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Illinois Supreme Court makes changes amid 'staggering' increase in pretrial appeals over detention



The Illinois Supreme Court in Springfield is seen April 18, 2023. The Supreme Court changed rules for appealing pretrial detention decisions after appellate courts saw an "unprecedented and unsustainable" influx. A requirement that appellants file a motion in front of the trial judge asking to set aside the detention decision as a prerequisite for filing an appeal before an appellate court are among changes. (Brian Cassella/Chicago Tribune)



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The Illinois Supreme Court has changed rules for appealing pretrial detention decisions after appellate courts saw an "unprecedented and unsustainable" influx of such appeals following implementation of the Pretrial Fairness Act.

The changes, which take effect April 15, were recommended by a task force that prepared a report after consulting clerks, prosecutors, public defenders and other attorneys across the state. The law allows detention decisions to be appealed, but the process is governed by Supreme Court rules.

The changes are meant to streamline the process while still providing for "meaningful review of decisions" regarding pretrial detention, the report says.

The long-sought reforms that abolished the use of cash bail took effect in September, a landmark moment that advocates say levels the playing field for defendants who sometimes were locked up for years while awaiting trial because they were too poor to post bail.

One impact of the legislation, though, [has been a "staggering" increase in appeals](#) asking higher courts to review trial court judges' decisions about detention. Though anticipated to some extent, the volume of appeals surpassed expectations, with pretrial appeals outnumbering all other criminal appeals by about 3 to 1 in some districts, the report said.

In about five months, there were nearly 1,900 detention appeals, compared with about 17 bond appeals annually under the previous cash bail system, marking a projected "268-fold increase in volume," the report said.

"There is no doubt that the volume of PFA cases is a problem; that's why the Task Force was created," 4th District Appellate Justice and task force Chair Eugene Doherty said in a statement. "We think our recommendations can help address the volume while making the process of appellate review more meaningful."

The task force, made up of five appellate judges, notes that further changes could be necessary if these don't sufficiently stem the flow, including adding additional judges.

"We hope that adoption of the measures ... will result in the ability to handle PFA appeals with appropriate deliberation, but we harbor doubts about whether they will be sufficient," the report said.

Among changes are a requirement that appellants file a motion in front of the trial judge asking to set aside the detention decision as a prerequisite for filing an appeal before an appellate court.

This change, though, elicited "negative feedback" from trial judges, the report said, who noted that this would add to their dockets.

"We do not overlook the fact that trial courts have borne much of the burden of implementing the PFA in our court system; we would never contrive to put upon them some exotic new requirement," the report said, adding that the change is in line with how bond decisions were previously appealed. "But this is not a contrivance, and it is not new; it is a return to the norm."

The court also will now only allow "one-at-a-time" appeals, meaning that parties cannot appeal a new detention decision by a judge if a previous appeal is in the works. The Pretrial Fairness Act provides that detention decisions are reviewed during subsequent court dates, so defendants could file multiple appeals in the same case, clogging up the system.

The change would "incentivize strategic thinking by trial counsel about which detention rulings to appeal," the report said.

Among other changes, the court requires notification within 24 hours if the appeal becomes moot due to a resolution in the case, as well as the elimination of the 14-day deadline to file, reasoning that people are rushing into decisions about whether to appeal due to the deadline.

The Pretrial Fairness Act, part of a broad array of criminal justice reforms passed as part of the SAFE-T Act, abolished cash bail as a potential condition for release and changed the way pretrial hearings are conducted.

Proponents of the law have long argued that cash bail deepened disparities in the system by disproportionately jailing people too poor to make bail. In addition to the bail measure, the law also seeks to even the playing field for defendants up for their first court appearance, with more robust hearings and opportunities to evaluate the evidence more closely.

The cash bail measure has been controversial for those concerned about the public safety impact of the provisions — particularly Republicans. Opponents of Gov. J.B. Pritzker have sought to paint him and his Democratic allies as weak on crime — though studies of bail reform measures in other jurisdictions have not shown a significant effect on recidivism or failure by defendants to appear in court.

Lawmakers delayed implementation for two years so jurisdictions could prepare for the changes, and it was further stalled by a lawsuit from prosecutors across Illinois who challenged the law's constitutionality.

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