

ADMINISTRATIVE ORDER NO. 2023-14
22nd Judicial Circuit
McHenry County, Illinois

FILED

SEP - 8 2023

KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

(Implementation of the Pretrial Fairness Act)

WHEREAS, in 2021, the Illinois General Assembly passed, and the Governor signed into law, Public Act 101-652, which is commonly known as the Safety, Accountability, Fairness and Equity-Today Act (the “SAFE-T Act”). *See Rowe v. Raoul*, 2023 IL 129248 ¶ 3 (July 18, 2023).

WHEREAS, through the SAFE-T Act and Public Act 102-1104 which was signed into law in follow-up, the statutory framework for the pretrial release of criminal defendants in Illinois was dismantled and rebuilt. *Id.*

WHEREAS, said statutory framework for pretrial release had been separately introduced but then legislated through the SAFE-T Act, and is also considered as the Pretrial Fairness Act (the PFA”).

WHEREAS, the PFA had been stayed through the handling of litigation which challenged its constitutionality, and this stay will end on September 18, 2023. *See Rowe v. Raoul*, 2023 IL 129248 ¶ 52 (July 18, 2023).

(Electronic Filings)

WHEREAS, the Supreme Court of Illinois has mandated electronic filings in its Circuit Courts, and this Circuit Court began meeting that mandate years ago.

WHEREAS, the PFA further mandates the expeditious processing of criminal defendants.

WHEREAS, the law enforcement agencies in McHenry County have had access to training on the use and operation of the Electronic Criminal Complaint application which has been developed through the work of the Circuit Clerk of McHenry County and Trial Court Administration.

WHEREAS, the use of the Electronic Criminal Complaint application is necessary to successfully implement the provisions of the PFA, as it will trigger the beginning of the processing of criminal defendants, with filings being made available to the Court and those involved in each case, including each criminal defendant through counsel.

(Initial Appearance Court)

WHEREAS, through the PFA, criminal defendants who are arrested are required to be brought before a Judge within forty-eight hours in Initial Appearance Court ("IAC").

WHEREAS, under the PFA, to provide for the meaningful hearings which are anticipated, after discussion with various stakeholders, including law enforcement, the State's Attorney (for the People and the Complaining Witnesses and Victims), the Public Defender and other defense counsel (for the anticipated criminal defendants), and the 22nd Judicial Circuit Department of Probation and Court Services (the "DCS"), the Court finds IAC should be held at least every forty-eight hours, or more specifically:

- (a) Excepting certain Court Holidays, on Monday through Friday at 1:15 p.m.,
- (b) On Saturdays and certain Court Holidays¹ at 10:00 a.m., and
- (c) On days following days with no IAC at 8:00 a.m. for certain defendants.²

WHEREAS, in IAC, Orders of Protection may be requested and should be considered.

WHEREAS, in IAC, the State may file a petition to detain a criminal defendant, and hearing on any such petition will proceed then unless continued in accordance with the PFA.

WHEREAS, IAC should be scheduled in Courtroom 202 of the Michael J. Sullivan Judicial Center³ (unless it is being used, and then as indicated at Courtroom 202); when the Judicial Center is closed, IAC will be scheduled in the Courtroom in the McHenry County Jail.⁴

(The Public Defender)

WHEREAS, through the PFA, the Court is required to appoint the Public Defender (or a licensed attorney at law of this State) to represent criminal defendants at IAC, where conditions of pretrial release are determined, unless a defendant has already retained a licensed attorney. *See* 725 ILCS 5/110-5(f).

WHEREAS, through the PFA, the Court should appoint the Public Defender to represent criminal defendants who are being initially held under arrest, upon their arrival at the McHenry

¹ Court Holidays are announced through Administrative Order and may result in closures more than one day in a row between Monday and Friday, as with the Thanksgiving Holiday for example. When this occurs, the Court will endeavor to conduct IAC as needed as with the days after Thanksgiving. This Court will also endeavor to publish a schedule for IAC in advance.

² To accommodate the 48-hour requirement for initial court appearances under the PFA, criminal defendants who are arrested before 1:15 p.m. on the day before a day without IAC and who do not come into IAC, will need to be processed at these points in time.

³ 2200 North Seminary Avenue, Woodstock, Illinois 60098.

⁴ 2200 North Seminary Avenue, Woodstock, Illinois 60098.

County Jail, to maximize the opportunity for any such defendant to meaningfully participate in IAC.

WHEREAS, any such appointment of the Public Defender should last until IAC is concluded for the defendant or any such defendant retains a licensed attorney for IAC, and thereafter until any such defendant is found to not be eligible for representation by the Public Defender for the remainder of the case.

WHEREAS, upon retention of private counsel by a criminal defendant, the Public Defender should expeditiously relay all material received for the defendant to such private counsel.

(Risk Assessment & Criminal History)

WHEREAS, through the PFA, "The Court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release as provided for in Section 10-6.4." *See* 725 ILCS 5/110-5(b).

WHEREAS, pretrial officers of the DCS use the Virginia Pretrial Risk Assessment Instrument (the "VPRAI"), which is a regularly validated risk assessment tool to author Pre-Trial Bond Reports, which will transform into Pretrial Reports under the PFA.

WHEREAS, under the PFA, "[i]f a risk assessment tool is used, the defendant's counsel [and all parties involved in the case] shall be provided with the information and scoring system of the risk assessment tool used to arrive at the determination." *See* 725 ILCS 5/110-5(b).

WHEREAS, pretrial officers will continue to provide criminal history information and will also provide VPRAI information in each Pretrial Report, which will be filed and provided to the parties in each case.

WHEREAS, through the PFA, Pretrial Reports will contain personally identifying information, such that these documents should be impounded in the document and case management information systems of the Clerk of the Court, to protect the same from unnecessary dissemination.

(Out-of-County Warrants)

WHEREAS, under the PFA, as with all arrests, warrants which are issued outside McHenry County but served in McHenry County, need to be addressed within forty-eight hours, and "[a]ny person arrested in a county other than the one in which a warrant for his arrest was issued shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or, if no additional delay is created, before the nearest and most accessible judge in the county from which the warrant was issued." *See* 725 ILCS 5/109-2(a).

WHEREAS, “any person arrested in a county other than the one in which a warrant for his arrest was issued, may waive the right to be taken before a judge in the county where the arrest was made [in which case] the arresting agency shall surrender such person to a law enforcement agency of the county that issued the warrant without unnecessary delay.” *See* 725 ILCS 5/109-2(b).

WHEREAS, to the extent any such criminal defendant is processed on an Out-of-County Warrant (“OCW”) and is detained through IAC in this Circuit, within five calendar days, “the county⁵ where the warrant [was] outstanding shall...(1) transport the person to [that] county...for [further hearing]...or...(2) quash the warrant and order the person released...only when the county that issued the warrant fails to transport the defendant in the timeline as proscribed.” *See* 725 ILCS 5/109-2(e).

WHEREAS, if the Court which issued the OCW does not take said action (and does not communicate the same to this Circuit Court) within five calendar days, a Judge of this Circuit Court should release the detained defendant, set conditions of release, and admit the defendant to pretrial release for his or her appearance before the Circuit Court named in the warrant; “[u]pon releasing the defendant, the circuit judge or associate circuit judge shall certify such a fact on the warrant and deliver the warrant and the acknowledgment by the defendant of his or her receiving the conditions of pretrial release to the officer having charge of the defendant from arrest and without delay deliver such warrant and such acknowledgment by the defendant of his or her receiving the conditions to the court before which the defendant is required to appear.” *See* 725 ILCS 5/109-2(f).

WHEREAS, “[i]f a person has a warrant in another county, in lieu of transporting the person to the issuing county as outlined in subsection (e), the issuing county may hold the hearing by way of a two-way audio-visual communication system if the accused waives the right to be physically present in court, the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court, or the chief judge of the circuit orders use of that system due to operational challenges in conducting the hearing in person.” *See* 725 ILCS 5/109-2(g).

WHEREAS, the handling of OCWs should be coordinated by one Judge during regular hours and the Duty Judge at other times.

(Review)

WHEREAS, with the novelty and demands of the PFA, this Circuit should continue to review the implementation of the PFA and consider any changes which may advance the apparent purposes of the PFA and the interests of justice.

⁵ Reference to the “county” in this portion of the PFA is found to refer to the Circuit Court for the county, as warrants are issued by Courts (rather than counties, which more generally operate as units of local government).


(Order)

NOW, THEREFORE, IT IS ORDERED that:

- (A) Law enforcement agencies shall use the Electronic Criminal Complaint application to electronically file complaints against criminal defendants who are held by them under arrest, as soon as possible.
- (B) When a criminal defendant is held under arrest and arrives at the McHenry County Jail, the Public Defender is appointed to represent the criminal defendant in IAC, with this appointment lasting until the end of the proceedings in IAC.
- (C) Upon retention of private counsel by a criminal defendant, the Public Defender shall expeditiously relay all material received for the defendant to such private counsel and advise the Court of need to be discharged as soon as possible.
- (D) As soon as possible, the DCS shall file a Pretrial Report for any criminal defendants who is held under arrest in anticipation of IAC, with any such filing impounded.
- (E) IAC shall be held at least every forty-eight hours, or more specifically:
 - (a) Excepting certain Court Holidays, on Monday through Friday at 1:15 p.m.,
 - (b) On Saturdays and certain Court Holidays at 10:00 a.m., and
 - (c) On days following days with no IAC at 8:00 a.m. for certain defendants.
- (F) Hearings on any petition which requests the detention of a criminal defendant shall proceed in IAC, unless continued in accordance with the PFA.
- (G) IAC shall be scheduled in Courtroom 202 of the Michael J. Sullivan Judicial Center (unless it is being used, and then as indicated at Courtroom 202); when the Judicial Center is closed, IAC will be scheduled in the Courtroom in the McHenry County Jail.
- (H) The position of OCW Supervising Judge is hereby created; Judge Michael E. Coppedge shall serve in this capacity.
- (I) OCWs shall be processed in accordance with the PFA in IAC and shall then be referred to and handled by the OCW Supervising Judge during regular Court hours (8:00 a.m. to 4:30 p.m.) with back up scheduled through Trial Court Administration; on weekends and Court Holidays, the Duty Judge shall serve as the OCW Supervising Judge.

- (J) The position of Duty Supervising Judge is hereby created; Judge Suzanne C. Mangiamele shall serve in this capacity.
- (K) The Duty Supervising Judge shall coordinate the scheduling of the Duty Judge and related items.
- (L) In its discretion, and in accordance with the PFA, the Court reserves the right to address the items covered in this Administrative Order, to provide for due process in the interest of justice.
- (M) This Circuit Court shall continue to review the implementation of the PFA and consider any changes which may advance the apparent purposes of the PFA and the interests of justice.
- (N) This Administrative Order shall be effective on September 18, 2023 and shall remain in effect until further Order of Court.

DATED: September 8, 2023


MICHAEL J. CHMIEL
CHIEF JUDGE