Justices consider constitutionality of SAFE-T Act's pretrial detention provisions

Abolition of cash bail was placed on hold in December pending appeal to Supreme Court

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SPRINGFIELD – The state's highest court heard arguments Tuesday in a case that could drastically alter the legal landscape for criminal defendants who are incarcerated as they await trial.

It's the latest development in the ongoing legal challenge to the pretrial detention provisions of the SAFE-T Act criminal justice reform – short for Safety, Accountability, Fairness and Equity-Today – which the high court put on hold in December just hours before it was scheduled to take effect.

The case pits Illinois' attorney general, legislative leaders and governor, who wish to uphold the pretrial detention overhaul, against state's attorneys and sheriffs representing 64 counties who say the legislature should have put a constitutional amendment to voters if they wanted to make such a change.

If the Supreme Court allows the pretrial detention changes to take effect, judges would no longer be able to incarcerate a defendant who is awaiting trial solely because they cannot afford to post bail. The system replacing cash bail would allow a judge to order pretrial detention based on an accused person's level of risk of reoffending or fleeing prosecution.

But the law would also create a list of lower-level nonviolent offenses for which a defendant cannot be held pretrial if they are not already out on pretrial release when committing the alleged offense or proven to be a "willful flight" risk.

The case was appealed to the Supreme Court by the state after a Kankakee County circuit court judge ruled in December that parts of the law were unconstitutional. The court must decide whether the state's constitution gives the judiciary a "right" to assess cash bail and whether lawmakers overstepped their bounds by passing a law that infringes on such a "right."

The law's opponents based their claims of unconstitutionality on two references to "bail" in the state's constitution. Section 9 states that "all persons" accused of crimes "shall be bailable by sufficient sureties" except in certain specified circumstances. And Section 8.1, the Crime Victims' Bill of Rights, notes a crime victim's right to safety must be considered "in denying or fixing the amount of bail."

In oral arguments before the high court Tuesday, Deputy Solicitor General Alex Hemmer with the attorney general's office argued that if the circuit court's ruling is allowed to stand it would severely limit the future authority of the General Assembly.

The high court, Hemmer argued, has consistently allowed the General Assembly to regulate pretrial practices, including by setting sentencing requirements, prohibiting the use of unsecured commercial bail bonds and prohibiting detention in certain circumstances.

"We're talking about six decades of legislative regulation of pretrial practices that are all called into question by plaintiffs' expansive reading of judicial power and their narrow reading of legislative power in this area," Hemmer said.

The constitution's mention of bail and "sufficient sureties" don't imply a monetary nature, he argued. He said that language was derived from the state's 1818 constitution which passed at a time when the modern monetary bail system was "all but unknown."

"Bailable just meant eligible for release on those conditions imposed by a court," he said.

Judges maintain the authority to impose conditions of release under the new law, he added.

But opponents argued the constitution's mentions of "bail" essentially serve as a requirement that the state maintains a system of monetary bail.

In particular, the prosecutors argued that the Crime Victims' Bill of Rights was brought to voters as a constitutional amendment in 2014, which was the proper avenue for such a change.

Kankakee County State's Attorney James Rowe argued that lawmakers put amendments to the voters in the 1980s when looking to expand the list of nonbailable offenses in the constitution. He contrasted that effort with the January 2021 passage of the SAFE-T Act which moved quickly through the legislature and came for a vote in the middle of the night.

Hemmer countered that the constitution has multiple references to institutions that no longer exist.

"The bail clause itself refers to capital offenses, but there are no more capital offenses in Illinois," he said. "No one would argue, I think, that the bail clause requires the state to maintain capital offenses simply by referring to it and the same is true here."

Each side faced questioning from the court which has a 5-2 majority of justices who ran as Democrats.

Rowe was just one sentence into his opening remarks, stating his "oath in the interest of public safety" compelled him to challenge the law, when Chief Justice Mary Jane Theis interjected.

"So I'm gonna stop you right there," Theis said before questioning whether the state's attorneys had legal standing to bring the challenge

"This court has said a party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights… How does this statute adversely impact the rights of elected state's attorneys and sheriffs?" she asked.

Rowe responded the group had standing because they swore a duty to uphold the constitution. Theis responded that judges and lawyers also swear such an oath.

"Are you saying that every lawyer in the state of Illinois has standing to challenge a statute they don't like?" she asked.

Rowe responded that he was not, but state's attorneys "stand in a very unique position" because they "are the only ones that can go into a courtroom and file a petition … to deny bail to someone."

He added that prosecutors "have an inherent interest in ensuring that we can move cases through the court system, that we can secure a defendant's appearance at trial."

"Why don't you continue to have that right?" Theis interjected. "If you say it's a right – a constitutional right, I'm not sure – but you say you have a right to ensure that defendants appear … doesn't that continue under this Act?" she asked.

"Well, the act abolishes the opportunity for a state's attorney to even request a monetary bail as a sufficient surety," Rowe said. "And for the sheriff, the sheriff has to ensure effectively the safety of every law enforcement officer under his charge."

Rowe argued that requiring sheriffs to serve a notice to appear and a warrant on two occasions doubles their risk of harm. And he later added prosecutors should be able to assert rights on behalf of a victim.

"So plaintiffs squarely believe that prosecutors and sheriffs have standing to pursue these matters. And we further believe that the act is unconstitutional," he said.

The court put the case on an expedited schedule and a decision is expected later this year, although the court did not set a specific timeline.

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Lawmakers advance measure to regulate ride-shares as 'common carriers'

2014 regulation subjected them to lower level of scrutiny for passenger safety

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SPRINGFIELD – Lawmakers are considering a bill that would treat ride-share companies such as Uber and Lyft as "common carriers," opening them up to the same level of liability as other forms of public transportation.

House Bill 2231 passed on the House floor this week with a 73-36 vote. The bill now awaits consideration in the Senate.

The common carrier status is defined as a "standard of care" under which passengers surrender their safety to certain modes of transportation. Currently in Illinois, this includes taxicabs, railways and elevators, among others.

"The reason for treating common carriers and holding common carriers to a higher standard of care is the lack of control that the rider has," Rep. Jennifer Gong-Gershowitz, a Democrat from Glenview and the bill's lead sponsor, said in an interview. "There is no difference between the lack of control that a rider has the moment they step into an Uber or a Lyft and the lack of control that a rider has when they step into a taxicab or a train or an elevator."

The push for the bill is spurred by concerns for rider safety, particularly after an Illinois Supreme Court case that was settled out of court in January 2022. The case's prior appellate court opinion affirmed ride-share companies' exemption from the common carrier status after a Lyft driver allegedly raped a passenger in 2017.

The alleged rape occurred in Chicago, when a woman identified as Jane Doe hailed a Lyft after a night out with her friends. The Lyft driver picked her up and, at some point during the ride, Doe fell asleep. The driver then drove to a secluded alley where he brandished a knife, zip-tied her hands and repeatedly sexually assaulted her, according to a court filing in the case that was settled in 2022.

Despite Doe's argument that ride-share companies such as Lyft should be held to the same liability standard as established common carriers, the appellate court upheld the exemption because of the specificity of the statute. The case was settled out of court before the Supreme Court could rule on it.

The statute in question, part of the 2014 Transportation Network Providers Act, states Transportation Network Companies and their drivers "are not common carriers, contract carriers or motor carriers, as defined by applicable State law, nor do they provide taxicab or for-hire vehicle service."

"Were we to hold that TNCs are subject to the same liability standards as common carriers, it would strip the relevant language of (the section of the statute) of all meaning," Illinois First District Justice Bertina Lampkin wrote in the appellate court decision.

Gong-Gershowitz argued that, if not for the law, Lyft may have been liable in this instance.

"This exemption from the common carrier doctrine insulates TNC's liability from the acts of their drivers when injuries to their consumers occur," Gong-Gershowitz said in a committee hearing. "Other common carriers…do not enjoy this exemption and it has been used by ride-share companies to shield themselves from liability and auto crashes and cases where drivers have sexually assaulted their passengers."

Opposition to the legislation centered on a concern that the common carrier classification may negatively impact business for ride-share companies.

"One of the reasons these entities have been so successful has been costs aren't as great as they are with other entities," Rep. Patrick Windhorst, R-Metropolis, said on the House floor. "So by increasing regulations or burdens on business then we may drive them out or make them less successful."

In an interview, Gong-Gershowitz refuted that claim, asserting ride-share companies are not a cheaper option anymore.

"When you look at surge pricing, when you look now at what riders pay to take an Uber or Lyft from one place or another, I would argue that the price comparison to other forms of transportation… being a less expensive option no longer is what's born out in the market," Gong-Gershowitz said.

According to Crain's Chicago Business, the average fare for Ubers in Chicago increased by 80 percent and by 73 percent for Lyft since 2019. According to the same report, the average fare for taxis increased by 50 percent.

Gong-Gershowitz added the cultural landscape around ride-share companies has shifted since their inception, eliminating the need to treat them differently from alternative modes of transportation.

"I think almost everybody now, at all ages, has an app on their phone and knows how to use both ride-share apps for Uber and Lyft, as well as other things," Gong-Gershowitz said. "So the dominance of technology in terms of the way we handle transportation, and many other things, has transformed the world that we live in over the last 10 years. And so the rationale that existed in 2015 just doesn't hold up in today's market."

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