

“SAFE-T” OVER SAFETY: THE STRUCTURAL LIMITS OF THE PRETRIAL FAIRNESS ACT IN DOMESTIC VIOLENCE CASES

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The Illinois Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act represents a significant shift in the state’s approach to pretrial detention, replacing wealth-based bail with an individualized detention framework grounded in statutory eligibility and risk assessment. While the Act was created with the goal of promoting equity and reducing unnecessary pretrial detention, its application in domestic violence cases raises concerns about victim safety during the pretrial period. Although the statute includes additional considerations for defendants charged with domestic violence-related offenses, emerging case law suggests that these safeguards may be insufficient to address the risks inherent in abusive relationships. This Comment examines how the SAFE-T Act’s detention framework may inadequately account for the behavioral dynamics and typologies of domestic violence offenders, particularly where abuse manifests through coercive control, threats, or escalation rather than “detainable” physical offenses. Drawing from interviews with Illinois law enforcement officers, psychological research on domestic batterer typologies, and recent holdings in Illinois appellate case law, this Comment argues that the Act’s emphasis on offense classification and prior criminal history may underestimate the risk posed by certain domestic violence perpetrators. These perspectives illuminate recurring practical concerns that are largely absent from existing legal scholarship. It further explores how statutory limitations on what offenses are considered “detainable” can result in pretrial release even in cases involving serious threats or repeated abuse, often leaving victims vulnerable to continued harm. Finally, this Comment compares Illinois’s statutory framework with alternative approaches adopted in New Jersey and Kentucky to illustrate how structured supervision, rehabilitation, or offense-based distinctions may better balance the SAFE-T Act’s reform objectives with the need to protect domestic violence victims during the pretrial phase.

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I. INTRODUCTION

The Illinois Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act¹ has garnered significant praise, with scholars declaring that the statute is ushering in a new era by “righting a systemic wrong.”² On the other hand, the Act has been met with harsh scrutiny, with critics claiming that the legislation will inevitably result in “the beginning stages of *The Purge*, the infamous movie where all crime is legal for 12 hours.”³ While this may be an extreme, albeit slightly dramatic, perspective overall, the SAFE-T Act’s implementation has raised serious concerns for victims of domestic violence whose abusers are granted pretrial release. For some victims, the consequences of these reforms have been fatal. In one widely-reported case, Julie Elguezabal was murdered by her husband while he was on pretrial release following an arrest for domestic violence—an offense that was perpetrated against her.⁴ Her death highlights the high-stakes nature of pretrial release decisions in domestic violence cases and begs the question of whether the SAFE-T Act’s detention framework adequately considers the risks posed by such offenders. This Comment aims to address the idea that, while the SAFE-T Act may have been created for an equitable purpose, it is inherently flawed in nature due to its negative impact on victims of domestic violence situations and its potential for subjecting these victims to further abuse.

¹ Illinois Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act, Pub. Act 101-0652, 2020 Ill. Laws 2476.

² See Natasha Brown, *Innocent Until Proven Guilty: Unless You’re Poor. Righting a Systemic Wrong Under the Pretrial Fairness Act*, 57 UIC L. REV. 291 (2024).

³ *Id.* at 294 (discussing criticisms from those in opposition of the SAFE-T Act); see also Press Release, Randi L. Freese, McHenry Cnty. State’s Att’y, *SAFE-T Act Report By the Numbers* (Oct. 22, 2024), https://www.mchenrycountyil.gov/Home/Components/News/News/18069/11527?fbclid=IwY2xjawGFt0pleHRuA2FlbQIxMAABHfw_vFMCvFFtVOE46zgdDg8dyqyy4ZVRLjYijjD5msAthzYl2icUJJAJA_aem_PYup5xHAcQUQQt8gnAazA#:~:text=The%20problem%20with%20the%20SAFE,no%20matter%20how%20high%20risk [https://perma.cc/3PCQ-SPHN] (“The SAFE-T Act in McHenry County has been an abject failure.”); see also Jerry Nowicki, *Advocates Oppose Safe-T Act Changes Proposed by Democratic Senator*, NPR Ill. (Oct. 18, 2022), www.nprillinois.org/illinois/2022-10-18/advocates-oppose-safe-t-act-changes-proposed-by-democratic-senator [https://perma.cc/EA4X-JBKC]; see also Paul Mauro, *Illinois’ UN-SAFE-T Act*, CITY JOURNAL (Oct. 17, 2022) <https://www.city-journal.org/article/illinois-un-safe-t-act> [https://perma.cc/GWM5-K5G3].

⁴ Max Cotton, *Push to Curve Domestic Violence in Illinois*, WGEM (May 3, 2024), <https://www.wgem.com/2024/05/03/push-curb-domestic-violence-illinois/> [https://perma.cc/RF6F-K8GD].

The SAFE-T Act was passed on January 13, 2021⁵ and signed by Illinois Governor JB Pritzker on February 22, 2021.⁶ It was found constitutional by the Illinois Supreme Court on July 18, 2023⁷ and, on September 18, 2023, the Act became effective.⁸ The primary objective of the Act was to promote criminal justice reform.⁹ The Act covers three areas of reform: policing, pretrial, and corrections.¹⁰ Contained within this contentious SAFE-T Act lies the Pretrial Fairness Act.¹¹ And among its notable reforms of the pretrial stage of criminal justice, the Act abolished the cash bail system.¹² This monumental abolition has led courts to use an entirely new method to determine whether alleged offenders should be detained in the time leading up to their trial, opting instead for an individualized review.¹³ Instead of detaining the accused based on the alleged offense itself and setting a monetary bond, courts will instead take into account the accused's history, characteristics, and other similar considerations.¹⁴

This Comment will discuss why this legislation is problematic, particularly in the way its application affects victims of domestic violence, from the point of the initial arrest to when a pretrial detention order reaches the appellate court. The focus of this Comment will be on the

⁵ Jessica Reichert, Aaron Zivic & Karen Shelley, *The 2021 SAFE-T Act: ICJIA Roles and Responsibilities*, ILL. CRIM. JUST. INFO. AUTH. (2021), <https://icjia.illinois.gov/researchhub/articles/the-2021-safe-t-act-icjia-roles-and-responsibilities> [<https://perma.cc/WQ35-TQZ2>].

⁶ *Additional Pretrial Resources*, ILL. CTS., <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-resources/additional-pretrial-resources/#:~:text=The%20PFA%20was%20passed%20as,its%20January%201%20effective%20date> [<https://perma.cc/B32N-Z4Z2>].

⁷ *Rowe v. Raoul*, 2023 IL 129248, ¶51 (“Our constitution creates a balance between the individual rights of defendants and the individual rights of crime victims. The [SAFE-T] Act’s pretrial release provisions set forth procedures commensurate with that balance.”).

⁸ *Pretrial Provisions of the SAFE-T Act Took Effect This Week*, THE CIVIC FED’N (Sep. 22, 2023), <https://www.civiced.org/node/4154> [<https://perma.cc/L4JD-R9Q4>].

⁹ Zachary Vancil, *Elimination of Cash Bail in Illinois: Assessing Risk of Defendants Using Risk Assessment Tools*, 48 S. ILL. U. L. J. 157, 163 (2023).

¹⁰ Reichert et al., *supra* note 5.

¹¹ Lauryn P. Gouldin, *Keeping Up Appearances*, 58 U.C. DAVIS L. REV. 1019, 1039 (2024); *See also* 725 ILL. COMP. STAT. ANN. 5/110 (West 2024).

¹² *See* 725 ILL. COMP. STAT. ANN. 5/110-1.5 (West 2024); *The Pretrial Fairness Act*, LOYOLA UNIV. CHI. CTR. FOR CRIM. JUST., <https://loyolaccj.org/pretrial-fairness-act> [<https://perma.cc/6Q2F-PZ4R>] (last visited Mar. 19, 2026).

¹³ *See* 725 ILL. COMP. STAT. ANN. 5/110-5 (West 2024); *Evaluating the Implementation and Impact of Illinois’ Pretrial Fairness Act*, LOYOLA UNIV. CHI. CTR. FOR CRIM. JUST. (2025).

¹⁴ *Id.*

means of detention for alleged offenders, focusing specifically on those accused of domestic violence-related offenses. In Part II, this Comment will address what the SAFE-T Act is and provide the language of the amended statute. Part III contains a collection of anecdotes from Illinois law enforcement officers who have seen firsthand how the SAFE-T Act impacts the victims of domestic violence offenses. In Part IV, this Comment will discuss the typologies of domestic batterers and their behavioral tendencies, along with an analysis of the applicable existing case law that highlights these typologies. The typologies discussed will be extracted from a study by E.W. Gondolf, who categorized domestic batterers as sociopathic, antisocial, or typical.¹⁵ This analysis serves to emphasize why the considerations for detention under the SAFE-T Act do not properly adhere to the psychology of many domestic violence perpetrators.

Part V will provide what offenses are not detainable by statute, and how there is a potential for improper release where a domestic abuser is charged under certain statutes. It will discuss how the SAFE-T Act attempts to protect victims of domestic violence-related offenses but falls flat in sufficiently shielding these victims from their abusers due to what offenses are considered “detainable” by statute. Finally, Part VI will examine how other states have implemented legislation related to pretrial release and suggest how Illinois can adopt aspects of these laws to be more efficient for protecting domestic violence victims. There are seven states that have successfully implemented bail reform,¹⁶ but this Comment will primarily focus its analysis on the legislation of New Jersey and Kentucky. Although this Comment seeks to offer a solution about how to improve the Act to protect those vulnerable to abusers, this area of law is still developing, and more research could be paramount to the safety of those affected.

¹⁵ Edward W. Gondolf, *Who Are Those Guys? Toward a Behavioral Typology of Batterers*, 3 *Violence & Victims* 137, 142 (1988).

¹⁶ Sierra Searcy, *Other States with Bail Reform*, MRDC (Oct. 25, 2022) <https://www.mdrc.org/news/mdrc-news/other-states-bail-reform> [<https://perma.cc/ZD43-4C8G>].

II. THE SAFE-T ACT AND ILLINOIS’S PRETRIAL DETENTION FRAMEWORK

Illinois’s SAFE-T Act fundamentally altered the state’s approach to pretrial detention by abolishing cash bail and replacing it with an individualized analytical framework.¹⁷ More specifically, when a defendant is charged with an offense, the assumption is that the defendant is automatically entitled to pretrial release.¹⁸ The State must then file a petition to detain the defendant, and the burden rests on the State to prove by clear and convincing evidence at a hearing that (1) the proof is evident and the presumption great that the defendant committed a detainable offense; (2) the defendant’s release would pose a “real and present threat” to the safety of anyone, whether it be the community or a specific victim; and (3) no condition or combination of conditions could sufficiently mitigate the threat posed by the defendant.¹⁹ At the detention hearing, the State must present a proffer explaining why the defendant should be detained awaiting trial, including arguments that the defendant poses such a threat or presents a risk of flight.²⁰ In response, the defendant may present their own proffer that is based on reliable evidence contradicting the proffer of the State.²¹ In determining whether the defendant should be detained, the SAFE-T Act provides a number of considerations for the court to analyze for each case.²²

Under the SAFE-T Act, courts evaluating pretrial detention must assess the charged offense, the strength of the State’s case, the defendant’s history and characteristics, and the degree to which release would pose a risk of obstructing the criminal justice process.²³ These

¹⁷ Reichert et al., *supra* note 5.

¹⁸ 725 ILL. COMP. STAT. ANN. 5/110-2(a) (West 2024).

¹⁹ 725 ILL. COMP. STAT. ANN. 5/110-6.1(e)(1)-(3) (West 2024).

²⁰ 725 ILL. COMP. STAT. ANN. 5/110-2(b) (West 2024); *see* 725 ILL. COMP. STAT. ANN. 5/110-2(c) (West 2024); *see* 725 ILL. COMP. STAT. ANN. 5/110-6.1(f)(2) (West 2024).

²¹ 725 ILL. COMP. STAT. ANN. 5/110-6.1(f)(2) (West 2024).

²² *See* 725 ILL. COMP. STAT. ANN. 5/110-6.1(g)(1)-(9) (West 2024).

²³ *Id.*

considerations determine both whether a defendant should be detained while awaiting trial and whether the defendant should have conditions imposed if they are granted pretrial release.²⁴ Conditions the court may implement are options such as electronic monitoring,²⁵ surrendering firearms,²⁶ and not communicating with certain persons.²⁷ The courts can implement any conditions “necessary to ensure the defendant’s appearance in court,”²⁸ but these conditions must be “least restrictive.”²⁹ In domestic violence cases, the SAFE-T Act authorizes courts to consider a broader range of contextual factors, including prior abuse, access to weapons, substance use, controlling behavior, and circumstances suggesting heightened risk to the victim.³⁰

Further, if a defendant is ordered to be detained by the trial court, they can appeal their detention order to the jurisdiction’s respective appellate court.³¹ These decisions are reviewed *de novo* where the parties proceed solely by proffer.³² Under the *de novo* standard, no deference is given to the circuit court’s decision.³³ Where either party presents witness testimony, an abuse of discretion standard is applied, and it is decided whether the circuit court’s factual findings were against the manifest weight of the evidence.³⁴

On its face, the statutory framework appears equitable. Rather than conditioning pretrial release on a defendant’s financial ability to post bond, the SAFE-T Act directs courts to consider the individual circumstances of each alleged offender. In practice, however, the Act’s application to domestic violence reveals a major statutory gap. In 2023 alone, the year the SAFE-T Act was

²⁴ *Id.*

²⁵ 725 ILL. COMP. STAT. ANN. 5/110-5(b)(5) (West 2024).

²⁶ 725 ILL. COMP. STAT. ANN. 5/110-10(a)(5) (West 2024).

²⁷ 725 ILL. COMP. STAT. ANN. 5/110-10(b)(3) (West 2024).

²⁸ 725 ILL. COMP. STAT. ANN. 5/110-10(b) (West 2024).

²⁹ 725 ILL. COMP. STAT. ANN. 5/110-5(c) (West 2024).

³⁰ 725 ILL. COMP. STAT. ANN. 5/110-6.1(a)(4) (West 2024).

³¹ Ill. S. Ct. 604(h)(1); 725 ILL. COMP. STAT. ANN. 5/110-6.6(a) (West 2024).

³² *People v. Morgan*, 2025 IL 130626, ¶51.

³³ *Id.* at ¶22.

³⁴ See *People v. Trottier*, 2023 IL App (2d) 230317, ¶13.

fully implemented, the State of Illinois saw a reported 110% increase in domestic violence deaths.³⁵ While correlation alone cannot establish causation, the sharp increase in reported domestic violence fatalities following implementation of the SAFE-T Act warrants careful scrutiny of whether the statutory detention framework adequately accounts for relational risk factors unique to intimate partner violence.

III. CATCH AND RELEASE: AN OFFICER’S GUIDE TO THE SAFE-T ACT

“If I arrest somebody on Monday, I can almost guarantee I’ll be dealing with them again on Friday.”³⁶ This observation, provided by an Illinois police officer describing domestic violence enforcement under the SAFE-T Act, captures a recurring concern raised throughout the interviews conducted for this Comment: that pretrial release decisions may fail to disrupt cycles of violence during the period immediately following arrest.

Statutory reforms like the SAFE-T Act are often formulated through appellate opinions, legislative history, and data collection.³⁷ Yet laws governing pretrial detention and arrest authority are ultimately implemented by frontline actors whose discretionary decisions shape how those reforms operate in practice.³⁸ In the context of domestic violence enforcement, those actors are police officers who are the first responders to such situations, through assessing the risk presented and making immediate decisions impacting victim safety.³⁹ To better understand how the Illinois SAFE-T Act operates in practice, this Comment incorporates interviews with

³⁵ See Jasmine Minor, *Illinois Domestic Violence Deaths Increased by 110% in 2023, Report Says*, ABC7 EYEWITNESS NEWS (July 24, 2024) <https://abc7chicago.com/post/domestic-violence-deaths-increased-more-double-illinois-2023/15090965/> [https://perma.cc/34R3-LXX3].

³⁶ Interview with Illinois Municipal Police Officer, (Jan. 9, 2025) (audio recording on file with author).

³⁷ Valerie C. Brannon, *STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS* (LIBRARY OF CONGRESS).

³⁸ Sarah Riley, *OVERRIDING (IN)JUSTICE: PRETRIAL RISK ASSESSMENT ADMINISTRATION ON THE FRONTLINES* 481, STANFORD UNIVERSITY (June 3, 2024).

³⁹ Andy Myhill & Kelly Johnson, *Police Use of Discretion in Response to Domestic Violence*, *CRIMINOLOGY & CRIMINAL JUSTICE*, June 2015 at 14, 15.

Illinois law enforcement officers who have professional experience responding to domestic violence incidents before and after the Act’s implementation. These interviews provide insight into how changes to arrest authority, pretrial release, and enforcement mechanisms are understood and applied at the street level—an area that is largely absent from existing legal scholarship.

The individuals interviewed included a municipal police sergeant, a patrol officer, and a county deputy sheriff, each of whom has professional experience responding to domestic violence incidents under the SAFE-T Act.⁴⁰ During his interview, the sergeant indicated that neither he nor the rest of his department received any training leading up to the implementation of the Act.⁴¹ Officers, he explained, were left to determine detention eligibility and arrest procedures in real time, often resorting to independent legal research while on patrol.⁴² The sergeant compared the late-night hours of September 17, 2023 to “waiting for the ball to drop on New Year’s Eve,” emphasizing the anxiety and uncertainty officers experienced as the SAFE-T Act abruptly changed arrests and procedures without any guidance.⁴³ The officers also described how this feeling never really subsided as they find themselves constrained in their ability to respond to domestic violence incidents under the current statutory framework.⁴⁴ One deputy explained that, in practice, officers are “handcuffed to the legislation” when determining whether an arrest or detention is legally available.⁴⁵ This sentiment reflects a broader tension between

⁴⁰ Interview with Illinois Municipal Sergeant (Feb. 6, 2026) (audio recording on file with author); Police Officer Interview, *supra* note 36; Interview with Illinois Deputy Sheriff (Mar. 12, 2026) (audio recording on file with author).

⁴¹ Sergeant Interview, *supra* note 40.

⁴² *Id.* (“We were all left googling the SAFE-T Act from our squad cars an hour before it went into effect.”).

⁴³ *Id.*

⁴⁴ *Id.*; Deputy Sheriff Interview, *supra* note 40.

⁴⁵ Deputy Sheriff Interview, *supra* note 40.

statutory detention criteria and the discretion officers must utilize when responding to domestic violence calls.

The sergeant discussed repeated encounters with the same domestic violence offender, whom he had personally arrested multiple times.⁴⁶ Despite this history, the offender openly anticipated release, remarking that the victim would not appear in court and that his detention was unlikely.⁴⁷ According to the sergeant, that defendant's confidence reflected a broader awareness among repeat offenders that detention decisions could often be foreseen under the current statutory framework.⁴⁸ Not only does such an awareness reduce the deterrent effect of arrest, as indicated by the officers interviewed, it encourages the cycle of abuse to continue and "obliterates" officer morale.⁴⁹ Another anecdote he provided highlighted the enhanced risk of recidivism in domestic violence cases.⁵⁰ Recently, the sergeant arrested a domestic violence offender who was granted pretrial release with a no-contact order but was re-arrested twenty-four hours later for hiding in the victim's backyard.⁵¹ When the offender arrived at the county jail, he immediately went to the payphone and called the victim.⁵² At first, the offender was apologetic and asked the victim to reconsider pressing charges.⁵³ However, he eventually became irate and verbally abused the victim over the phone.⁵⁴

⁴⁶ Sergeant Interview, *supra* note 40.

⁴⁷ *Id.* ("He told me: 'I'm getting released anyway. You're welcome for the overtime, though.'").

⁴⁸ *Id.*; see also Police Officer Interview, *supra* note 36; Deputy Sheriff Interview, *supra* note 40.

⁴⁹ Sergeant Interview, *supra* note 40 ("We often ask ourselves 'why am I even doing this anymore?'"); see also Police Officer Interview, *supra* note 36; Deputy Sheriff Interview, *supra* note 40.

⁵⁰ Sergeant Interview, *supra* note 40; see *Domestic Violence Reoffending*, PUB. HEALTH POST (Oct. 7, 2024), <https://publichealthpost.org/health-equity/domestic-violence-reoffending/> [<https://perma.cc/MQV7-VN7M>] (noting that the probability of recidivism increases from 24% for offenders with no prior felonies to 61% for those with seven prior felonies); Cal. Partnership to End Domestic Violence, *Evidence-Based Practices for Assessing, Supervising and Intervening with Domestic Violence Offenders* 6-8 (2011), https://www.cpoc.org/sites/main/files/file-attachments/dvfullreport_final.pdf [<https://perma.cc/84ZR-2KF4>].

⁵¹ Sergeant Interview, *supra* note 40.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

A patrol officer who was sworn in shortly after the Act went into effect described his experience responding to repeat domestic violence calls post-SAFE-T Act.⁵⁵ While responding to a domestic violence call between two individuals he termed “frequent fliers,” he encountered a male and female having an altercation outside a bar.⁵⁶ The officer was aware that the male had filed an order of protection against the female, though the order’s status was unclear at the time.⁵⁷ Immediately upon approaching the scene, the officer witnessed the female strike the male in the face with a closed fist.⁵⁸ The female was placed under arrest, and while resisting and repeatedly “slipping the cuffs,”⁵⁹ the female spit on the officer and directed verbal abuse toward both the officer and the other individual involved.⁶⁰ The female was taken to the county adult detention facility where extra staff was needed to physically remove her from the car, and she was kept in a separate holding facility due to her behavior.⁶¹ A detention hearing was held the following Monday.⁶² Despite the violent nature of the arrest and the officer’s status as a victim of aggravated battery, the officer received notice that the defendant had been granted pretrial release pursuant to the SAFE-T Act.⁶³ This incident illustrates the tension between the SAFE-T Act’s emphasis on pretrial release and the realities of repeat domestic violence enforcement, particularly where violent conduct occurs in public and involves prior protective orders.

The officers further described a noticeable decline in victim willingness to pursue charges following the arrest of their abuser. As the officers noted, several domestic violence victims have been reluctant to press charges and sign complaints “because they knew [their abuser] was going

⁵⁵ Police Officer Interview, *supra* note 36.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Police Officer Interview, *supra* note 36.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

to be getting out the next day and they knew nothing was going to change.”⁶⁴ Each interviewee noted how much psychology, specifically coercive and threatening dynamics, influences domestic violence relationships, and pretrial release only heightens and permits these dynamics.⁶⁵ All officers noticed that many pretrial detention decisions were eerily similar in domestic violence cases: the defendant would be arrested and charged with an offense, released within forty-eight hours, and would have police contact again concerning a new offense against the same victim.⁶⁶

The officer perspectives presented illuminate recurring themes that arise when the SAFE-T Act is applied to cases involving ongoing coercion, power imbalances, and a heightened risk of retaliation. As these interviews illustrate, officers consistently describe tensions between the SAFE-T Act’s pretrial objectives and the realities of domestic violence response, particularly with respect to victim protection during the immediate post-arrest period.

IV. DISSECTING THE NATURE OF DOMESTIC VIOLENCE PERPETRATORS

The concerns articulated by law enforcement officers present a critical question: why do the SAFE-T Act’s pretrial statutes appear to fall short in protecting victims of domestic violence? To answer this question, it is necessary to move beyond procedural mechanics and examine the underlying dynamics of abusive relationships themselves. Domestic violence and intimate partner violence are terms that are used synonymously, but they vary in their level of

⁶⁴ Police Officer Interview, *supra* note 36 (quotation edited for clarity); *see also* Sergeant Interview, *supra* note 40; Deputy Sheriff Interview, *supra* note 40.

⁶⁵ Sergeant Interview, *supra* note 40 (“The ‘hook and release’ method only makes it easier for abusers to regain control.”); Police Officer Interview, *supra* note 36; Deputy Sheriff Interview, *supra* note 40.

⁶⁶ *Id.*

specificity.⁶⁷ While domestic violence is defined as “abuse between married individuals or of the opposite sex,”⁶⁸ intimate partner violence encompasses various current and former relationships “regardless of gender, marital status, or sexual orientation.”⁶⁹ The statutory definition of domestic battery in Illinois is if someone “knowingly without legal justification by any means (1) causes bodily harm to any family or household member; or (2) makes physical contact of an insulting or provoking nature with any family or household member.”⁷⁰ The statute encompasses both intimate partners and other household members, while intimate partner violence exclusively pertains to the abuse between significant others.⁷¹ But a perpetrator of intimate partner violence can also be charged under sexual assault or stalking statutes.⁷²

These are simply blanket terms to encompass violence in a domestic situation. However, no two domestic or intimate partner violence perpetrators are identical. Psychologists and behavioral researchers have examined the cognitive, emotional, and behavioral patterns of domestic batterers, identifying recurring dynamics such as coercive control, entitlement, and escalation that are not readily captured by statutory labels alone.⁷³ Researcher Edward W. Gondolf, for example, pioneered the study into the psychology of domestic violence offenders.⁷⁴ Gondolf conducted a study of 6,000 women in domestic violence shelters and utilized the information gathered during their intake interviews.⁷⁵ In this study, he concluded that there are three distinct categories of domestic batterers, termed the “Gondolf typologies.”⁷⁶ The categories

⁶⁷ Lily Gleicher, *Understanding Intimate Partner Violence: Definitions and Risk Factors*, ILL. CRIM. JUST. INFO. AUTH. (Feb. 5, 2021), <https://icjia.illinois.gov/researchhub/articles/understanding-intimate-partner-violence-definitions-and-risk-factors> [https://perma.cc/FNG6-MF74].

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 720 ILL. COMP. STAT. ANN. 5/12-3.2(a)(2) (West 2024).

⁷¹ *See Id.*; *see* Gleicher, *supra* note 67.

⁷² Gleicher, *supra* note 67.

⁷³ *See* Gondolf, *supra* note 15; Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 PSYCHOLOGICAL BULLETIN, 476 (1994).

⁷⁴ *See* Gondolf, *supra* note 15.

⁷⁵ *Id.*

⁷⁶ *Id.*

can be described as an “interpretable summary of cluster findings,”⁷⁷ including sociopathic batterers, antisocial batterers, and typical batterers.⁷⁸ Although Gondolf’s typologies were first introduced in the late 1980s, subsequent empirical research has repeatedly replicated and refined similar batterer classifications. Later studies, including Holtzworth-Munroe and Stuart’s three-subtype model, continue to distinguish between generally violent/antisocial batterers and those whose violence is confined to intimate relationships.⁷⁹ Modern domestic violence scholarship still relies on these foundational typologies when assessing risk, escalation, and intervention strategies.⁸⁰

A. Typical and Antisocial Batterers and the Limits of Criminal History

Gondolf’s typologies break down the different mindsets, histories, and personality traits of abusers.⁸¹ Some are more obvious, such as the sociopathic batterer.⁸² Sociopathic batterers are more likely to exhibit extensive criminal histories, substance abuse issues, frequent weapon access, and patterns of violent behavior.⁸³ Gondolf described these batterers as “extremely diverse and unpredictable,”⁸⁴ and victims of this type of abuser are more likely to contact either domestic violence resources or the police because of their experience.⁸⁵ The SAFE-T Act’s emphasis on criminal history and violent nature as considerations for pretrial detention⁸⁶ most

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 PSYCHOLOGICAL BULLETIN, 476 (1994).

⁸⁰ See, e.g., Edward W. Gondolf, *Who Are Those Guys? Toward a Behavioral Typology of Batterers*, 3 Violence & Victims 137 (1988); Amy Holtzworth-Munroe & Gregory L. Stuart, *Typologies of Male Batterers: Three Subtypes and the Differences Among Them*, 116 PSYCHOL. BULL. 476 (1994); Jennifer Waltz et al., *Testing a Typology of Batterers*, 68 J. Consulting & Clinical Psychol. 658 (2000) (empirically testing and largely validating the batterer typology model); O. Cunha & Rui Gonçalves, *Intimate Partner Violence Offenders: Generating a Data-Driven Typology*, 23 Eur. J. Psych. Applied to Legal Context 1 (2013) (describing batterer typologies as prominent data for understanding IPV offenders).

⁸¹ Gondolf, *supra* note 15.

⁸² *Id.*

⁸³ Gleicher, *supra* note 67.

⁸⁴ See Gondolf, *supra* note 15.

⁸⁵ Gleicher, *supra* note 67.

⁸⁶ 725 ILL. COMP. STAT. ANN. 5/110-6.1 (West 2024).

directly aligns with this batterer typology. However, sociopathic batterers only make up around five to eight percent of intimate partner violence offenders.⁸⁷ The current approach of the SAFE-T Act falls flat in domestic violence situations because this sociopathic typology does not account for other prominent classifications of domestic or intimate partner violence perpetrators.⁸⁸ In fact, it would seem the Act fails to consider the other two Gondolf typologies entirely—the antisocial and typical batterers.⁸⁹

Antisocial and typical batterers are often much more elusive.⁹⁰ An antisocial batterer, like the sociopathic batterer, is highly abusive both physically and verbally.⁹¹ What makes them different from the sociopathic batterer, however, is that antisocial batterers are less likely to have prior police contact, and confine any physical violence to their intimate partner.⁹² This typology makes up thirty to forty percent of intimate partner violence perpetrators.⁹³ Then, there is the typical batterer, which is the most common Gondolf typology.⁹⁴ The typical batterer “approximates the ‘honeymoon phase’ of the cycle of violence” and is apologetic towards their partner after a violent incident.⁹⁵ Typical batterers are much less likely to have prior arrests or police contact, and the violence experienced by victims of the typical batterer is usually less severe than that of the sociopathic and antisocial batterers.⁹⁶ For these reasons, this typology is most commonly returned to by the victim, and the victim does not usually reach out to domestic violence resources.⁹⁷

⁸⁷ Gleicher, *supra* note 67.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Gondolf, *supra* note 15.

⁹¹ *Id.*

⁹² Gleicher, *supra* note 67.

⁹³ Gondolf, *supra* note 15.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Gondolf, *supra* note 15.

One Illinois police sergeant described how this cyclical nature of domestic violence complicates pretrial decision-making.⁹⁸ He noted that victims frequently remain emotionally attached to their abusers even after repeated incidents, and that short periods of detention may inadvertently encourage renewed control once the offender is released.⁹⁹ According to the sergeant, the predictability of release can reinforce an abuser's sense of dominance, allowing them to reassert control over the victim.¹⁰⁰ In some instances, he observed victims that expressed anger toward law enforcement for arresting the offender, underscoring the psychological hold that abusers may retain despite these clear patterns of harm.¹⁰¹

The sergeant's observations show the lack of synthesis between the SAFE-T Act and abuse dynamics. The SAFE-T Act discusses what matters the court shall consider when determining if a defendant qualifies for pretrial release,¹⁰² but these factors do not sufficiently account for the tendencies of an antisocial or typical batterer or the inherent mechanics of these relationships. For example, one SAFE-T Act consideration includes the history and characteristics of the defendant, such as criminal history, record of appearance at court proceedings, and whether the defendant was already on pretrial release at the time of the current offense.¹⁰³ Meanwhile, antisocial and typical batterers are far less likely to have had contact with the police in the past.¹⁰⁴ This becomes an issue for those individuals who have been a victim of an antisocial or typical batterer. Because these types of batterers are less likely to have a criminal history to analyze by the court, they are less likely to be detained pretrial, leaving the victim subject to further harm and manipulation by the perpetrator.

⁹⁸ Sergeant Interview, *supra* note 40.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See 725 ILL. COMP. STAT. ANN. 110-5(a) (West 2024).

¹⁰³ *Id.*

¹⁰⁴ Gleicher, *supra* note 67.

The Second District’s decision in *People v. Rosado* further illustrates how the SAFE-T Act’s detention framework may result in pretrial release even where the State asserts that no combination of conditions can adequately mitigate the risk posed by a domestic violence defendant.¹⁰⁵ In *Rosado*, the defendant was charged with multiple domestic violence-related offenses arising from a brutal incident involving his intimate partner.¹⁰⁶ The State petitioned for detention, arguing that the defendant posed a real and present threat to the safety of the victim and that conditions of release would be insufficient to prevent further harm.¹⁰⁷ According to the State’s proffer, the defendant had a prior criminal history, though it did not consist of inherently violent offenses.¹⁰⁸ The record reflected that the defendant was on parole at the time of the charged conduct and had violated probation conditions before.¹⁰⁹ The trial court granted pretrial release subject to conditions,¹¹⁰ and the State appealed.¹¹¹ On review, the appellate court affirmed the trial court’s release decision.¹¹² Importantly, the appellate court did not dispute the gravity of the allegations or the State’s concerns regarding victim safety.¹¹³

The court’s application of the SAFE-T Act in *Rosado* suggests domestic violence offenders without a documented violent criminal history may nonetheless be granted pretrial release.¹¹⁴ Although the charged conduct in *Rosado* involved serious violence against an intimate partner, the absence of a prior violent record weighed against detention.¹¹⁵ The opinion reflects the statute’s prioritization of documented prior violence as a predictive indicator, which is an

¹⁰⁵ See *People v. Rosado*, 2024 IL App (2d) 240089-U.

¹⁰⁶ *Id.* at ¶5.

¹⁰⁷ *Id.* at ¶7.

¹⁰⁸ *Id.* at ¶8.

¹⁰⁹ *Id.*

¹¹⁰ *Rosado*, 2024 IL App (2d) 240089-U, ¶14.

¹¹¹ *Id.* at ¶16.

¹¹² *Id.* at ¶38.

¹¹³ *Id.* at ¶29.

¹¹⁴ *Id.* at ¶29.

¹¹⁵ *Rosado*, 2024 IL App (2d) 240089-U.

approach that aligns imperfectly with batterer typology research demonstrating that many intimate partner abusers escalate without extensive criminal records.¹¹⁶ As a result, these offenders may be more likely to be granted pretrial release under a framework that relies too heavily on prior violent convictions as an indicator of risk. Even when release is conditioned on no-contact orders or orders of protection, as in *Rosado*, victims may continue to experience significant fear and anxiety. As scholars have observed, “too many survivors of abuse find themselves in fear of when a perpetrator is going to be released.”¹¹⁷ Moreover, as this Part will address, orders of protection are violated with alarming frequency,¹¹⁸ calling into question their effectiveness as a substitute for detention in domestic violence cases.

B. Risks of Recidivism and Orders of Protection

Across batterer typologies, data indicates a substantial risk of re-offense following arrest.¹¹⁹ Studies show that approximately ten to eighteen percent of those arrested for domestic violence are arrested again within six months, fifteen to thirty percent face a second arrest within twenty-eight months, and up to sixty percent are rearrested within ten years.¹²⁰ This risk is reflected in recent appellate decisions reviewing pretrial detention orders under the SAFE-T Act, which include both offenders with extensive criminal histories¹²¹ and those without prior convictions. In some instances, defendants with documented patterns of violence reoffended

¹¹⁶ See Gondolf, *supra* note 15.

¹¹⁷ Amanda Kippert, *Know When an Abuser Is Released from Prison or Jail*, DOMESTIC SHELTERS (Nov. 20, 2023), <https://www.domesticshelters.org/articles/technology/stay-safe-know-when-your-abuser-gets-out> [https://perma.cc/3NMF-DT66].

¹¹⁸ Sergeant Interview, *supra* note 40.

¹¹⁹ Shelley Flannery, *Will Domestic Abuse Happen Again?*, DOMESTIC SHELTERS (June 1, 2022), <https://www.domesticshelters.org/articles/identifying-abuse/will-it-happen-again> [https://perma.cc/W7VU-CCDA].

¹²⁰ *Id.*

¹²¹ See *People v. Person*, No. 4-25-1272 (appellate court review of pretrial detention where defendant severely injured the victim while on probation for multiple prior domestic violence offenses) (author served as counsel to the appellee subject to the limitations set forth in Ill. S. Ct. R. 711).

while on pretrial release.¹²² In others, individuals lacking criminal histories—often associated with antisocial or typical batterer typologies¹²³—were released and subsequently engaged in continued abusive conduct.¹²⁴ Together, these cases illustrate that the likelihood of re-offense in domestic violence cases is not confined to any single offender typology, reinforcing the limitations of detention frameworks that rely heavily on prior criminal history as a proxy for risk.

A case that highlights a defendant who could be categorized as the sociopathic batterer who reoffended is *People v. Villareal*, a case coming from the Second District.¹²⁵ The defendant in this case was charged with armed violence, a Class X felony.¹²⁶ The basic facts of the case are as follows: the defendant went to a bar with his wife, he began arguing with her, he pulled out a firearm and shot it three times into the air.¹²⁷ The defendant’s wife had recently filed an order of protection against the defendant following a domestic violence incident.¹²⁸ Even after obtaining the order of protection, the defendant continued to harass her over social media.¹²⁹ At the time of the offense, the defendant was already on pretrial release for a domestic violence incident, where he had allegedly struck the same victim and put hands on her neck.¹³⁰ Another offense in the defendant’s criminal history included first degree murder.¹³¹ The defendant in *Villareal* was ultimately detained, but only after the victim had been subjected to further abuse.¹³²

The aforementioned statistic becomes highly relevant when viewing the court’s application of the SAFE-T Act in *People v. Korotenko*, a case arising out of the Second

¹²² See *People v. Villareal*, 2023 IL App (2d) 230313-U.

¹²³ See Gondolf, *supra* note 15.

¹²⁴ See *People v. Jones*, 2024 IL App (5th) 231306-U (holding that the circuit court did not err in detaining defendant and revoking her previous pretrial release where the defendant had “blatantly violated her previous conditions of release” and committed a new offense against the same victim).

¹²⁵ See *Villareal*, 2023 IL App (2d) 230313-U.

¹²⁶ *Id.* at ¶3.

¹²⁷ *Id.* at ¶5.

¹²⁸ *Id.* at ¶6.

¹²⁹ *Id.*

¹³⁰ *Villareal*, 2023 IL App (2d) 230313-U, ¶7.

¹³¹ *Id.* at ¶9.

¹³² *Id.*

District.¹³³ In *Korotenko*, the defendant was charged with three domestic violence-related offenses.¹³⁴ At his detention hearing for those offenses, the court granted pretrial release with conditions, one of them being that he have no contact with the victim.¹³⁵ Five months later, the defendant was charged with domestic battery against the same victim, despite having been ordered to not have contact with her.¹³⁶ The court's initial release determination in *Korotenko* may have been consistent with the statutory framework,¹³⁷ but even judicial compliance can fail to protect victims where a statute is insufficient. The SAFE-T Act relies heavily on post-release conditions to protect victims, yet cases like *Korotenko* demonstrate how those conditions may be ineffective when applied to domestic violence offenders whose behavior is driven by tenacious patterns of abuse.¹³⁸ As a result, victims remain vulnerable during the pretrial period, which is the very stage at which research indicates the risk of serious harm is often highest.¹³⁹

At present, comprehensive statewide data comparing domestic violence recidivism rates before and after implementation of the SAFE-T Act remains limited. Without such baseline analysis, definitive causal conclusions cannot be drawn. However, advocacy organizations report that Illinois domestic violence incidents and fatalities have increased in recent years.¹⁴⁰ Further, the recurring appellate cases involving re-offense against the same victim during pretrial release suggest that the statutory framework merits closer empirical examination. The Second District is

¹³³ See *People v. Korotenko*, 2024 IL App (2d) 240261-U.

¹³⁴ *Id.* at ¶2.

¹³⁵ *Id.* at ¶4.

¹³⁶ *Id.* at ¶7.

¹³⁷ *Id.* at ¶4.

¹³⁸ See *Korotenko*, 2024 IL App (2d) 240261-U.

¹³⁹ Suraji R. Wagage, *When the Consequences Are Life and Death: Pretrial Detention for Domestic Violence Offenders*, 7 DREXEL L. REV. 195, 195 (2015).

¹⁴⁰ Carlee Bronkema, *Local, State Organizations Seeing Increase in Domestic Violence Deaths*, WAND-TV (Nov. 5, 2025), https://www.wandtv.com/news/local-state-organizations-seeing-increase-in-domestic-violence-deaths/article_1861c6e8-1bc9-40b8-87d0-ed1fa3c2c11e.html [<https://perma.cc/D8BY-A6L2>] (reporting that domestic violence deaths in Illinois increased 14% in 2024 and 140% since 2022).

not the only location where such a situation has occurred, and *Korotenko* is not an anomaly or a rare circumstance where the SAFE-T Act led to a victim being harmed. Apart from *Korotenko*, there have already been several cases in the state of Illinois where domestic batterers to whom pretrial release have been granted have reoffended while on pretrial release.¹⁴¹ Notably, in cases arising under the SAFE-T Act's statutory framework, subsequent alleged offenses frequently involve the same victim as the initial charge.¹⁴² And the statute has only been in effect since September 2023.¹⁴³ As courts continue to apply the Act's release criteria, victims may remain exposed to continued harm when accused perpetrators are released subject to conditions rather than detained.¹⁴⁴ And if the trend should continue, some domestic violence victims whose perpetrators are released pretrial will be forced to face additional trauma at the hands of their abuser.¹⁴⁵

In an attempt to avoid these repeat offenses, the SAFE-T Act authorizes courts to impose conditions of release on defendants.¹⁴⁶ One of these possible conditions includes no-contact orders or orders of protection.¹⁴⁷ As implemented in *Korotenko*, an order of protection against the defendant stating that he or she may not have contact with the victim is often utilized by Illinois courts.¹⁴⁸ Meanwhile, statistics have shown that orders of protection are often violated by domestic violence offenders: in fact, half of them are.¹⁴⁹ What's more is that an abuser is statistically more likely to increase the severity of their violence after they have been given an

¹⁴¹ See *Jones*, 2024 IL App (5th) 231306-U; see also *People v. Malone*, 2024 IL App (4th) 240245-U.

¹⁴² See *Id.*

¹⁴³ *Pretrial Provisions of the SAFE-T Act Took Effect This Week*, THE CIVIC FED'N (Sep. 22, 2023), <https://www.civicroad.org/node/4154> [<https://perma.cc/L4JD-R9Q4>].

¹⁴⁴ Sean Keenehan, *Report Shows a 110% Increase in Illinois Domestic Violence Deaths as Advocates Call for Action*, WTTW (July 26, 2024), <https://news.wttw.com/2024/07/26/report-shows-110-rise-illinois-domestic-violence-deaths-advocates-call-action>.

¹⁴⁵ See *Jones*, 2024 IL App (5th) 231306-U.

¹⁴⁶ 725 ILL. COMP. STAT. ANN. 5/110-5(a) (West 2024).

¹⁴⁷ 725 ILL. COMP. STAT. ANN. 5/110-10(b)(7) (West 2024).

¹⁴⁸ See *Korotenko*, 2024 IL App (2d) 240261-U; see *Jones*, 2024 IL App (5th) 231306-U; see *Malone*, 2024 IL App (4th) 240245-U.

¹⁴⁹ Kippert, *supra* note 117.

order of protection.¹⁵⁰ Even though the statistics are that orders of protection are unsuccessful as often as they are successful, courts have still chosen to use this condition for defendants charged with domestic violence instead of ordering detention.¹⁵¹ Where compliance depends largely on an offender’s willingness to adhere to court-ordered conditions, victims remain at risk of subsequent (and potentially more severe) acts of violence.¹⁵²

C. Virginia Pretrial Risk Assessment Instrument

As previously mentioned, courts must consider a defendant’s criminal history when deciding if they should be detained awaiting trial.¹⁵³ When this history is analyzed, the State or the defendant may use supplementary material to show how the defendant’s criminal history will impact their likelihood of appearing in court or reoffending.¹⁵⁴ The SAFE-T Act provides that a statewide risk-assessment tool could be used to determine a defendant’s likelihood of recidivism or failure to appear in court.¹⁵⁵ The statute defines a risk-assessment tool as 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.”¹⁵⁶

The risk-assessment tool used statewide under the SAFE-T Act in Illinois is the Virginia Pretrial Risk Assessment Instrument (VPRAI).¹⁵⁷ The VPRAI was created by the Virginia

¹⁵⁰ *Id.*

¹⁵¹ See *Korotenko*, 2024 IL App (2d) 240261-U; see *Jones*, 2024 IL App (5th) 231306-U; see *Malone*, 2024 IL App (4th) 240245-U.

¹⁵² Kippert, *supra* note 117.

¹⁵³ 725 ILL. COMP. STAT. ANN. 5/110-5(a)(3) (West 2024).

¹⁵⁴ See Va. Dep’t of Crim. Just. Servs., *Virginia Pretrial Risk Assessment Instrument* (rev. ed. 2023).

¹⁵⁵ See 725 ILL. COMP. STAT. ANN. 5/110-6.4 (West 2024).

¹⁵⁶ *Id.*

¹⁵⁷ See Va. Dep’t of Crim. Just. Servs., *Virginia Pretrial Risk Assessment Instrument* (rev. ed. 2023). Illinois has also adopted a domestic violence-specific risk assessment instrument, intended to help identify lethality and re-offense risk in intimate partner violence cases. Nevertheless, courts applying the SAFE-T Act frequently continue to rely on the Virginia Pretrial Risk Assessment Instrument (VPRAI-R) when evaluating detention in domestic violence cases. See *People v. Barrett*, 2024 IL App (5th) 240448-U.

Department of Criminal Justice Services.¹⁵⁸ It is used to determine the risk presented by releasing a defendant pretrial.¹⁵⁹ Illinois uses the VPRAI in accordance with the Act to determine whether a defendant should be eligible for pretrial release,¹⁶⁰ with a manual scoring sheet considering factors such as the defendant's likelihood to appear in court, the defendant's criminal history, and the nature of the alleged offense.¹⁶¹ Defendants are ranked on a scale of 1 to 14, with 1 being lowest risk, and 14 being highest risk.¹⁶²

This assessment may assist judges in considering how much risk there is for a defendant, but the VPRAI does not consider all the factors necessary to differentiate the typologies of batterers. For example, five of the eight considerations in the VPRAI involve prior offenses.¹⁶³ As previously noted, certain categories of batterers, particularly antisocial and typical batterers, are often less likely to have prior police contact or documented criminal histories.¹⁶⁴ In the absence of prior arrests or court appearances, these individuals may score as low risk under the VPRAI despite presenting a substantial danger to intimate partners.¹⁶⁵ Because the instrument presumes that future risk is best predicted by prior system interaction, it inadequately captures the behavioral and psychological dynamics that distinguish batterer typologies most associated with coercive control and escalation.¹⁶⁶ As a result, the VPRAI may underestimate the risk posed by domestic violence defendants who lack formal criminal records but nonetheless present a high likelihood of continued, intensified abuse.

¹⁵⁸ CCCA-PSA-Pretrial Risk Assessment, VIRGINIA DEPARTMENT OF CRIM. JUST. SERVS., <https://www.dcjs.virginia.gov/adult-justice-programs/comprehensive-community-corrections-act-ccca-pretrial-services-act/pretrial-risk-assessment> [<https://perma.cc/5JHN-UQNV>].

¹⁵⁹ *Id.*

¹⁶⁰ Risk Assessment Tool Database, BERKMAN KLEIN CTR. FOR INTERNET & SOC'Y, HARVARD UNIV. (last visited Mar. 3, 2025), <https://criminaljustice.tooltrack.org/tool/16638> [<https://perma.cc/8J9V-XK4F>].

¹⁶¹ Va. Dep't of Crim. Just. Servs., *Virginia Pretrial Risk Assessment Instrument* (rev. ed. 2023).

¹⁶² *Id.*

¹⁶³ See Va. Dep't of Crim. Just. Servs., *Virginia Pretrial Risk Assessment Instrument* (rev. ed. 2023).

¹⁶⁴ Gleicher, *supra* note 67.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*, see Gondolf, *supra* note 15.

Critics of the VPRAI and similar risk-assessment tools used in Illinois have noted that such instruments may obscure indicators of danger.¹⁶⁷ This concern is echoed by Illinois law enforcement officers, who report that defendants are often reduced to “names on a spreadsheet”: a spreadsheet that fails to reflect patterns of escalation, prior contacts, or arrest behavior.¹⁶⁸ One Illinois sergeant expressed frustration that officer observations derived from repeated interactions with the same offender are frequently excluded from detention determinations, despite officers being trained to assess risk in these contexts.¹⁶⁹ These deficiencies reveal that the challenges associated with risk assessment under the SAFE-T Act are structural rather than practical. Where detention eligibility depends on offense classification rather than contextual patterns of abuse, even well-founded assessments of risk may fail to translate into protective action. This dynamic is particularly found in domestic violence cases, where harm does not always present itself in ways the SAFE-T Act recognizes as detainable. Part V explores these statutory gaps and their implications for victim safety.

V. DEFINING “DETAINABLE”: STATUTORY GAPS IN DETENTION FOR NONPHYSICAL VIOLENCE

Domestic battery is the most readily identifiable form of abuse within intimate relationships, and it is oftentimes the most associated with domestic violence in both public discourse¹⁷⁰ and criminal statutes.¹⁷¹ Yet domestic abuse frequently extends beyond physical harm.¹⁷² Perpetrators commonly use a range of coercive tactics, including verbal, emotional, and

¹⁶⁷ Sergeant Interview, *supra* note 40.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Resources for Reporters, Editors, and Media Professionals*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/media-guide/> [<https://perma.cc/36FN-9ZPY>] (last visited Jan. 15, 2026).

¹⁷¹ 720 ILL. COMP. STAT. ANN. 5/12-3.2(a)(2) (West 2024).

¹⁷² *Abuse Isn’t Always Physical*, THIS IS NOT AN EXCUSE (last visited Mar. 3, 2025), <https://www.thisisnotanexcuse.org/domestic-abuse/abuse-isnt-always-physical/> [<https://perma.cc/6JMC-QFU4>].

psychological abuse, to maintain control over their partners.¹⁷³ These nonphysical forms of abuse, while no less harmful, occupy a less clearly defined space within the SAFE-T Act’s detention structure.¹⁷⁴ Courts that have handled cases in this gray area under the SAFE-T Act have considered and imposed conditions that may be insufficient to prevent harm to victims of nonphysical forms of abuse.¹⁷⁵ Another issue arises in the SAFE-T Act regarding what is considered “detainable” under the statute and how these distinctions impact victims of domestic or intimate partner violence.

Pursuant to the Illinois statute, a person commits domestic battery “if he or she knowingly without legal justification by any means (1) causes bodily harm to any family or household member; or (2) makes physical contact of an insulting or provoking nature with any family or household member.”¹⁷⁶ However, perpetrators of domestic violence are not always charged under this statute. Meanwhile, under the SAFE-T Act, many Class 4 felonies and Class A misdemeanors are categorically non-detainable. These offenses, among others, include aggravated assault¹⁷⁷ and disorderly conduct involving threats,¹⁷⁸ conduct that may reflect coercive or escalating behavior but nonetheless falls outside the scope of the statute’s detention authority.

A. Abuse Beyond Physical Violence

¹⁷³ Maureen Outlaw, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners*, 24 J. Fam. Violence 263 (2009).

¹⁷⁴ See generally 725 ILL. COMP. STAT. ANN. 5/110-6.1 (West 2024).

¹⁷⁵ See *People v. Willard*, 2023 IL App (5th) 230895-U.

¹⁷⁶ 720 ILL. COMP. STAT. ANN. 5/12-3.2(a)(2) (West 2024).

¹⁷⁷ See *People v. Challans*, 2024 IL App (5th) 240353; see 720 ILL. COMP. STAT. ANN. 5/112-2 (West 2024) (clarifying that aggravated assault can bear a penalty ranging from a Class A misdemeanor to a Class 3 felony).

¹⁷⁸ See *People v. Davis*, 2024 IL App (3d) 240244 (holding that disorderly conduct involving the threat of bodily harm was not a detainable offense because it was a Class 4 felony).

A common misconception about domestic violence is that it always results in physical harm.¹⁷⁹ However, this is far from accurate. Bodily harm is not always the sole result of domestic violence.¹⁸⁰ In a domestic abuse situation, the goal of the abuser is not merely to cause physical harm; instead, it is to establish and maintain control over their partner so they have a sense of power.¹⁸¹ To hold on to this power, the abuser will try to limit their victim's independence and thoughts, while also suppressing the victim's ability to leave.¹⁸² A study conducted by two researchers named Pence and Paymar articulated some of the strategies used by abusers to maintain the power that they hold over their victims.¹⁸³ Some of these strategies include verbal insults, humiliation, intimidation, and threats.¹⁸⁴

Holdings in the appeals from detention orders have already begun to disregard nonphysical abuse, and those perpetrators have been released with conditions.¹⁸⁵ In *People v. Willard*, originating from the Fifth District, the court affirmed a circuit court decision which imposed electronic monitoring on a defendant who committed this type of abuse.¹⁸⁶ The defendant in the case violated an order of protection imposed by his former girlfriend.¹⁸⁷ The violation was that he sent the victim a threatening text message filled with profanities and crude language.¹⁸⁸ At the detention hearing, the State's proffer included the content of the text message, which said "you can shove this OP right up your stinky—stinky, nasty a***, mother

¹⁷⁹ *Myths About Domestic Abuse*, WOMEN'S AID (last visited Mar. 3, 2025), <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/myths/> [https://perma.cc/DF2J-XHVF].

¹⁸⁰ *Abuse Isn't Always Physical*, THIS IS NOT AN EXCUSE (last visited Mar. 3, 2025), <https://www.thisisnotanexcuse.org/domestic-abuse/abuse-isnt-always-physical/> [https://perma.cc/6JMC-QFU4].

¹⁸¹ Sandra K. Burge, *How Do You Define Abuse?*, 7 ARCHIVES FAM. MED. 31 (1998), <https://triggered.edina.clockss.org/ServeContent?url=http://archfami.ama-assn.org%2Fcgi%2Fcontent%2Ffull%2F7%2F1%2F31#RREF-FED7002-8> [https://perma.cc/6BH9-W5PB].

¹⁸² *Abuse Isn't Always Physical*, THIS IS NOT AN EXCUSE (last visited Mar. 3, 2025), <https://www.thisisnotanexcuse.org/domestic-abuse/abuse-isnt-always-physical/> [https://perma.cc/6JMC-QFU4].

¹⁸³ Ellen Pence & Michael Paymar, *Education Groups for Men Who Batter: The Duluth Model*, (Springer Publ'g Co. 1993).

¹⁸⁴ *Id.*

¹⁸⁵ *See Willard*, 2023 IL App (5th) 230895-U.

¹⁸⁶ *See id.*

¹⁸⁷ *Id.* at ¶5.

¹⁸⁸ *Id.*

f*** p***, b***.”¹⁸⁹ The court held that electronic monitoring was proper in this case, and that the defendant can be released.¹⁹⁰

In implementing electronic monitoring for this type of offense, the court did not properly consider the potential harm posed to the victim. The offense here was violating an order of protection.¹⁹¹ The defendant violated the order of protection by sending a crude text message to the person he was not supposed to have contact with.¹⁹² While electronic monitoring will ensure that the defendant will be held accountable if he were to make physical or in-person contact with the victim, electronic monitoring does not function to control a person’s texting habits.¹⁹³ Imposing this condition was futile if it is not going to limit the defendant’s ability to commit the same offense again. Further, the text that was sent contained abusive undertones and read as a threat,¹⁹⁴ a telltale sign of nonphysical violence meant to assert control over the victim. Electronic monitoring will be rendered insufficient to prevent this kind of abusive behavior.¹⁹⁵ The same would be true for similar considerations, such as where a court orders no contact with the defendant but also implements no other measures to prevent unwanted contact. Notably, the record in *Willard* does not indicate that the defendant reoffended following release.¹⁹⁶ However, the case illustrates the structural limitation of electronic monitoring in addressing nonphysical coercive abuse rather than serving as evidence of post-release violence.

B. Threat-Based and Non-Detainable Offenses

¹⁸⁹ *Id.*

¹⁹⁰ *Willard*, 2023 IL App (5th) 230895-U, ¶33.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Illinois Implementing New Electronic Monitoring System After SAFE-T Act Eliminates Cash Bonds*, WQAD News 8, YOUTUBE (Sep. 12, 2023), <https://www.youtube.com/watch?v=C2vNuLl58ak> [<https://perma.cc/H976-L9A3>] (“Ankle monitors alert authorities when there’s a low battery, the signal goes out, the defendant leaves an approved area, or tampers with the device.” at 1:42-155).

¹⁹⁴ *See Willard*, 2023 IL App (5th) 230895-U.

¹⁹⁵ Deputy Interview, *supra* note 39 (“An ankle monitor doesn’t do anything to someone who is determined.”).

¹⁹⁶ *Id.*

Although conditions such as electronic monitoring and orders of protection may be insufficient to prevent all forms of domestic abuse, their imposition nonetheless reflects an understanding that abusive conduct warrants judicial intervention. However, not all forms of nonphysical abuse trigger even these limited consequences. Under the SAFE-T Act, many behaviors used to assert control or cause intimidation fall outside the category of what is considered “detainable” under the statute.¹⁹⁷ A common form of domestic abuse includes “making threats or using intimidation to force a change in behavior or choices”.¹⁹⁸ This form is similar to the language of the Illinois statute on aggravated assault, which states that an assault occurs when a person, without lawful authority, “knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.”¹⁹⁹ On the other hand, a subsection of the Illinois statute for disorderly conduct says that a person commits disorderly conduct when they knowingly do “any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.”²⁰⁰

A victim of domestic violence who is threatened with serious harm or subjected to aggravated assault may nonetheless be required to confront their abuser again when the charged offense is not detainable under the SAFE-T Act. This outcome has already arisen in the Fifth District.²⁰¹ In *People v. Challans*, a defendant was charged with aggravated assault against his father, which was charged as a Class A misdemeanor.²⁰² The defendant in the case had threatened to kill his 70-year-old father with a knife.²⁰³ At the detention hearing, the State

¹⁹⁷ See *Davis*, 2024 IL App (3d) 240244; see *Challans*, 2024 IL App (5th) 240353.

¹⁹⁸ *Abuse Isn't Always Physical*, THIS IS NOT AN EXCUSE (last visited Mar. 3, 2025), <https://www.thisisnotanexcuse.org/domestic-abuse/abuse-isnt-always-physical/> [<https://perma.cc/6JMC-QFU4>].

¹⁹⁹ 725 ILL. COMP. STAT. ANN. 5/12-1 (West 2024).

²⁰⁰ 720 ILL. COMP. STAT. ANN. 5/26-1(a)(1) (West 2024).

²⁰¹ *Challans*, 2024 IL App (5th) 240353.

²⁰² *Id.* at ¶3.

²⁰³ *Id.* at ¶4.

proffered evidence that the defendant had a prior conviction for domestic battery and argued that pretrial release would place the victim at continued risk.²⁰⁴ Despite these concerns, the appellate court reversed the detention order, holding that aggravated assault is not a detainable offense under the SAFE-T Act.²⁰⁵ The State argued that the defendant could have been charged with attempted domestic battery, which may have altered the detention analysis, but the court rejected this argument as insufficient to justify detention.²⁰⁶ The matter was remanded, and the defendant was released subject to the statutory framework.²⁰⁷

Although *Challans* does not involve an intimate partner relationship,²⁰⁸ its reasoning is enlightening. The case demonstrates that even where an alleged domestic violence offender exhibits explicit threats of serious harm and a documented history of violence, detention may be an unavailable option based on the statutory classification of the charged offense.²⁰⁹ The outcome in *Challans* highlights a broader concern within the SAFE-T Act's detention structure: it places substantial weight on offense labels and prior criminal history,²¹⁰ while giving comparatively less consideration to the nature and circumstances of the offense itself.²¹¹ For victims of domestic or intimate partner violence, particularly where abuse manifests through threats, coercion, or escalation rather than detention-eligible offenses, this approach may fail to provide meaningful protection during the pretrial period.

An aggravated assault charge is not the only charge courts deem to not be a detainable offense.²¹² Courts have held that Class 4 felonies such as disorderly conduct that involves a

²⁰⁴ *Id.*

²⁰⁵ *Id.* at ¶12.

²⁰⁶ *Challans*, 2024 IL App (5th) 240353, ¶12.

²⁰⁷ *Id.* at ¶13.

²⁰⁸ *See id.*

²⁰⁹ *Id.*

²¹⁰ 725 ILL. COMP. STAT. ANN. 5/110-5(a)(3) (West 2024).

²¹¹ 725 ILL. COMP. STAT. ANN. 5/110-5(a)(1) (West 2024).

²¹² *See Challans*, 2024 IL App (5th) 240353; *see Davis*, 2024 IL App (3d) 240244, ¶7.

threat is not detainable. In *People v. Davis*, a defendant was charged with disorderly conduct for threatening to blow up the Joliet Social Security Administration office.²¹³ Although the charged conduct in this case did not arise from a domestic violence incident, the defendant in this case had an extensive criminal history, which included a previous conviction of domestic battery.²¹⁴ Despite the defendant’s documented history of violence, the appellate court reversed the detention order, holding that Class 4 felony disorderly conduct is not a detainable offense under the SAFE-T Act.²¹⁵ The court’s analysis turned not on the defendant’s demonstrated dangerousness, but on the statutory classification of the charged offense.²¹⁶ While *Davis* does not involve an intimate partner or family member victim, its reasoning is nonetheless significant in the context of domestic violence.²¹⁷ The decision establishes that defendants charged with threat-based offenses (regardless of prior violent conduct) may not be detained pending trial when the offense falls outside the Act’s classification of what is “detainable”. For victims of domestic or intimate partner violence, where threats often function as tools of coercion and precursors to physical harm, this statutory approach further illustrates the limitations of the SAFE-T Act’s ability to shield domestic violence victims.

Challans and *Davis* reflect a consistent doctrinal principle under the SAFE-T Act: courts must assess detention eligibility based on the offense “as charged in the indictment” rather than on hypothetical or alternative charges the State could have pursued.²¹⁸ In both cases, appellate courts rejected the State’s argument that detention could be justified by reference to more serious detainable offenses that might have been charged, holding instead that the statutory inquiry is

²¹³ *Davis*, 2024 IL App (3d) 240244, ¶7

²¹⁴ *Id.* at ¶9.

²¹⁵ *Id.* at ¶21.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Davis*, 2024 IL App (3d) 240244, ¶23.

confined to the charged offense itself.²¹⁹ While it may be a logical approach, under circumstances where an offender has been charged with offenses such as aggravated assault or disorderly conduct, the defendant cannot be detained because the offense is not detainable.²²⁰ These holdings seem counter-intuitive, especially since the first consideration for determining whether a defendant is eligible for pretrial release is the nature and circumstances of the offense.²²¹ This outcome exposes a tension within the SAFE-T Act’s framework: although courts are instructed to consider the nature and circumstances of the offense when evaluating pretrial release, that inquiry becomes largely irrelevant where the charged offense falls outside the statute’s detainable categories. As *Challans* and *Davis* illustrate, the statutory classification of the charge ultimately controls, even when the alleged conduct suggests a heightened risk of danger.²²²

Law enforcement officers routinely confront the limitations of this conduct-based framework.²²³ One expressed frustration with having the knowledge of an arrestee’s dangerousness, while simultaneously being aware that the individual will not be detained due to the offense being categorically non-detainable.²²⁴ Another described the difficulty of responding to victims who had been verbally abused and “psychologically dismantled” but whose abusers had not committed a detainable offense.²²⁵ He explained that, despite recognizing the ongoing danger, there was often legal constraints in what protective action could be taken.²²⁶ This made it “hard to look a [broken-down] woman in the eyes and tell her she’s not safe,” while simultaneously knowing that detention was not an option.²²⁷

²¹⁹ See *Challans*, 2024 IL App (5th) 240353; see *Davis*, 2024 IL App (3d) 240244.

²²⁰ *Id.*

²²¹ 725 ILL. COMP. STAT. ANN. 5/110-5(a)(1) (West 2024).

²²² See *Davis*, 2024 IL App (3d) 240244.

²²³ Sergeant Interview, *supra* note 40; Police Officer Interview, *supra* note 36; Deputy Sheriff Interview, *supra* note 40.

²²⁴ Deputy Sheriff Interview, *supra* note 40.

²²⁵ Sergeant Interview, *supra* note 40.

²²⁶ *Id.*

²²⁷ *Id.* (quotation edited for clarity).

The SAFE-T Act's detention framework thus presents a structural limitation in domestic violence cases because not all abusive conduct is charged as domestic battery,²²⁸ nor does all abuse manifest as physical harm.²²⁹ An abuser can instead be charged with a non-detainable offense that can be used to maintain control over a victim.²³⁰ Although victims may seek protective measures such as orders of protection, reliance on these conditions alone may be insufficient to prevent continued contact.²³¹ As a result, the statute's focus on the classification of an offense may leave victims vulnerable during pretrial despite clear indications of risk.

VI. PRETRIAL INTERVENTION V. PRETRIAL FAIRNESS

As it stands, the SAFE-T Act's considerations for determining who is granted pretrial release are impractical for domestic violence perpetrators because they do not properly consider the psychology and history of most of these offenders. However, this Comment does not suggest that Illinois should necessarily revert to pre-September 2023. In fact, several other states have implemented similar means of legislation to reform pretrial release that may be more protective of domestic violence victims.²³² Instead of eliminating cash bail altogether, some states have taken the approach of pretrial intervention.²³³ Others have taken a hybrid approach, giving courts

²²⁸ See *Challans*, 2024 IL App (5th) 240353.

²²⁹ *Abuse Isn't Always Physical*, THIS IS NOT AN EXCUSE (last visited Mar. 3, 2025), <https://www.thisisnotanexcuse.org/domestic-abuse/abuse-isnt-always-physical/> [<https://perma.cc/6JMC-QFU4>].

²³⁰ *Id.*

²³¹ Kippert, *supra* note 117.

²³² See *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [<https://perma.cc/49NV-TD7Z>]; see also *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [<https://perma.cc/46AN-2ET4>].

²³³ See *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [<https://perma.cc/49NV-TD7Z>].

the option to use either cash bail or nonfinancial options for pretrial release.²³⁴ Two states that have implemented this sort of reform include New Jersey and Kentucky.²³⁵

A. New Jersey's Approach to Pretrial Intervention

New Jersey employs a pretrial intervention (PTI) framework that emphasizes structured supervision and rehabilitation.²³⁶ New Jersey has a similar pretrial release approach to Illinois, but it varies on the type of offender that is able to receive this sort of intervention.²³⁷ The approach of New Jersey courts includes a focus on first-time offenders, ensuring that they are rehabilitated in the time leading up to trial.²³⁸ The objective of pretrial intervention is “to build on the clients' strengths and give them tools to avoid future criminal behavior.”²³⁹ Defendants are admitted into the rehabilitation program preceding the decision of their case, and upon completion of the program with the assistance of a probation officer, the charges can be dismissed.²⁴⁰

The major difference between Illinois and New Jersey and the way the courts in both states impose their pretrial procedure is New Jersey's focus on first-time offenders.²⁴¹ Illinois may consider an alleged offender's criminal history²⁴² and whether the defendant is a first-time offender;²⁴³ however, it is not a defining factor in whether they are detained in Illinois. On the

²³⁴ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx>.

²³⁵ Sierra Searcy, *Other States With Bail Reform*, OUR QC NEWS (Oct. 25, 2022) <https://www.mdrc.org/news/mdrc-news/other-states-bail-reform> [<https://perma.cc/ZD43-4C8G>].

²³⁶ *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [<https://perma.cc/49NV-TD7Z>].

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [<https://perma.cc/49NV-TD7Z>].

²⁴² 725 ILL. COMP. STAT. ANN. 5/110-5(a)(3) (West 2024).

²⁴³ *Id.*

other hand, New Jersey imposes a system similar to typical probation with an emphasis on first-time offenders.²⁴⁴

It is important to address that this form of pretrial intervention might also be flawed, as antisocial and typical batterers are likely to be first-time offenders and not have an extensive criminal history.²⁴⁵ However, Illinois and New Jersey differ in the way they handle first-time offenders because where Illinois may simply grant pretrial release, New Jersey requires that even first-time offenders at least are given some sort of condition and are also involved in a rehabilitation program.²⁴⁶ With this type of system, the defendant is given the tools needed to avoid recidivism.²⁴⁷ Meanwhile, in Illinois, defendants are released with conditions that are either completely unrelated to their respective charges (for example, electronic monitoring)²⁴⁸ or unproductive towards reducing the chances of re-offense.²⁴⁹ As established in *Rosado*, a domestic violence perpetrator can be released if they do not have a violent criminal history.²⁵⁰ If this case were to arise out of New Jersey, the defendant may have been granted pretrial release with the conditions listed above, which would be more meaningful for protecting the victim from future offenses.

B. Kentucky Pretrial Services

²⁴⁴ *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [https://perma.cc/49NV-TD7Z].

²⁴⁵ Gleicher, *supra* note 67.

²⁴⁶ *Id.*

²⁴⁷ *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [https://perma.cc/49NV-TD7Z].

²⁴⁸ See *Willard*, 2023 IL App (5th) 230895-U.

²⁴⁹ See *Korotenko*, 2024 IL App (2d) 240461-U (defendant charged with domestic battery was granted pretrial subject to no-contact, sobriety, and residency conditions; defendant subsequently violated release conditions and reoffended against the same victim).

²⁵⁰ *Castillo*, 2024 IL App (1st) 232315, ¶33.

Another state that has implemented an alternative to cash bail is the state of Kentucky.²⁵¹ Instead of only using cash bail or eliminating it entirely, Kentucky has elected to give non-financial and financial options to those awaiting trial.²⁵² This means that cash bail has not been abolished and is still an option, but there are also other services that can be implemented as well.²⁵³ Further, Kentucky's pretrial service program provides diversion programs and conditional release options to those charged with nonviolent offenses.²⁵⁴

For the diversion programs, the Kentucky Supreme Court has given the lower courts the options of pre-arraignment release and misdemeanor diversion.²⁵⁵ Pre-arraignment release provides pretrial specialists with the opportunity to use their discretion to allow defendants to be released without being presented to a judge.²⁵⁶ The emphasis is on nonviolent, nonsexual offenses, limiting the number of dangerous offenders being put back on the streets.²⁵⁷ On the other hand, domestic violence offenses are oftentimes (though not always) violent or sexual.²⁵⁸ Under this system of pretrial release, domestic violence perpetrators are less likely to be released. Similarly, misdemeanor diversion lets some offenders be released after being accepted into a diversion program, and this is focused on those offenders who have been charged with misdemeanor or other lower-level offenses.²⁵⁹

For the release options, defendants charged with a nonviolent offense have the option of monitored conditional release.²⁶⁰ The goal is to minimize any risk to the community while

²⁵¹ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [https://perma.cc/46AN-2ET4].

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [https://perma.cc/46AN-2ET4].

²⁵⁷ *Id.*

²⁵⁸ Reichert et al., *supra* note 5.

²⁵⁹ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [https://perma.cc/46AN-2ET4].

²⁶⁰ *Id.*

keeping unnecessary detention to a low.²⁶¹ The other is deferred prosecution, which is the option for those charged with possession of a controlled substance only.²⁶² With this option, a defendant charged with that nonviolent offense can apply for the program and submit to any terms and conditions implemented by the pretrial services program.²⁶³ If a defendant is accepted into this program, and they complete it successfully, the charge is dismissed and sealed.²⁶⁴ Additionally, the conditions in this program are not merely limits on a defendant's release. The conditions imposed by Kentucky seek to rehabilitate offenders—ideally so that their first offense is their last offense.²⁶⁵

C. Reallocating Responsibility in Pretrial Risk Management

A major distinction between how Illinois and Kentucky handle pretrial matters is Kentucky's emphasis on nonviolent offenses.²⁶⁶ Meanwhile, Illinois only takes the nature and circumstances of the offense as one of many considerations in determining if a defendant is eligible for pretrial release.²⁶⁷ As discussed prior, appellate courts in Illinois that have reviewed pretrial detention orders seem to put much emphasis on the criminal history of defendants.²⁶⁸ In fact, courts have held that the nature and circumstances of the offense on its own is insufficient to detain a defendant.²⁶⁹ It may be beneficial for victims of domestic violence for Illinois courts to model after Kentucky's pretrial release legislation and place more emphasis on the nature and circumstances of the offense charged. Not only would this avoid contact between antisocial and

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [https://perma.cc/46AN-2ET4].

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ 725 ILL. COMP. STAT. ANN. 5/110-5(a) (West 2024).

²⁶⁸ *See Rosado*, 2024 IL App (2d) 240089-U.

²⁶⁹ *Id.*

typical batterers and their victims during the pretrial stage, but it may also improve the lives of those who have been impacted by nonphysical violence that is either insufficiently conditioned upon release or not detainable by statute. Kentucky is arguably a beneficial option for victims of domestic violence since domestic violence offenses are considered violent, and pretrial services in Kentucky focuses on nonviolent crimes.²⁷⁰

There is a stark difference between how Illinois handles pretrial release as opposed to New Jersey and Kentucky. This distinction can also be attributed to who carries the burden in these states. More specifically, the burden of proof is on the State in Illinois to prove that a defendant should be denied pretrial release or should have conditions.²⁷¹ The model used by Illinois appears to weigh all crimes equally, considering that the main purpose of the SAFE-T Act is that all defendants are automatically deemed eligible for pretrial release.²⁷² Meanwhile, in Kentucky, the responsibility is on the defendant to voluntarily engage in pretrial programs that involve diversion.²⁷³ Similarly, in New Jersey, the responsibility is on the defendant to actively engage in the rehabilitation program offered by the state in the time leading up to the trial.²⁷⁴ Both New Jersey and Kentucky condition favorable outcomes contingent on participation by the defendant in these programs.²⁷⁵ Requiring defendants to engage in structured rehabilitation rather than relying on statutory conditions may reduce the risk of re-offense. Illinois's SAFE-T Act seeks equity and fairness for defendants, but it fails to give these defendants the proper tools to avoid recidivism.

²⁷⁰ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [<https://perma.cc/46AN-2ET4>].

²⁷¹ 725 ILL. COMP. STAT. ANN. 5/110-2(b) (West 2024); *see* 725 ILL. COMP. STAT. ANN. 5/110-2(c) (West 2024).

²⁷² 725 ILL. COMP. STAT. ANN. 5/110-2(a) (West 2024).

²⁷³ *Pretrial Services*, KY. CT. JUST., <https://www.kycourts.gov/Court-Programs/Pretrial-Services/Pages/default.aspx> [<https://perma.cc/46AN-2ET4>].

²⁷⁴ *Supervision for Pretrial Intervention Services*, N.J. CTS., <https://www.njcourts.gov/courts/adult-probation-supervision/pretrial-intervention> [<https://perma.cc/49NV-TD7Z>].

²⁷⁵ *Id.*

It is interesting to see the disparities between Illinois and both New Jersey and Kentucky's methods for making pretrial processes more equitable, mainly because Illinois took inspiration from both of these states.²⁷⁶ To better protect victims of domestic violence, the SAFE-T Act could be further refined by adopting aspects of the New Jersey and Kentucky frameworks, including prioritizing the pretrial release of first-time, nonviolent offenders. It could be even more beneficial to implement rehabilitative programs that encourage real change in the psychology of domestic violence offenders, instead of granting these perpetrators pretrial release and merely hoping that they do not reoffend or violate their conditions of release. Further, while New Jersey and Kentucky illustrate alternative approaches to managing pretrial risk, Illinois's framework could be strengthened through targeted statutory reform that accounts for the unique dynamics of domestic violence. Unlike many other forms of criminal conduct, domestic abuse frequently manifests through escalation, coercive control, and patterns of intimidation that may not be reflected in the charged offense itself. Illinois could amend section 110-6.1 to authorize detention in domestic violence cases where credible evidence demonstrates a pattern of coercive control, prior abuse, or escalation indicators, regardless of the statutory classification of the charged offense. Such an amendment would allow courts to account for relational risk factors commonly associated with intimate partner violence while remaining consistent with the SAFE-T Act's individualized detention framework.

In Gondolf's study, he concluded his research by disclosing that rehabilitative efforts to transform the minds of domestic abusers may be premature.²⁷⁷ The SAFE-T Act, if amended

²⁷⁶ Marcia M. Meis, *Illinois Courts Prepare for the Pretrial Fairness Act*, ILL. CTS. (Mar. 30, 2021), <https://www.illinoiscourts.gov/News/935/Illinois-Courts-Prepare-for-the-Pretrial-Fairness-Act/news-detail/> [https://perma.cc/8BKY-FV4Z].

²⁷⁷ See Gondolf, *supra* note 15.

similarly to the legislation of New Jersey and Kentucky with additional regard to abuse dynamics, may be a start to rehabilitating abusers while maintaining the goal of protecting victims of domestic violence.

VII. CONCLUSION

The Illinois SAFE-T Act was enacted for an equitable purpose and represents a significant shift in the state's approach to pretrial detention. As this Comment has shown, however, the Act's analytical framework presents structural limitations when applied to domestic violence cases. Existing case law suggests that the statute's emphasis on offense classification and prior criminal history does not fully account for the behavioral dynamics and typologies of domestic violence offenders. As a result, current detention considerations may inadequately protect victims of domestic violence. These statutory gaps are illustrated by observations of Illinois law enforcement officers, whose professional experiences highlight recurring tensions between the SAFE-T Act's pretrial objectives and the realities of domestic violence. These perspectives raise practical concerns regarding victim safety during the pretrial phase. Comparative approaches adopted by other states demonstrate that pretrial reform does not need to be abandoned to better safeguard domestic violence victims. Jurisdictions such as New Jersey and Kentucky have provided alternative approaches that structure pretrial release with supervision, rehabilitation, or offense-based distinctions. Incorporating similar principles with Illinois may offer a more balanced approach that preserves the SAFE-T Act's reform goals while more effectively addressing the risks of domestic violence cases. Without a meaningful recognition of domestic violence dynamics, the SAFE-T Act's promise of "fairness" may come at the cost of the very safety it purports to protect.