

***Rowe v. Raoul*, 2023 IL 129248, 2023 Ill. LEXIS 460**
Illinois Supreme Court (Docket No. 129248) (July 18, 2023)
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In a 5-2 decision, the Illinois Supreme Court upheld the constitutionality of the elimination of cash bail which was codified in what has come to be known as the “Pre-trial Fairness Act” (PFA). Those provisions were part of the larger Safety, Accountability, Fairness, and Equity Act” (SAFE-T Act) (PL101-652) which was passed in 2021. The provisions of the PFA were subsequently amended in 2022 through the “Follow-Up Act” (PL 102-1104). Many of the provisions of the SAFE-T Act are already in effect, but the provisions of the PFA and those of the Follow-up Act were given an effective date of January 1, 2023. The effective date of both the PFA and Follow-Up Act were subsequently stayed in December 2022 by an Illinois Supreme Court supervisory order. The stay was to permit an Illinois Supreme Court review of a Kankakee County Circuit Court decision holding the PFA unconstitutional under provisions of the Illinois Constitution of 1970.

The Illinois Supreme Court opinion reversed the circuit court’s ruling and set a date to remove the stay set by its December 2022 supervisory order. This has cleared the path to implementation of the provisions of the PFA and the amendatory Follow-Up Act. The Illinois Supreme Court set **September 18, 2023**, as the effective date for the pre-trial provisions of both acts (PL 101-652 and PL 102-1104).

In reaching its decision, the Illinois Supreme Court rejected the three arguments that had been accepted in the circuit court decision as the basis for its ruling that the PFA violated the provisions of the Illinois Constitution of 1970. First, the supreme court concluded that the PFA provisions did not violate the bail provisions in Article I, Section 9 of the Illinois Constitution of 1970. It found that the surety for bail could be other than monetary. Second, the supreme court rejected the circuit court’s conclusion that the PFA violated protections for crime victims’ rights under Article I, Section 8.1 of the Illinois Constitution of 1970. Third, the supreme court rejected the circuit court’s conclusion that legislation eliminating cash bail violated the separation of powers provisions in Article II Section 1 of the Illinois Constitution of 1970.

In a concurring opinion that supported the reversal of the circuit court decision, one justice noted she would also have rejected the argument that the plaintiff sheriffs and state’s attorneys had standing to maintain the challenge to the PFA. This would be an independent basis for reversing the circuit court decision. The majority opinion paid little attention in its analysis to the standing issue. It did, however, conclude there was standing.

The dissent, which was joined by another justice, provided a detailed assessment of the standing argument. It concluded that at least the state’s attorneys had standing to maintain the action. It also concluded that the victims’ rights provisions of the Illinois Constitution were violated by the PFA.

Law Enforcement Actions to Implement the *Rowe* Decision

While the matters addressed by the Illinois Supreme Court’s opinion *Rowe* primarily govern actions of courts and state’s attorneys in the establishing the conditions for bail and pretrial release, there will likely be impacts on operations of local law enforcement agencies. As an example, law enforcement agencies may need to assist in gathering information to support prosecutorial applications with respect to bail. Those actions require coordination between law enforcement agencies and state’s attorneys.

Additionally, there are provisions of the public laws addressed in *Rowe* that more directly impact law enforcement operations. The provision concerning issuance of citations and limitations on custodial arrest is an example. With respect to custodial arrest, when that arrest is for an offense other than felony or Class A misdemeanor, the discretion of the law enforcement officer to make a custodial arrest is limited to the following circumstances:

(i) a law enforcement officer reasonably believes the accused poses a threat to the community or any person, (ii) a custodial arrest is necessary because the criminal activity persists after the issuance of a citation, or (iii) the accused has an obvious medical or mental health issue that poses a risk to the accused's own safety.

725 ILCS 5/109-1 (a-1).¹ Illinois law enforcement agencies need to adjust their internal policies and practices with respect to custodial arrests to comply with these limitations on officer discretion on decisions to make a custodial arrest in lieu of issuing a citation.

Law enforcement agencies need to consult with their municipal counsel and state's attorneys to determine what new processes they will be required to implement and what existing policies and practices will need to be modified to comply with the new pretrial procedures mandated by PL 101-625 and 102-1104 as ordered in the *Rowe* decision.

¹ This reflects the changes to 725 ILCS 5/109-1 (a-1) made by PL 101-625 and PL 103-1104. The changed language is found at pages 146-147 of the 316-page PL 102-1104.