

2022 Domestic Violence Pretrial Practices Working Group Preliminary Report:  
Current Illinois Domestic Violence Pretrial Practices

A report to the Illinois Governor and General Assembly

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## Introduction

### Prevalence and Impacts of Domestic Violence

According to the Office for Victims of Crime (n.d.), domestic violence refers to physical, sexual, emotional, and financial abuse or other controlling behavior perpetrated by a current or former intimate partner or a family member. In Illinois, Uniform Crime Report data indicated that more than 111,000 domestic offenses were reported to law enforcement in 2019 (Illinois Criminal Justice Information Authority, n.d.). Findings from a nationally representative survey examining the prevalence of victimization in the United States indicate that over half of domestic violence offenses are not reported to law enforcement (Thompson & Tapp, 2022). Data from ICJIA's InfoNet system, a web-based victim services database containing deidentified domestic violence client and service information, revealed that 49,433 domestic violence victims had received services from an Illinois domestic violence agency in 2021. These domestic violence providers also responded to 112,345 hotline calls from victims.

Studies have found a relationship between domestic violence and negative impacts for victims. Domestic violence victims experience physical injuries, such as fractures and head trauma, and mental health symptoms, including anxiety, suicidal behavior, depression, and difficulty sleeping (Houston-Kolnik et al., 2019). They also suffer economic impacts; victims have reported the abuser harassing them at work, having to leaving their position or being fired because of the abuse, and being forced to take on debt that negatively affected their future financial stability (National Coalition Against Domestic Violence, 2016).

### Legal Policies and Practices

Research points to legal policies and practices that have been developed and/or implemented to address domestic violence perpetration and prevent its reoccurrence. These include:

- **Mandatory arrest:** Requires law enforcement to make an arrest when there is reason to believe that a domestic violence offense has occurred (Hirschel et al., 2008).
- **Specialized domestic violence courts:** Have dedicated judges assigned to domestic violence cases and maintain a separate calendar for these cases (Labriola et al., 2009).
- **Firearm ban:** Individuals convicted of a misdemeanor domestic violence offense are prohibited from owning a firearm (Office of Inspector General, 2020).
- **No-drop prosecution:** Prosecutorial discretion to pursue a case without victim participation or cooperation (Corsilles, 1994).
- **Orders of protection:** Court orders that restrict the offenders' behavior, such as prohibiting abuse, intimidation, or harassment, or compels them to take certain actions, like relinquishing firearms (Illinois Attorney General, 2020).
- **Risk assessment tools:** Instruments used by criminal justice professionals to assess risk of repeat domestic violence perpetration and the potential for fatal outcomes (Northcott, 2012).
- **Victim notification system:** Free and confidential automated system that provides registered victims with updates by phone, text, or email about the offender's court hearings or custody status (VINE, n.d.).

Studies suggest that some of these legal policies and practices, including firearm bans and orders of protection, do increase victims' safety. Since firearm bans have been enacted the number of domestic violence-related homicides has decreased (Zeoli et al., 2020). In addition, a systematic review of research examining the relationship between orders of protection for domestic violence offenses and revictimization found that domestic violence victims with an order of protection were less likely to reexperience physical abuse, psychological abuse, and threats (Dowling et al., 2018). However, support for mandatory arrest and no drop prosecution policies has been mixed. For example, supporters of mandatory arrest policies for domestic violence offenses assert that such policies decrease recidivism, whereas opponents contend that more victims have been arrested due to these policies (Gleicher & Gilbreath, 2021). Also, while the intent of no drop prosecution policies is to protect domestic violence victims, this approach is inconsistent with trauma-informed care because it disempowers victims by preventing them from having a voice in the decision-making process. Trauma-informed practices are important because they have been linked to positive victim outcomes, including increased sense of safety and decreased risk of re-traumatization (Substance Abuse and Mental Health Services Administration, 2014).

## **SAFE-T Act**

The Illinois Safety, Accountability, Fairness, and Equity-Today Act (SAFE-T Act) was signed into law on January 22, 2021, by Illinois Governor JB Pritzker. The SAFE-T Act enacts criminal justice reform in three critical areas – policing, pretrial, and corrections. For more detailed information on these reforms, see [The 2021 SAFE-T Act: ICJIA Roles and Responsibilities](#). Pretrial reforms, in particular, have important implications for victims of domestic violence and other forms of gender-based violence, including sexual assault and stalking. Thus, the SAFE-T Act established the Domestic Violence Pretrial Practices Working Group to inform the state's understanding of current domestic violence pretrial practices and to make recommendations for evidence-based improvements to court procedures. The present report reflects the working group's assessment of current domestic violence pretrial practices as of November 30, 2022, and satisfies their statutory obligation to submit a preliminary report summarizing these findings. Domestic violence pretrial practices in Illinois continue to shift in response to new or amended legislation as well as court orders and decisions. While this report does not capture changes in practices since November 30, 2022, it does provide a crucial foundation upon which members can assess changes in practices as new legislation is passed, amended, and implemented in Illinois and develop recommendations for evidence-based improvements to court procedures.

## Background

### Domestic Violence Pretrial Practices Working Group

The working group is comprised of 13 diverse Illinois criminal justice and victim service stakeholders. Illinois Criminal Justice Information Authority Executive Director, Delrice Adams, serves as the working group’s chair. Table 1 contains the membership list.

**Table 1**

*Domestic Violence Pretrial Practices Working Group Membership List*

Field	Name	Organization	Required
Administrative Office of the Courts	Wendy Venvertloh	Administrative Office of the Courts	Yes
ICJIA	Amanda L. Vasquez	ICJIA	Yes
Domestic violence victims’ advocate	Amanda Pyron	The Network	Yes
Formerly incarcerated victims of violence	Willette Benford	City of Chicago	Yes
Legal practitioner	Deirdre Harrington	Cook County State’s Attorney	Yes
Legal practitioner	Margaret Duval	Ascend Justice	Yes
Legal practitioner	Judge Randy Wilt	17 <sup>th</sup> Circuit	Yes
Legal practitioner	Monique Patterson	Cook County Public Defender	Yes
Legal practitioner	Sharlyn Grace	Cook County Public Defender	Yes
Partner abuse intervention	Christine Call	Center for Advancing Domestic Peace	No*
Law enforcement	Eric Arnold	Illinois Law Enforcement and Training Standards Board	No*
Probation	LaTanya Hill	Kane Court Services	No*
Court administration	Nicole Ticknor	17 <sup>th</sup> Circuit	No*

*Note.* \*These individuals represent “other entities that possess knowledge of evidence-based practices surrounding domestic violence and current pretrial practices in Illinois,” as required by the legislation.

The SAFE-T Act delineated three required working group activities. These activities were to: a) convene at least quarterly; b) issue a preliminary report on current domestic violence pretrial practices within 15 months of the Act’s effective date; and c) issue a final report on recommendations for evidence-based improvements to court procedures no later than 15 months after the preliminary report’s release.

Since its formation in March 2022, the working group has convened eight meetings. Meetings were held virtually via Webex on the following dates:

- Thursday, March 24, 2022
- Thursday, April 28, 2022
- Thursday, May 26, 2022
- Thursday, June 23, 2022
- Thursday, August 25, 2022
- Thursday, October 27, 2022
- Thursday, December 8, 2022
- Tuesday, January 24, 2023

During working group meetings, members participated in guided discussions on various domestic violence-related pretrial practices topics, such as law enforcement and court practices for domestic violence offenses, risk and lethality assessments, and data collection standards. In addition, members invited Mary Ratliff, Program Director for the Illinois Family Violence Coordinating Council (IFVCC) program, to present information on the IFVCC program at a working group meeting. She also described a recent Office for Violence Against Women (OVW) funded initiative focused on implementing risk assessment protocols within local councils.

### **Methodological Approach**

The present report is a summary of working group members' assessment of current domestic violence pretrial practices. Members are subject matter experts on current practices because of their education, training, and experience. Additional sources are only referenced in the report to contextualize working group members' discussion.

Minutes from five working group meetings were analyzed for common themes. The following four themes were identified: a) system responses; b) risk and lethality assessments; c) education and training; and d) data collection. This initial thematic categorization, sub-themes, and corresponding discussion points supporting each category were then shared with members for feedback at the October 27<sup>th</sup> meeting. For example, members' discussion of initial appearance hearings was presented as a sub-theme of the system responses category and included references to statements made by members on current initial appearance hearing practices as support. Members recommended that victim notification be included as a category or sub-theme; as a result, victim notification was added as a system response sub-theme.

Members were provided with an initial preliminary report draft and invited to provide feedback and additional substantive content. A total of nine members submitted feedback and/or content by email. On January 24<sup>th</sup>, the working group convened and approved this preliminary report for submission to the Illinois Governor and General Assembly.

## Working Group Assessment of Current Practices

Members discussed current domestic violence pretrial practices. Their discussion centered around four areas: criminal justice system responses, use of risk and lethality assessments, education and training for criminal justice professionals, and pretrial data collection for domestic violence and related offenses.

### System Responses

Members' assessment of criminal justice system responses currently used during the pretrial phase focused on Illinois' discretionary arrest policy for domestic violence offenses, and probable cause, initial appearance hearing, and victim notification practices.

### *Illinois as a "May Arrest" State*

According to the Illinois Domestic Violence Act (IDVA) of 1986, law enforcement *may* arrest the alleged perpetrator if there is sufficient probable cause that a domestic violence-related offense has been committed (The County of DuPage, n.d.). These offenses include:

- **Physical abuse:** Use of physical force, confinement, or restraint and is inclusive of sexual abuse
- **Harassment:** Unnecessary conduct causing distress to a reasonable person;
- **Intimidation of a dependent:** Forcing a dependent to observe or participate in the abuse of another individual
- **Interference with liberty:** Threats or use of physical abuse, harassment, or intimidation to induce an individual to behave in a particular manner
- **Willful deprivation:** Exposing an individual to physical or emotional harm by failing to provide them with needed medication, health care, food, shelter, or physical assistance

Individuals protected by the IDVA are victims who have been abused by a family member or persons sharing the same household, either currently or previously (The County of DuPage, n.d.). Examples of protected relationship types are spouse or former spouse, parent, child or stepchild, roommates, persons sharing a child, current or former dating partners, and the personal assistant to an individual with a disability.

Several working group members described Illinois as a "may arrest" state, in contrast to other states with mandatory arrest policies for domestic violence offenses. They asserted that not all prosecutors, law enforcement officers, and defense attorneys understand this important distinction and that educating them on the policy and how it impacts legal procedures and processes can be challenging. Therefore, criminal justice professionals may benefit from clearer guidance on how law enforcement officers are to make arrest decisions when domestic violence is suspected.

### ***Probable Cause and Initial Appearance Hearings***

Probable cause is required to make an arrest, to conduct a search, or to issue an arrest or search warrant (Legal Information Institute, n.d.a). While courts have discretion in interpreting probable cause, they have broadly described it as there being sufficient reason to believe that a crime has occurred. If law enforcement determines there is probable cause to conduct a warrantless arrest or search, then a judicial determination of probable cause must be made within 48 hours (Legal Information Institute, n.d.b). Members stated that in many jurisdictions probable cause is determined during the defendant's initial appearance hearing. According to the American Bar Association (2019), during an initial appearance hearing for a misdemeanor offense, the defendant is informed of the charge(s) and their right to counsel, and may enter a plea, and the presiding judge or magistrate sets bail.

Members reported that the timing of a defendant's first appearance hearing varied by jurisdiction. In Kane and Cook counties defendants may be brought in front of a judge for their initial appearance hearing the next day, whereas in rural counties it may be several days before their initial appearance hearing is held. They also noted that in extreme circumstances that a defendant may be detained for a week or more before their initial appearance hearing is held if probable cause is found. According to members, such delays are allowable because while statute requires that defendants be brought before the first available judge, it does not specify a time limit. Rather, it states that the defendant's initial appearance before a judge is to take place "without unnecessary delay" (Legal Information Institute, n.d.c).

Therefore, to satisfy the requirement that a probable cause determination is made within 48 hours, some smaller Illinois counties have decoupled the probable cause determination from the first appearance hearing. Members reported that Gerstein or probable cause hearings satisfy the court's statutory obligation to make a probable cause determination with 48 hours of arrest. Gerstein refers to a 1975 Supreme Court Case, *Gerstein v. Pugh*, in which the court determined that a probable cause determination does not require the presence of counsel nor a hearing; an informal procedure can be used (Office of the State Appellate Defender, 2019). However, regardless of whether the probable cause determination occurs during a defendant's initial appearance or separately, the burden of proof must be met because, according to working group members, there is a presumption of release.

### ***Victim Notification***

Both the IDVA and the Rights of Crime Victims and Witnesses Act delineates information to be shared with domestic violence victims; this information sharing can be crucial for facilitating victims' safety. Specifically, the IDVA requires law enforcement to provide domestic violence victims with a summary of their rights, available victim service resources, and the responding officer's name and identification number (The County of DuPage, n.d.). Furthermore, the Rights of Crime Victims and Witnesses Act asserts that victims have the right be notified of court proceedings and to information about the defendant's conviction, sentence, and custody status (National Crime Victim Law Institute, n.d.). To satisfy IDVA victim notification requirements, the Chicago Police Department (2008) provides domestic violence victims with a Domestic Incident Notice; the form includes a summary of their rights, information on legal remedies,



including how to obtain an order of protection, the domestic violence hotline number, and the responding officer's name and badge number. However, members noted that under current law bond hearings are excluded from victim notification requirements.

Several working group members reported that these required victim notification practices are implemented consistently across Illinois counties. Furthermore, information for each local jurisdiction's prosecution-based victim/witness advocacy program is also provided. While the specific services offered by the victim/witness advocacy program may vary by jurisdiction, services offered by multiple Illinois programs include court accompaniment, referrals, and assistance with victim impact statements and filing applications for crime victim's compensation (Adams County, n.d.; Will County State's Attorney, 2021; Sangamon County, n.d.). In 2021, the Illinois Attorney General's Office launched a new statewide automated victim notification system called Victim Information and Notifications Everyday. The system allows victims to search for information on the offenders' custody status and for victim services agencies (Illinois Attorney General, 2021). Victims who register can receive automatic notifications via phone, email, or text regarding court dates and changes in the offender's custody status. This system is a tool used to satisfy the Crime Victims and Witnesses Act requirement that victims be notified of court proceedings and the offender's status.

## **Risk and Lethality Assessments**

Members had numerous robust discussions about the risk and lethality assessment tools currently being used to help assess risk to domestic violence victims during pretrial. In addition to reporting the types of instruments and their utilization, members asserted the importance of satisfying lethality assessment requirements outlined by the Cindy Bischoff Law and using evidence-based assessment tools.

### *Types*

Working group members discussed four risk and lethality assessments for use with domestic violence and other gender-based violence offenses. Among those discussed as being widely utilized in Illinois were:

- **Danger Assessment:** Contains 20 items and an accompanying calendar, for indicating when abuse occurred, and is used to assess risk of homicide by an intimate partner (John Hopkins School of Nursing, 2022). Items ask domestic violence victims about the characteristics of the abuse, such as the use of a weapon, controlling behavior, and threats, and other risk factors, including perpetrator's alcohol or drug use, employment status, and gun ownership (Campbell, 2019).
- **Domestic Violence Screening Instrument (DVSI):** Designed to assess perpetrator's risk of committing future domestic violence-related offenses. The tool considers such factors as the perpetrator's criminal history, including any prior order of protections, employment status, substance use, and use of a weapon in a past crime (Williams & Houghton, 2004).
- **Lethality Assessment Program (LAP):** Joint law enforcement and social service agency partnership that seeks to decrease domestic violence victims' risk of being re-assaulted or

killed by an intimate partner (Richards et al., 2020). The program is comprised of a Lethality Screen and Protocol Referral. The Lethality Screen is an 11-item tool adapted from the Danger Assessment for use with first responders and other practitioners providing on the ground support (Messing et al., 2017). The screening tool includes items on strangulation, employment, threats, access to weapons, and controlling behaviors. As part of the protocol, victims assessed as being high risk are immediately connected with a domestic violence service provider (Richards et al., 2020).

- **Ontario Domestic Assault Risk Assessment (ODARA):** Computes the likelihood that a perpetrator will assault their partner again based on responses to 13 items and comparisons to other perpetrators with similar assessment scores (Mental Health Centre Penetanguishene, 2005). The perpetrator's criminal history, substance use, use of threats and isolation during the abuse, and the presence of shared children are among the factors assessed.

### *Utilization*

Members reported that many agencies conduct risk assessments for domestic violence cases. According to one member, Cook county uses a general population risk assessment. [Arnold Ventures](#) (2019) has identified this tool as their Public Safety Assessment (PSA) tool. The PSA was developed to guide pretrial decision-making and is comprised of nine factors, including the perpetrator's age, offense type, and current or past criminal justice system involvement; these factors are used to calculate the perpetrator's risk for re-offending or their failure to appear for a court hearing. Other members stated that some counties use the ODARA to assess risk for recidivism and that Winnebago county uses the DVSI at bond court for domestic violence offenses.

Guest speaker, Mary Ratliff, described the IFVCCs' recent efforts to increase utilization of risk assessment tools through an OVW funded initiative. This project seeks to increase the number of judicial circuits using a risk assessment tool prior to a domestic violence perpetrator's pretrial release. Local IFVCCs have partnered with the [Center for Court Innovation](#) to develop a strategic plan for implementation of risk assessments tools in their circuits. A working group member asserted that the project could be used to identify and implement a statewide lethality assessment protocol for domestic violence offenses.

Members also noted that law enforcement are being encouraged to use risk assessment tools in their police reports. Pretrial agencies have reached out to law enforcement to ask if risk assessment fields can be added to reports. Doing so helps to ensure that this information is available to the courts when pretrial decisions are being made. Also, members asserted that information in police reports has the potential to heavily influence initial appearance hearing decisions. Furthermore, others suggested that increased use of risk assessment tools by law enforcement increases both officer and victim safety.

### *Cindy Bischof Law*

In addition, working group members considered how the use of risk and/or lethality assessments intersected with the Cindy Bischof Law. The Cindy Bischof Law went into effect on January 1,

2009 (Thompson, 2011). This legislation attempted to increase protections for domestic violence victims whose perpetrator had violated an order of protection. Specifically, the law's passage enabled the courts to order that a risk assessment be conducted for order of protection violations and for them to be placed on electronic monitoring. Furthermore, the Cindy Bischof Law specified that a partner abuse intervention, pretrial, probation, or parole agency was to conduct the assessment, that these agencies were permitted access to the defendant's criminal history for the purpose of completing the assessment, and that assessment findings were admissible in court (Thompson, 2011). However, one member reported that some partner abuse intervention agencies have been unable to access the defendant's criminal history for the purpose of completing an assessment when there has been an order of protection violation. Lastly, the Cindy Bischof Law delineated that perpetrators accused of violating an order of protection could be placed on electronic monitoring and that monitoring was required for perpetrators convicted of violating an order of protection (Thompson, 2011).

### *Efficacy*

Working group members also discussed the importance of using risk and lethality assessment tools with demonstrated effectiveness. One member noted that while the DVSI is widely used in Winnebago county, that more research is needed to examine its effectiveness. However, another member cautioned that the DVSI is intended to assess recidivism and not lethality. For example, there are no questions about strangulation. It was also noted that in communities using the Danger Assessment instrument that a decrease in domestic violence-related fatalities had been observed. This reduction was attributed to the identification of behaviors associated with increased homicide risk. According to a member, one jurisdiction is currently assessing the efficacy of LAP; research findings are forthcoming.

In addition, members stated that lethality and risk assessment tools have strengths and limitations, including whether they have been validated for use with the intended population. For example, whether there is evidence to support a tool's validity or reliability with same-sex partners should be considered. Before one or more risk or lethality assessment tools is utilized to for making pretrial decisions, one member asserted that the validity and reliability of using these tools with this population should be examined. Furthermore, a critical concern expressed was whether validated risk and assessment tools have inherent biases. A review of several risk assessment tools used for sentencing decisions revealed that 10-25% of items were linked to a defendant's socioeconomic characteristics, such as employment, education, and living situation (van Eijk, 2017). As a result, jurisdictions using risk and lethality assessment tools comprised of numerous socioeconomic indicators may unintentionally advantage defendants with a higher socioeconomic status.

### **Education and Training**

Working group members' assessment of the current availability of education and training for judges and law enforcement on domestic violence-related policies and procedures suggested there is a gap. For example, education for judges on best practices for interacting with domestic violence victims is needed. Members asserted that appropriate decorum does not exist beyond the limited number of judges who are regularly assigned to domestic violence divisions.

However, one member noted that Winnebago county has used federal funds to train judges on domestic violence. According to the Center for Court Innovation (n.d.), Winnebago County Domestic Violence Coordinated Court staff have received a training titled, Enhancing Judicial Skills in Domestic Violence Cases Workshop. The training is facilitated by judges with domestic violence case experience and utilizes diverse teaching methods, including lectures, videos, case studies, and small groups, to increase judges' skills in presiding over domestic violence cases (Jaffe, 2010). Victim and perpetrator behavior, practical courtroom operations, and decision-making are among some topics covered in the training.

Members reflected that recent state initiatives have improved training content and practices for law enforcement. Specifically, these improvements have been observed for legislatively mandated training on domestic violence, sexual assault, and related topics. However, one member asserted that law enforcement would benefit from additional training on how to identify domestic violence offenses using critical thinking techniques. Furthermore, it was noted that funding for law enforcement training in Illinois had been decreased in recent years. In February 2020, the Illinois Sheriffs' Association and the Illinois Association of Chiefs of Police submitted a joint letter to Illinois Governor, JB Pritzker, regarding an anticipated funding shortage for legislatively mandated law enforcement training (Illinois Association of Chiefs of Police, 2020). They anticipated a reduction because of changes to a recent law giving judges discretion to waive traffic conviction fees. A portion of these fees were used by the Illinois Law Enforcement Training and Standards Board (ILETSB) to fund law enforcement training. As a result, a \$5 million appropriation for law enforcement training was requested (Illinois Association of Chiefs of Police, 2020). In response, the Governor's Office of Management and Budget submitted a request to increase the SFY21 and SFY22 budgets by \$3 million to fund law enforcement training (Stock, 2020). Furthermore, the ILETSB's budget has increased from \$55 million in SFY 2022 to \$145 million in SFY2023 (Illinois Association of Chiefs of Police, 2022). Some of these increased funds are to be used for implementation of SAFE-T Act provisions.

## **Data Collection**

Working group members stated that to the best of their knowledge that data on domestic violence or sexual assault pretrial practices are not currently collected, representing another potential gap and area of improvement. However, the SAFE-T Act established the Pretrial Practices Data Oversight Board; it specifies that this board is to identify current pretrial data collection efforts and to develop and implement strategies for gathering pretrial county level data on a quarterly basis. Information in the following areas is to be collected:

- Individuals arrested and charged with a misdemeanor or felony
- Outcomes of pretrial conditions and pretrial detention hearings
- Individuals detained by the county during pretrial
- Individuals placed on electronic monitoring during pretrial
- Individuals discharged following pretrial detention
- Rearrest following pretrial release
- Failure to appear following pretrial release rates
- Use of validated pretrial risk assessment tools
- Other areas as determined by the Pretrial Practices Data Oversight Board

Members of the Pretrial Practices Data Oversight Board and this working group co-developed domestic violence-related data elements to be collected. The recommended data fields are below:

- Number of domestic violence/IDVA arrests per jurisdiction
- Number of people charged with misdemeanor and felony IDVA charges statewide per jurisdiction with a specific list of charges
- Number of domestic violence orders of protection and civil no contact orders (CNCOs) requested at a detention hearing
- Number of domestic violence orders of protection and CNCO granted at a detention hearing
  - Number requested/granted along with hold on defendant
  - Number requested/granted with firearm remedies
- Number of domestic violence orders of protection and CNCO served at a detention hearing (pending civil served at detention hearing)
- Number of individuals released pending further action, with misdemeanor or felony status recorded
- Number of individuals placed without bond (not released) until trial for domestic violence, misdemeanor, or felony status recorded
- Re-offending
- Instances of violations of any protective order while a defendant is released pretrial.
- Instances of repeated prohibited victim contact during the pretrial release
- Victims required by defense counsel/judge to appear at detention hearings
- Defendant demographics and victim demographics
- Data broken down by case judge
- Validated risk assessment tools used in each jurisdiction, including comparisons of the pretrial release and pretrial detention decisions of judges and the risk assessment scores of individuals

However, according to members, it is unclear what board recommended domestic violence-related data fields, if any, will be statutorily mandated. Other members reported that the Illinois Judicial Branch had been building a “data hub.” While one member described that integrating domestic violence-related data fields within this type of data reporting system could be a future goal, others remarked that it may be challenging to obtain buy-in and participation from all departments and agencies.

## Conclusion

The Domestic Violence Pretrial Practices Working Group, established by the Safe-T Act, identified current domestic violence pretrial practices in Illinois. Their assessment revealed strengths and opportunities for improvement. For example, there is a current initiative to establish lethality assessment protocols for domestic violence offenses in judicial circuits served by local Illinois Family Violence Coordinating Councils. Also, legislatively mandated training for law enforcement on gender-based violence has improved the content of these trainings and additional funding has been made available for these trainings. Furthermore, members expressed support for improved data collection processes and increased training for judges on best practices for presiding over domestic violence cases.

The SAFE-T Act amended existing legislation and established new legislation outlining procedures and guidelines to be used during pretrial to ensure the safety of domestic violence, sexual assault, and stalking victims. The anticipated effective date for many pretrial reform provisions in the SAFE-T Act is January 1, 2023.

The amended and new provisions include:

- **Guidelines for pretrial release denial and eligibility:**

*Sec. 110-6.1. Denial of pretrial release (725 ILCS 5/110-6.1)*

*(a) Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release only if:*

- 1) the defendant is charged with a forcible felony offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, and it is alleged that the defendant's pretrial release poses a specific, real and present threat to any person or the community;*
- 2) the defendant is charged with stalking or aggravated stalking and it is alleged that the defendant's pre-trial release poses a real and present threat to the physical safety of a victim of the alleged offense, and denial of release is necessary to prevent fulfillment of the threat upon which the charge is based;*
- 3) the victim of abuse was a family or household member as defined by paragraph (6) of Section 103 of the Illinois Domestic Violence Act of 1986, and the person charged, at the time of the alleged offense, was subject to the terms of an order of protection issued under Section 112A-14 of this Code, or Section 214 of the Illinois Domestic Violence Act of 1986 or previously was convicted of a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012 or a violent crime if the victim was a family or household member as defined by paragraph (6) of the Illinois Domestic Violence Act of 1986 at the time of the offense or a violation of a substantially similar municipal ordinance or law of this or any other state*

*or the United States if the victim was a family or household member as defined by paragraph (6) of Section 103 of the Illinois Domestic Violence Act of 1986 at the time of the offense, and it is alleged that the defendant's pre-trial release poses a real and present threat to the physical safety of any person or persons;*

- 4) *the defendant is charged with domestic battery or aggravated domestic battery under Section 12-3.2 or 12-3.3 of the Criminal Code of 2012 and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of any person or persons;*
- 5) *the defendant is charged with any offense under Article 11 of the Criminal Code of 2012, except for Sections 11-30, 11-35, 11-40, and 11-45 of the Criminal Code of 2012, or similar provisions of the Criminal Code of 1961 and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of any person or persons;*
- 6) *the defendant is charged with any of these violations under the Criminal Code of 2012 and it is alleged that the defendant's pretrial releases poses a real and present threat to the physical safety of any specifically identifiable person or persons.*
  - a) *Section 24-1.2 (aggravated discharge of a firearm);*
  - b) *Section 24-2.5 (aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm);*
  - c) *Section 24-1.5 (reckless discharge of a firearm);*
  - d) *Section 24-1.7 (armed habitual criminal);*
  - e) *Section 24-2.2 2 (manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon's breath shotgun shells, boloshells or flechette shells);*
  - f) *Section 24-3 (unlawful sale or delivery of firearms);*
  - g) *Section 24-3.3 (unlawful sale or delivery of firearms on the premises of any school);*
  - h) *Section 24-34 (unlawful sale of firearms by liquor license);*
  - i) *Section 24-3.5 (unlawful purchase of a firearm);*
  - j) *Section 24-3A (gunrunning); or*
  - k) *Section on 24-3B (firearms trafficking);*
  - l) *Section 10-9 (b) (involuntary servitude);*
  - m) *Section 10-9 (c) (involuntary sexual servitude of a minor);*
  - n) *Section 10-9(d) (trafficking in persons);*
  - o) *Non-probationable violations: (i) (unlawful use or possession of weapons by felons or persons in the Custody of the Department of Corrections facilities (Section 24-1.1), (ii) aggravated unlawful use of a weapon (Section 24-1.6, or (iii) aggravated possession of a stolen firearm (Section 24-3.9);*
- 7) *the person has a high likelihood of willful flight to avoid prosecution and is charged with:*
  - a) *Any felony described in Sections (a)(1) through (a)(5) of this Section; or*

b) *A felony offense other than a Class 4 offense.*

(e) *Eligibility: All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:*

- 1) *the proof is evident or the presumption great that the defendant has committed an offense listed in paragraphs (1) through (6) of subsection (a)*
- 2) *the defendant poses a real and present threat to the safety of a specific, identifiable person or persons, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, and*
- 3) *no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate the real and present threat to the safety of person or persons or the defendant's willful flight.*

- **Compliance with orders of protection and no contact orders for release:**

*Sec. 110-2. Release on own recognizance (725 ILCS 5/110-2)*

(a) *It is presumed that a defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense, and complies with all terms of pretrial release, including, but not limited to, orders of protection under both Section 112A-4 of this Code and Section 214 of the Illinois Domestic Violence Act of 1986, all civil no contact orders, and all stalking no contact orders.*

- **Factors for determining pretrial release for stalking:**

*Sec. 110-5. Determining the amount of bail and conditions of release (725 ILCS 5/110-5)*

(c) *In cases of stalking or aggravated stalking under Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the court may consider the following additional factors:*

- 1) *Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of that behavior. The evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations or other proceedings;*
- 2) *Any evidence of the defendant's psychological, psychiatric or other similar social history that tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.*
- 3) *The nature of the threat which is the basis of the charge against the defendant;*
- 4) *Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;*
- 5) *The age and physical condition of any person allegedly assaulted by the defendant;*



- 6) *Whether the defendant is known to possess or have access to any weapon or weapons;*
- 7) *Any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior.*

- **Pretrial release revocation for order of protection violations:**

*Sec. 110-6. Revocation of pretrial release, modification of conditions of pretrial release, and sanctions for violations of conditions of pretrial release (725 ILCS 5/110-6)*

- 2) *When a defendant on pretrial release is charged with a violation of an order of protection issued under Section 112A-14 of this Code, or Section 214 of the Illinois Domestic Violence Act of 1986 or previously was convicted of a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012, and the subject of the order of protection is the same person as the victim in the underlying matter, the state shall file a verified petition for revocation of pretrial release.*

The SAFE-T Act also retained key provisions that protect domestic violence and stalking victims. Unchanged pretrial-related provisions include:

- **Factors for determining pretrial release conditions for order of protection violations, domestic violence offenses, and harassment:**

*Sec. 110-5. Determining the amount of bail and conditions of release (725 ILCS 5/110-5)*

- (b) *When a person is charged with a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012 or when a person is charged with domestic battery, aggravated domestic battery, kidnapping, aggravated kidnapping, unlawful restraint, aggravated unlawful restraint, stalking, aggravated stalking, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against an intimate partner regardless whether an order of protection has been issued against the person,*
  - 1) *whether the alleged incident involved harassment or abuse, as defined in the Illinois Domestic Violence Act of 1986;*
  - 2) *whether the person has a history of domestic violence, as defined in the Illinois Domestic Violence Act, or a history of other criminal acts;*
  - 3) *based on the mental health of the person;*
  - 4) *whether the person has a history of violating the orders of any court or governmental entity;*
  - 5) *whether the person has been, or is, potentially a threat to any other person;*
  - 6) *whether the person has access to deadly weapons or a history of using deadly weapons;*

- 7) *whether the person has a history of abusing alcohol or any controlled substance;*
- 8) *based on the severity of the alleged incident that is the basis of the alleged offense, including, but not limited to, the duration of the current incident, and whether the alleged incident involved the use of a weapon, physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;*
- 9) *whether a separation of the person from the victim of abuse or a termination of the relationship between the person and the victim of abuse alleged victim has recently occurred or is pending;*
- 10) *whether the person has exhibited obsessive or controlling behaviors toward the victim of abuse, including, but not limited to, stalking, surveillance, or isolation of the victim of abuse or victim's family member or members;*
- 11) *whether the person has expressed suicidal or homicidal ideations;*
- 11.5) *any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior*

- **Factors for determining if a defendant poses a threat:**

*Sec. 110-6.1. Denial of pretrial release (725 ILCS 5/110-6.1)*

*(g) Factors to be considered in making a determination of dangerousness. The court may, in determining whether the defendant poses a specific, imminent threat of serious physical harm to an identifiable person or persons, consider but shall not be limited to evidence or testimony concerning:*

- 1) *The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.*
- 2) *The history and characteristics of the defendant including:*
  - a) *Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. Such evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations or other proceedings.*
  - b) *Any evidence of the defendant's psychological, psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.*
- 3) *The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the*
- 4) *Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;*
- 5) *The age and physical condition of the defendant;*
- 6) *The age and physical condition of any victim or complaining witness;*
- 7) *Whether the defendant is known to possess or have access to any weapon or weapons;*

- 8) *Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law;*
- 9) *Any other factors, including those listed in Section 110-5 of this Article deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of such behavior.*

- **Illinois Supreme Court may designate a statewide risk assessment tool for establishing pretrial release conditions:**

*Sec. 110-6.4. Statewide risk-assessment tool (725 ILCS 5/110-6.4)*

*The Supreme Court may establish a statewide risk-assessment tool to be used in proceedings to assist the court in establishing conditions of pretrial release for a defendant by assessing the defendant's likelihood of appearing at future court proceedings or determining if the defendant poses a real and present threat to the physical safety of any person or persons. The Supreme Court shall consider establishing a risk-assessment tool that does not discriminate on the basis of race, gender, educational level, socio-economic status, or neighborhood. If a risk-assessment tool is utilized within a circuit that does not require a personal interview to be completed, the Chief Judge of the circuit or the director of the pretrial services agency may exempt the requirement under Section 9 and subsection (a) of Section 7 of the Pretrial Services Act.*

*For the purpose of this Section, "risk-assessment tool" means an empirically validated, evidence-based screening instrument that demonstrates reduced instances of a defendant's failure to appear for further court proceedings or prevents future criminal activity.*

- **Firearms surrender as pretrial release condition for domestic violence, stalking, and related offenses:**

*Sec. 110-10. Conditions of pretrial release bail bond (725 ILCS 5/110-10)*

*(a) If a person is released prior to conviction, either upon payment of bail security or on his or her own recognizance, the conditions of pretrial release the bail bond shall be that he or she will:*

- 1) *Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;*
- 2) *Submit himself or herself to the orders and process of the court;*
- 3) *(Blank); Not depart this State without leave of the court;*
- 4) *Not violate any criminal statute of any jurisdiction;*
- 5) *At a time and place designated by the court, surrender all firearms in his or her possession to a law enforcement officer designated by the court to take*

*custody of and impound the firearms and physically surrender his or her Firearm Owner's Identification Card to the clerk of the circuit court when the offense the person has been charged with is a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, or any felony violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012; the court may, however, forgo the imposition of this condition when the circumstances of the case clearly do not warrant it or when its imposition would be impractical; if the Firearm Owner's Identification Card is confiscated, the clerk of the circuit court shall mail the confiscated card to the Illinois State Police; all legally possessed firearms shall be returned to the person upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity; and*

- 6) At a time and place designated by the court, submit to a psychological evaluation when the person has been charged with a violation of item (4) of subsection (a) of Section 24-1 of the Criminal Code of 1961 or the Criminal Code of 2012 and that violation occurred in a school or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or on any public way within 1,000 feet of real property comprising any school.*

*Psychological evaluations ordered pursuant to this Section shall be completed promptly and made available to the State, the defendant, and the court. As a further condition of pretrial release bail under these circumstances, the court shall order the defendant to refrain from entering upon the property of the school, including any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or on any public way within 1,000 feet of real property comprising any school. Upon receipt of the psychological evaluation, either the State or the defendant may request a change in the conditions of pretrial release bail, pursuant to Section 110-6 of this Code. The court may change the conditions of pretrial release bail to include a requirement that the defendant follow the recommendations of the psychological evaluation, including undergoing psychiatric treatment. The conclusions of the psychological evaluation and any statements elicited from the defendant during its administration are not admissible as evidence of guilt during the course of any trial on the charged offense, unless the defendant places his or her mental competency in issue.*

By documenting current domestic violence pretrial practices, the working group's preliminary report provides a crucial foundation upon which members can develop recommendations for evidence-based improvements to court procedures following enactment of pretrial reform in Illinois. As the working group's focus shifts from current practices to recommendations members will examine how implementation of the SAFE-T Act impacts the domestic violence pretrial practices outlined in this report. The group will also propose recommendations intended to mitigate the potential for negative domestic violence-related pretrial reform outcomes and increase the safety of gender-based violence victims in Illinois. Thus, the working group will

continue to convene until its members have issued the group's final report. While members, at their discretion, may issue the final report earlier, it is anticipated no later than March 2024.

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## Appendix A

### Working Group Member Provided Resources

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