall remain in effect until March 18, 2024.

Order entered by the Court.