

# PRETRIAL FAIRNESS ACT + DOMESTIC VIOLENCE

In January 2021, the Illinois General Assembly passed a criminal justice reform package that includes the Pretrial Fairness Act (HB 3653 SFA2) - a piece of legislation that will abolish money bond and create a safer, fairer, and more effective pretrial legal system once Governor Pritzker signs the bill into law.

**Many anti-gender-based violence advocates throughout the state openly support the Pretrial Fairness Act (PFA), but there are several misconceptions circulating in the public narrative about how this policy change will affect survivors of domestic violence.**

## SAFETY

**Under the current system**, people charged with domestic violence may be released directly by police, or after only one quick court date ("bond hearing") determines if person will be held in custody for domestic violence.

State's Attorneys make their argument for a person to remain in jail with only a few minutes to prepare – much of the discussion concerns how much money the accused can afford to pay.

**Under the PFA**, if a State's Attorney is concerned for the safety of a DV survivor and their family, they have 24-48 hours to prepare for a hearing where a judge weighs evidence to decide if the accused should be incarcerated pretrial.

State's Attorneys asking for a person to be jailed must provide specific facts that relate to the safety of the victim(s) and may ask for the judge to enter orders of protection and other conditions of release.

## MONEY

**Currently**, access to money determines which people charged with domestic violence stay in jail. Some DV survivors face internal and external pressure to bail out perpetrators, or have other family members bail them out.

Some survivors are even improperly arrested as perpetrators, which can cause them to sit in jail for weeks, months, or even years – just because they are unable to pay a money bond.

**Without money bail**, wealth has no impact on a person's pretrial custody status. All decisions about if an accused person stays in jail or gets out are made by a judge – not placed in the hands of the survivor or their family.

Every person facing jail pretrial gets a comprehensive hearing, where the defense can call witnesses and explain their side. If a person is jailed, the written order must explicitly state why the judge believed they posed a danger.

## NOTIFICATION

**As the law stands today**, when and if an accused person becomes able to pay a money bond *at any time* while the case is pending, they are free to go.

Some people charged with domestic violence can be released by police without ever appearing before a judge.

Survivors are often given little-to-no time to prepare a safety plan in advance of release.

**With the Pretrial Fairness Act**, the court – not police – must decide whether releasing a person would pose a clear threat to the alleged victim.

If a person wants to appeal for release while awaiting trial, they must schedule a court date because hearings will be comprehensive. Survivors will be notified prior to these hearings.

At every stage, notice requirements for survivors are much stronger if the accused person is released.