

**BOND REFORM
NUTS & BOLTS:**

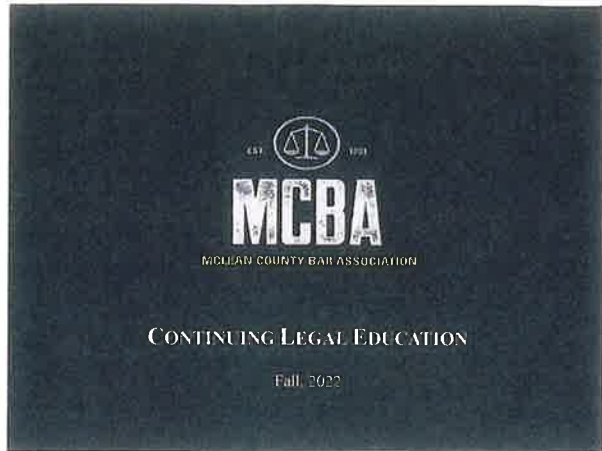
**Illinois' Safety, Accountability, Fairness
and Equity-Today ("SAFE-T") Act**

McLean County Bar Association CLE
November, 2022

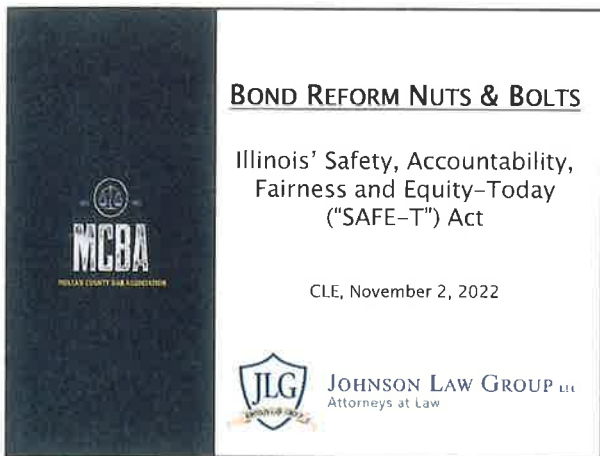
Presented by Brendan Bukalski

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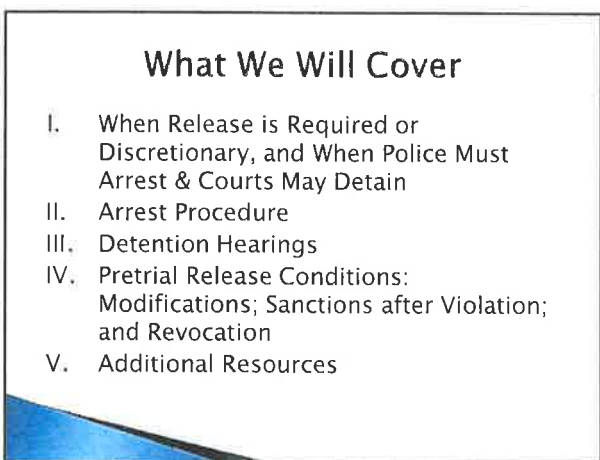
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When Release is Required or Discretionary, and When Police Must Arrest & Courts May Detain

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Introduction

- Language is changing:
 - Before, "detention" referenced what police do, but now, "detention" is a function of the courts and refers to "pretrial detention."
 - Further, there will not be "bail hearings." Bail does not exist as of January 1st. Instead, there will be "detention hearings."

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- Police can:
 - Cite & Release: required in certain instances, subject to exceptions, and discretionary in other instances, subject to the presumption to release.
 - Arrest & Book: required only when eligible, and otherwise discretionary, subject to the presumption to release.
- Courts can:
 - Not detain for most offenses; or
 - Detain only if offense is eligible or circumstances qualify.

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When Release is Required

If Class B, C, TR/OV, then release by citation required with first appearance within 21 days.

- Unless:
1. No proper identification;
 2. Obvious threat to community/any person; or
 3. Obvious medical/mental health issue that poses a risk to own safety.

Note: if services available, then transfer for services should be accomplished.

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When Release is Discretionary

Police can exercise discretion to arrest or to issue citation if the offense is a Class A or a CF that does not require detention.

Note: release by citation need not occur on scene, and can occur at police station, jail, etc.

Police can still arrest, and take people to jail for Class A or a CF, but there is a presumption in favor of releasing people when the offense is not one for which a person must be detained.

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When Police Must Arrest & Courts May Detain

- Stalking or Agg Stalking if release "poses a real and present threat to the physical safety of a victim of the offense, and denial of release is necessary to prevent fulfillment of the threat"

- Alleged victim is a family/household member & (1) the person charged is subject to an OP or (2) has a previous conviction for Vio of OP, Dom Batt, a violent crime (if victim was a family or household member, & release "poses a real and present threat to the physical safety of any person(s)")

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When Police Must Arrest & Courts May Detain (Cont'd).

- Dom Batt or Agg Dom Batt, and release "poses a real and present threat to the physical safety of any person(s)"
- Sex Offense (except Public Indecency, Adultery, Fornication, Bigamy), and release "poses a real and present threat to the safety of any person(s)"

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When Police Must Arrest & Courts May Detain (Cont'd).

- When release "poses a real and present threat to the physical safety of any specifically identifiable person(s)" for the following: see list in handouts. The enumerated offenses include ones involving several firearms- and/or ammunition-related offenses, including Agg UUW offenses, Armed Habitual Criminal, Involuntary Servitude, Involuntary Sexual Servitude of a Minor, and Trafficking in Persons.

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When Police Must Arrest & Courts May Detain (Cont'd).

- If the person has high likelihood of willful flight to avoid prosecution, and is charged with a felony alleging: Forcible Felony if prison required; Stalking or Agg Stalking; Victim is a family/household member; Agg Dom Batt; Sex Offense (except Public Indecency, Adultery, Fornication, Bigamy); or any felony other than a Class 4.

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When Police Must Arrest & Courts May Detain (Cont'd).

- Forcible Felonies when prison required and if release "poses a specific, real and present threat to any person or the community."

Forcible felony is defined in the handout, but it includes "any other felony which involves the use or threat of physical force or violence against any individual."

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Arrest Procedure

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- Within 3 hours, the person has the right to make at least 3 calls in order to communicate with an attorney and with their family free of charge, which includes the right to access a telephone (cell phone or landline).
- Police must summarize the above in a posted sign.
- Police must maintain records of the number of calls, the times calls were made, and why calls were not made (if this occurs).

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Detention Hearings

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Determining Release with or without Conditions

- Judges have to release people, unless the State files a petition, but can impose conditions on release.
- Release & compliance with conditions is presumed.
- Detention only when necessary to guarantee appearance, prevent crime, or compliance with PT conditions. (Requires written finding setting out why less restrictive conditions would not guarantee community safety or appearance in court, and judges must find continued detention is necessary for a specific, real and present threat at each subsequent hearing.)

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Determining Release with or without Conditions (Cont'd.)

- See 725 ILCS 5/110-2, -5, & -10. Courts can consider:
 - Nature/Circumstances of offense;
 - Weight of evidence;
 - History/Characteristics of person;
 - Nature/Seriousness of a specific threat; &
 - Nature/Seriousness of obstruction to justice
- If electronic monitoring or home confinement imposed, judge must make a finding of there being no less restrictive means to ensure appearance or protect from the imminent threat of serious harm.

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Hearing Details

- Must occur "without unnecessary delay," and still within 48 hours.
- Must be in-person (unless waived or person's physical health/safety would be endangered).
- Counsel must be appointed.
- Counsel must be given an adequate opportunity and physical accommodation to consult with client.

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Hearing Details (Con'td.)

- Counsel must be given and State must provide discovery in some form prior to the hearing, including a criminal history, reports, and possibly even photos and/or videos
- State's Attorney must notify victim of hearing and of right to seek protective order at hearing.
- Assessment must be done.

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State's Petition to Detain

- Must state grounds.
- Can be filed any time (even day of court after a notice to appear was issued).
- Can only be filed once.
- Hearing must be held that day, unless continued: hearing in 48 hours if a CF and in 24 hours if a CM.
- Procedural notes:
 - Proffers are allowed;
 - Rules of evidence do not apply; and
 - Defense can only call complaining witness after court grants leave.

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State's Petition to Detain (Cont'd.)

- State must show by clear and convincing evidence:
 - Proof is evident or presumption great that offense was committed;
 - Person poses real and present threat to safety of a specific person by their conduct; and
 - No pretrial conditions will remove the threat.

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**Pretrial Release Conditions:
Modifications;
Sanctions after Violation;
and Revocation**

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Pretrial Condition Modifications

- Removing Conditions: Any party can seek.
Note: If conditions protects a victim, then victim must receive notice.
- Adding Conditions: requires a revocation or sanctions hearing after a warrant is issued or upon State's motion.
Note: State must notify victim(s) of hearing.

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Sanctions for Violation

After a Person Fails to Appear

- After FTA, it is unclear whether courts can issue a warrant. Instead, courts can continue the hearing, issue notice to appear or RTSC (unclear whether service must be in-person or via mail).
 - If FTA again, then warrant can issue, but revocation of pretrial release/detention only possible on felonies.
 - Don't be surprised if you see different approaches in different counties, even in the same circuit.

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Sanctions for Violation (Cont'd.)

- State may file a petition after notice to show cause.
 - WT can only issue after FTA at hearing.
 - Violation can result in release by citation to appear on a new Class B, Class C, TR or OV.
- Sanctions can include:
 - Verbal/written admonishment;
 - Imprisonment up to 30 days;
 - Fine up to \$200; and/or
 - Modification of Pretrial Conditions

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Sanctions for Violation (Cont'd.)

- Hearing Procedure
 - Person has right to representation, present mitigation & to be heard.
 - Court must find by clear and convincing evidence:
 - Violation actually occurred;
 - Person had actual knowledge violation would occur;
 - Violation was willful; and
 - Violation was not due to a lack of financial resources.

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Revocation of Pretrial Release

- If already released on CF/Class A and person commits a new CF/Class A, then new detention hearing can be held on court's own motion or petition of State.
- If person had a previous Vio of OP and gets a new Vio of OP involving the same victim, State must file petition to detain.
- Hearing must be held within 72 hours.

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Revocation of Pretrial Release (Cont'd.)

- To detain, court must find by clear & convincing evidence no condition(s) will reasonably guarantee appearance or prevent commission of new qualifying offense(s).
- Instead of detention, courts can order a person's release with or without new condition(s).

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Additional Resources

- See Handouts to this CLE.
- Go to: <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/> for additional materials and listening sessions.

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Before Questions, Let's Thank:

- Judge Costigan & our Judiciary
- McLean County Bar Association
- Mary Sellmyer, Bar Association Assistant
- Bradly Rigdon, Assistant State's Attorney

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Questions?

There are lots.

The Good: the SAFE-T Act is subject to change.

The Bad: a lot remains unaddressed.

The Ugly: not all questions will have answers ... yet.



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Thank You!

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BOND REFORM NUTS & BOLTS:
Illinois' Safety, Accountability, Fairness and Equity-Today ("SAFE-T") Act

McLean County Bar Association CLE
November, 2022

Presented by Brendan Bukalski

Speaker Biography

Brendan Bukalski is Managing Partner of Johnson Law Group, LLC., which is headquartered in Bloomington, Illinois, and has offices in Springfield, Peoria, and Decatur. Practicing throughout central Illinois with a focus on criminal defense, Mr. Bukalski also has a substantial background in driver's license reinstatement, gun rights restoration, and post-conviction matters. He has successfully represented clients at both the trial and appellate court levels, as well as before administrative agencies.

Brendan is a frequent lecturer to groups about their rights and privileges under Illinois law, and has authored numerous articles published by various periodicals, including the Illinois State Bar Association. He presently serves as CLE Coordinator for the Illinois State Bar Association Committee on Criminal Justice, as well as Chair of the Criminal Law Committee and as Co-Chair for both the History and Memorials Committee and Membership Committee for the McLean County Bar Association, for which he is also on its Board of Governors. Brendan was born and raised in Illinois, and volunteers with various civic organizations. After graduating from New York University and Southern Illinois University School of Law, he worked as an Assistant State's Attorney in Livingston County, Illinois, for several years.

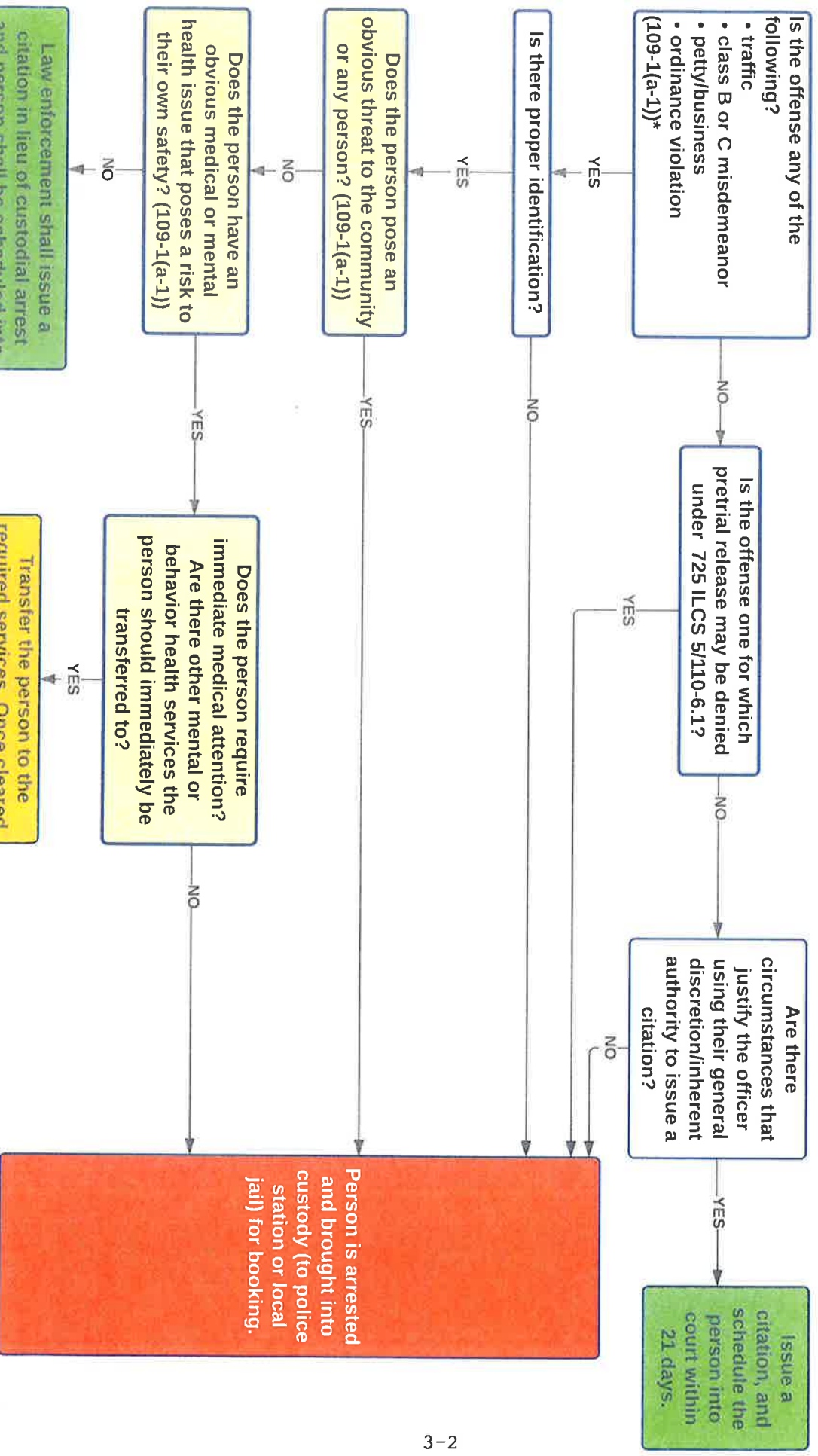
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Illinois Courts Pretrial Implementation Task Force Draft Flowcharts

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Pretrial Fairness Act, Effective 1/1/2023

Release by Citation



Law enforcement shall issue a citation in lieu of custodial arrest and person shall be scheduled into court within 21 days. (109-1(a-1))

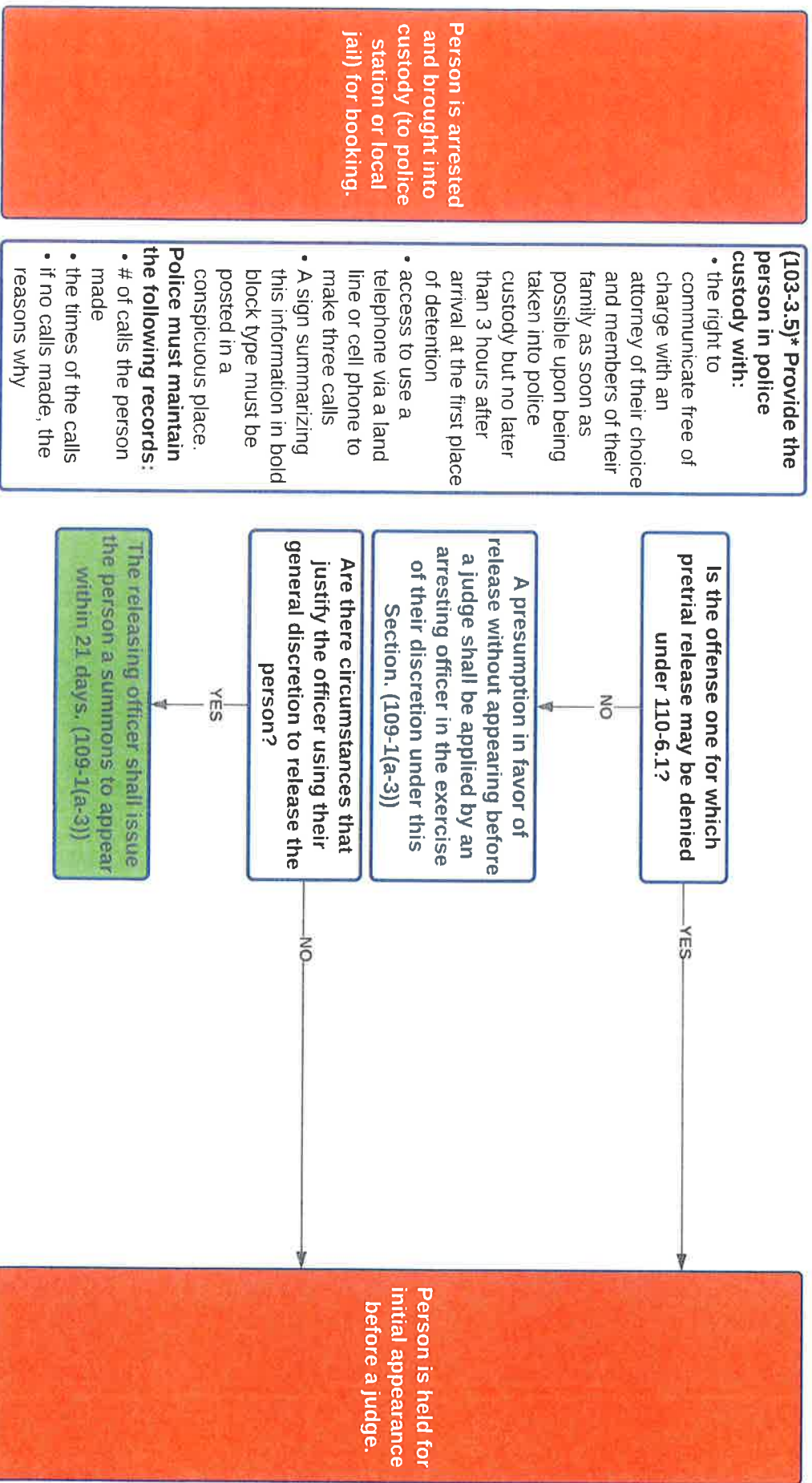
Transfer the person to the required services. Once cleared, issue a citation scheduling the person into court within 21 days, or transfer custody to county jail or detention center.

*Unless otherwise noted, all statutory references are to sections under 725 ILCS 5

This document is a product of the Illinois Supreme Court Implementation Task Force. The Task Force is working on additional flowcharts and resources, which will be shared with stakeholders and counties in the future. This is not an official resource from the Supreme Court.

Pretrial Fairness Act, Effective 1/1/2023

Release from Custody



(103-3.5)* Provide the person in police custody with:

- the right to communicate free of charge with an attorney of their choice and members of their family as soon as possible upon being taken into police custody but no later than 3 hours after arrival at the first place of detention
- access to use a telephone via a land line or cell phone to make three calls
- A sign summarizing this information in bold block type must be posted in a conspicuous place.

Police must maintain the following records:

- # of calls the person made
- the times of the calls
- if no calls made, the reasons why

Person is arrested and brought into custody (to police station or local jail) for booking.

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Pretrial Fairness Act, Effective 1/1/2023 Pre-First Appearance Activities

PC TO BE DECIDED WITHIN 48 HOURS. GERSTEIN

INITIAL APPEARANCE TO OCCUR WITHOUT UNNECESSARY DELAY (109-1(a))

Person is held for initial appearance before a judge.

Person receives a citation or summons and is scheduled to appear in court.

Ensure a Meaningful First Appearance

- Hearing must be **in-person** unless the physical health and safety of the person would be endangered by appearing or the person waives the right to be present in person. (109-1(f))* (But see 106-D1 which permits the person to appear by video conference.)
- Prior to appearance, the Court shall appoint counsel to represent the person for purposes of the hearing, unless counsel has already been obtained. (110-5(f))
- Counsel must be given adequate opportunity to confer with client prior to first appearance hearing, with physical accommodation made to facilitate attorney/client consultation. (109-1(g))

Notice to Victims

Crime victims shall be given notice by the State's Attorney's office of the first appearance hearing and shall be informed of their opportunity at this hearing to obtain an order of protection. (109-1(c))

Assess the Person Charged

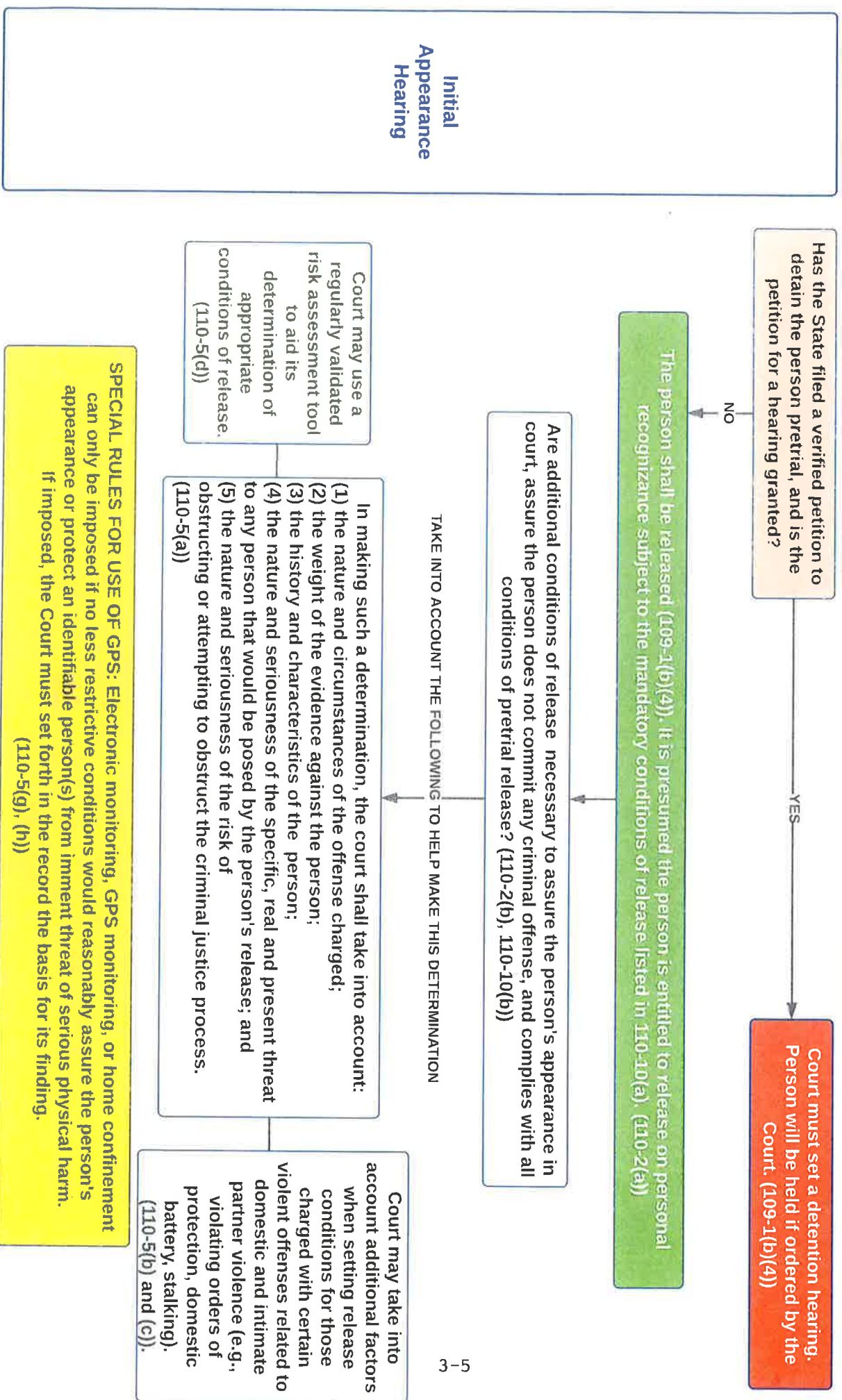
- Pretrial Services Agency should interview the person. (Pretrial Services Act, 725 ILCS 185, Section 7(a))
- The person may be assessed using a validated risk assessment tool, including a DV risk assessment. (110-5(d), 110-6.4)
- If a risk assessment tool is used, defense counsel shall be provided with the information and scoring system of the tool used to arrive at the determination. (110-5(d))

Initial Appearance Hearing

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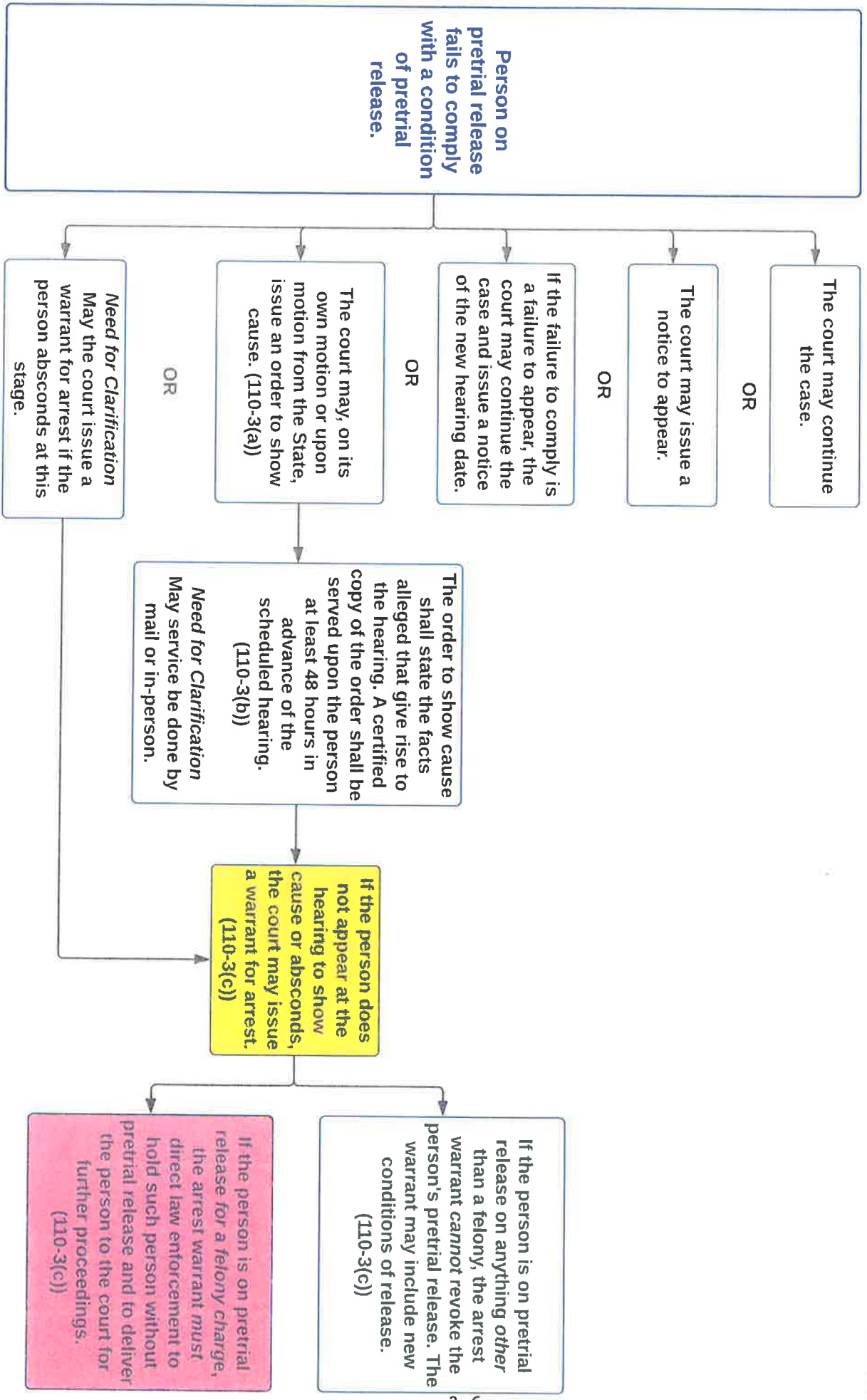
Setting of Release Conditions



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Issuing Warrants and Orders to Show Cause



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Modifications of Conditions of Release

REMOVING CONDITIONS OF RELEASE

At any time, either party or the court may make a motion to remove previously set conditions of pretrial release. (110-6(g)(a))

Court holds a conditions hearing.

REMOVING CONDITIONS OF RELEASE REGARDING VICTIMS OR WITNESSES

The court shall not remove a previously set condition of bond regulating contact with a victim or witness in the case, unless the subject of the condition has been given notice of the hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act. If the subject of the condition of release is not present, the court shall follow the procedures of paragraph (10) of subsection (c-1) of the Rights of Crime Victims and Witnesses Act. (110-6(g)(b))

ADDING CONDITIONS OF RELEASE

The court may only **add or increase** conditions of pretrial release:

After a revocation or sanctions hearing under Section 110-6

OR

In a warrant issued under Section 110-3

OR

Upon motion from the state.

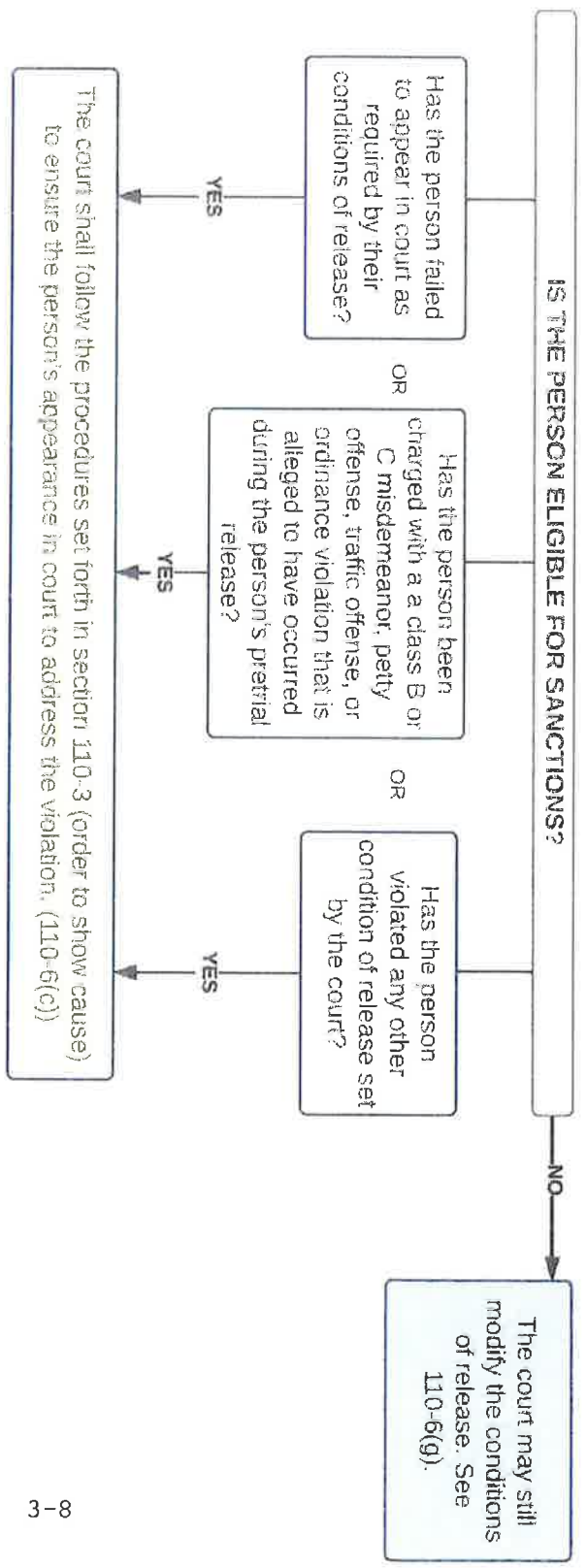
NOTICE TO VICTIMS FOR ALL HEARINGS UNDER SECTION 110-6

Crime Victims shall be given notice by the State's Attorney's office of all hearings in this section as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at these hearing to obtain an order of protection under Article 112A of this Code.

Person is on pretrial release subject to conditions.

*Unless otherwise noted, all statutory references are to sections under 725 ILCS 5

Sanctions for Violating Conditions of Release



Person is on pretrial release subject to conditions.

ELIGIBILITY FOR SANCTIONS

When:

- the person appears in court for a notice to show cause hearing, or
- after being arrested on a warrant issued because of an FTA at the show cause hearing, or
- after being arrested for an offense other than a felony or class A misdemeanor.

Then:

The state may file a verified petition requesting a hearing for sanctions. (110-6(d))

HEARING FOR SANCTIONS

The person shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation.

The court shall only impose sanctions if it finds by **clear and convincing evidence** that:

- The person committed an act that violated a term of their pretrial release;
- The defendant had actual knowledge that their action would violate a court order;
- The violation of the court order was willful; **and**
- The violation was not caused by a lack of access to financial monetary resources. (110-6(e))

SANCTIONS

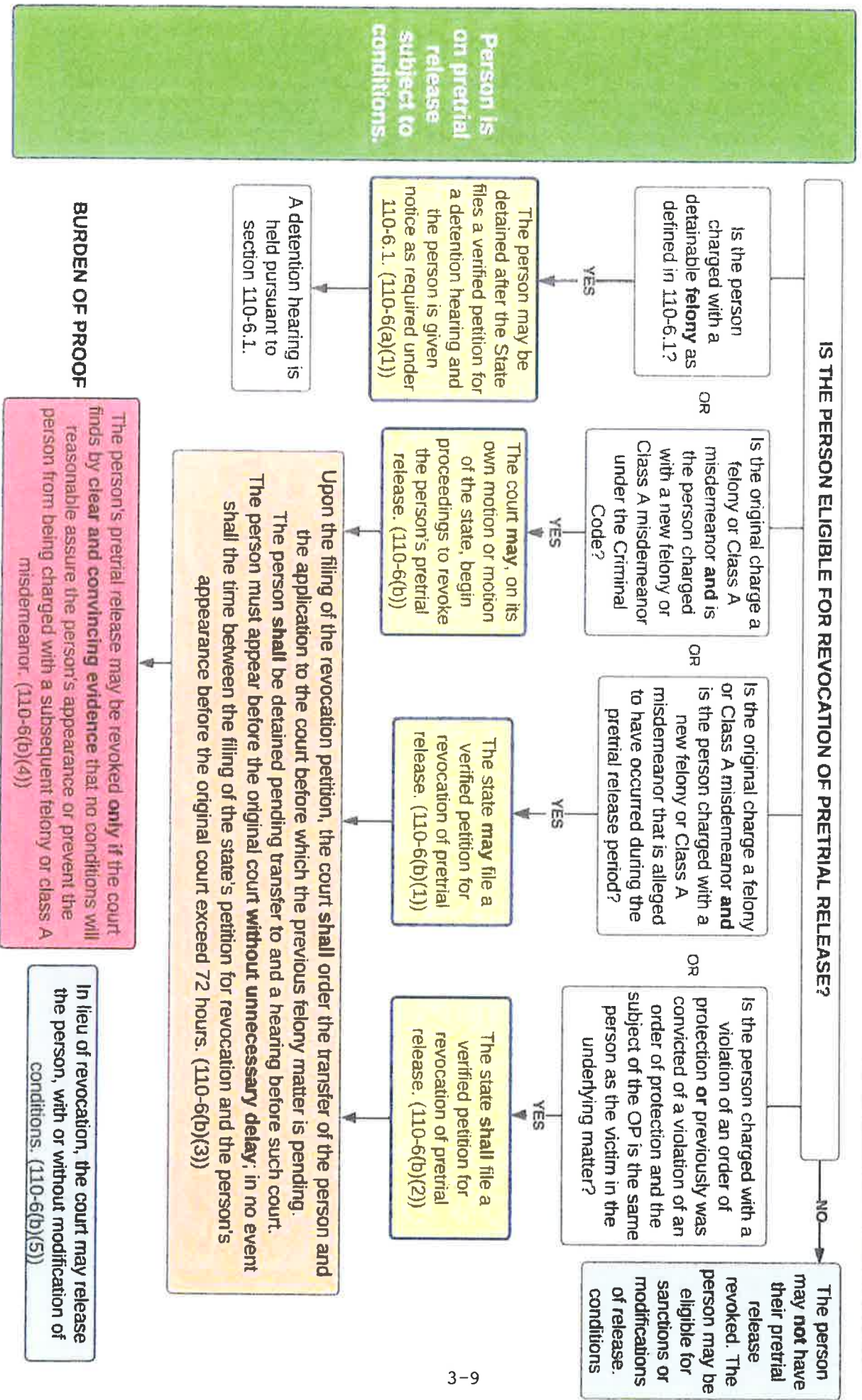
Sanctions for violations of pretrial release may include:

- A verbal or written admonishment from the court;
- Imprisonment in the county jail for a period not exceeding 30 days;
- A fine of not more than \$200;
- A modification of the defendant's pretrial conditions. (110-6(f))

*Unless otherwise noted, all statutory references are to sections under 725 ILCS 5

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Revocation of Pretrial Release



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720 ILCS 5/Art. 2
GENERAL DEFINITIONS

Forcible felony, Sec. 2-8 4-2

720 ILCS 5/2-8

Sec. 2-8. "Forcible felony". "Forcible felony" means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.

(Source: P.A. 88-277; 89-428, eff. 12-13-95; 89-462, eff. 5-29-96.)

720 ILCS 5/Art. 32 INTERFERENCE WITH JUDICIAL PROCEDURE

Violation of conditions of pretrial release, Sec. 32-10 5-2

720 ILCS 5/32-10) (from Ch. 38, par. 32-10

(Text of Section after amendment by P.A. 101-652)

Sec. 32-10. Violation of conditions of pretrial release.

(a) Whoever, having been released pretrial under conditions for appearance before any court of this State, incurs a violation of conditions of pretrial release and knowingly fails to surrender himself or herself within 30 days following the date of the violation, commits, if the conditions of pretrial release was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, a Class A misdemeanor if the underlying offense was a felony. If the violation of pretrial conditions were made in connection with a charge of committing a misdemeanor, or for appearance as a witness, commits a Class C misdemeanor.

(a-5) Any person who knowingly violates a condition of pretrial release by possessing a firearm in violation of his or her conditions of pretrial release commits a Class 4 felony for a first violation and a Class 3 felony for a second or subsequent violation.

(b) Whoever, having been released pretrial under conditions for appearance before any court of this State, while charged with a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963, knowingly violates a condition of that release as set forth in Section 110-10, subsection (d) of the Code of Criminal Procedure of 1963, commits a Class A misdemeanor.

(c) Whoever, having been released pretrial under conditions for appearance before any court of this State for a felony, Class A misdemeanor or a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963, is charged with any other felony, Class A misdemeanor, or a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963 while on this release, must appear before the court.

(d) Nothing in this Section shall interfere with or prevent the exercise by any court of its power to punishment for contempt. Any sentence imposed for violation of this Section may be served consecutive to the sentence imposed for the charge for which pretrial release had been granted and with respect to which the defendant has been convicted.

(Source: P.A. 101-652, eff. 1-1-23.)

725 ILCS 5/Art. 103
RIGHTS OF ACCUSED as amended

Right to communicate with attorney and family ..., Sec. 103-3.5 6-2

725 ILCS 5/103-3.5

Sec. 103-3.5. Right to communicate with attorney and family; transfers; presumption of inadmissibility.

(a) Persons who are in police custody shall have the right to communicate free of charge with an attorney of his or her choice and members of his or her family as soon as possible upon being taken into police custody, but no later than 3 hours of arrival at the first place of detention. Persons in police custody must be given access to use a telephone via a landline or cellular phone to make 3 telephone calls.

(b) In accordance with Section 103-7, at every police facility where a person is in police custody, a sign containing at minimum, the following information in bold block type must be posted in a conspicuous place:

(1) a short statement notifying persons who are in police custody of their right to have access to a phone within 3 hours of being taken into police custody; and

(2) that persons who are in police custody have the right to make 3 phone calls within 3 hours of being taken into custody, at no charge.

(c) In addition to the information listed in subsection (b), if the place of detention is located in a jurisdiction where the court has appointed the public defender or other attorney to represent persons who are in police custody, the telephone number to the public defender or other attorney's office must also be displayed. The telephone call to the public defender or other attorney must not be monitored, eavesdropped upon, or recorded.

(d) If a person who is in police custody is transferred to a new place of detention, that person's right to make 3 telephone calls under this Section within 3 hours of arrival is renewed.

(e) Statements made by a person who is detained in police custody in violation of this section are presumed inadmissible in court as evidence. The presumption of inadmissibility may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances. As used in this subsection, "totality of the circumstances" includes, but is not limited to, evidence that law enforcement knowingly prevented or delayed a person's right to communicate or failed to comply with the requirements of this Section.

(f) The 3-hour requirement under this Section shall not apply while the person in police custody is asleep, unconscious, or otherwise incapacitated or an exigent circumstance prevents the officers from timely complying with this Section. If this occurs, it must be documented within the police report detailing the exigent circumstance. Once the exigent circumstance ends, the right to make 3 phone calls within 3 hours resumes.

(g) In accordance with this Section, the following records shall be maintained: (i) the number of phone calls the person made while in custody; (ii) the time or times the person made phone calls; and (iii) if the person did not make any phone calls, a statement of the reason or reasons why no calls were made.

(h) For purposes of this Section, "place of detention" means a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency, other than a courthouse, that is owned or operated by a law enforcement agency, or other building, such as a school or hospital, where persons are held in detention in connection with criminal charges against those persons.

(Source: P.A. 102-694, eff. 1-7-22.)

725 ILCS 5/Art. 109
PRELIMINARY EXAMINATION
as amended

Person arrested; release; geographical constraints, Sec. 109-1 7-2

(Text of Section after amendment by P.A. 101-652)

Sec. 109-1. Person arrested; release from law enforcement custody and court appearance; geographical constraints prevent in-person appearances.

(a) A person arrested with or without a warrant for an offense for which pretrial release may be denied under paragraphs (1) through (6) of Section 110-6.1 shall be taken without unnecessary delay before the nearest and most accessible judge in that county, except when such county is a participant in a regional jail authority, in which event such person may be taken to the nearest and most accessible judge, irrespective of the county where such judge presides, and a charge shall be filed. Whenever a person arrested either with or without a warrant is required to be taken before a judge, a charge may be filed against such person by way of a two-way closed circuit television system, except that a hearing to deny pretrial release to the defendant may not be conducted by way of closed circuit television.

(a-1) Law enforcement shall issue a citation in lieu of custodial arrest, upon proper identification, for those accused of traffic and Class B and C criminal misdemeanor offenses, or of petty and business offenses, who pose no obvious threat to the community or any person, or who have no obvious medical or mental health issues that pose a risk to their own safety. Those released on citation shall be scheduled into court within 21 days.

(a-3) A person arrested with or without a warrant for an offense for which pretrial release may not be denied may, except as otherwise provided in this Code, be released by the officer without appearing before a judge. The releasing officer shall issue the person a summons to appear within 21 days. A presumption in favor of pretrial release shall be applied by an arresting officer in the exercise of his or her discretion under this Section.

(a-5) A person charged with an offense shall be allowed counsel at the hearing at which pretrial release is determined under Article 110 of this Code. If the defendant desires counsel for his or her initial appearance but is unable to obtain counsel, the court shall appoint a public defender or licensed attorney at law of this State to represent him or her for purposes of that hearing.

(b) Upon initial appearance of a person before the court, the judge shall:

(1) inform the defendant of the charge against him and shall provide him with a copy of the charge;

(2) advise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney at law of this State to represent him in accordance with the provisions of Section 113-3 of this Code;

(3) schedule a preliminary hearing in appropriate cases;

(4) admit the defendant to pretrial release in accordance with the provisions of Article 110 of this Code, or upon verified petition of the State, proceed with the setting of a detention hearing as provided in Section 110-6.1; and

(5) order the confiscation of the person's passport or impose travel restrictions on a defendant arrested for first degree murder or other violent crime as defined in Section 3 of the Rights of Crime Victims and Witnesses Act, if the judge determines, based on the factors in Section 110-5 of this Code, that this will reasonably ensure the appearance of the defendant and compliance by the defendant with all conditions of release.

(c) The court may issue an order of protection in accordance with the provisions of Article 112A of this Code. Crime victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (2) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain an order of protection under Article 112A of this Code.

(d) At the initial appearance of a defendant in any criminal proceeding, the court must advise the defendant in open court that any foreign national who is arrested or detained has the right to have notice of the arrest or detention given to his or her country's consular representatives and the right to communicate with those consular representatives if the notice has not already been provided. The court must make a written record of so advising the defendant.

(e) If consular notification is not provided to a defendant before his or her first appearance in court, the court shall grant any reasonable request for a continuance of the proceedings to allow contact with the defendant's consulate. Any delay caused by the granting of the request by a defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by subsection (a), (b), or (c) of Section 103-5 of this Code and on the day of the expiration of delay the period shall continue at the point at which it was suspended.

(f) At the hearing at which conditions of pretrial release are determined, the person charged shall be present in person rather than by video phone or any other form of electronic communication, unless the physical health and safety of the person would be endangered by appearing in court or the accused waives the right to be present in person.

(g) Defense counsel shall be given adequate opportunity to confer with the defendant prior to any hearing in which conditions of release or the detention of the defendant is to be considered, with a physical accommodation made to facilitate attorney/client consultation.

(Source: P.A. 101-652, eff. 1-1-23; 102-813, eff. 5-13-22.)

725 ILCS 5/Art. 110. BAIL as amended

Release on own recognizance, Sec. 110-2	8-2
Options for warrant alternatives, Sec. 110-3	8-3
Determining the amount of bail and conditions of release, Sec. 110-5	8-4
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Conditions of pretrial release, Sec.110-10	8-17

725 ILCS 5/110-2) (from Ch. 38, par. 110-2

(Text of Section after amendment by P.A. 101-652)

Sec. 110-2. Release on own recognizance.

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

(b) Additional conditions of release, including those highlighted above, shall be set only when it is determined that they are necessary to assure the defendant's appearance in court, assure the defendant does not commit any criminal offense, and complies with all conditions of pretrial release.

(c) Detention only shall be imposed when it is determined that the defendant poses a specific, real and present threat to a person, or has a high likelihood of willful flight. If the court deems that the defendant is to be released on personal recognizance, the court may require that a written admonishment be signed by the defendant requiring that he or she must comply with the provisions of Section 110-12 of this Code regarding any change in his or her address. The defendant may be released on his or her own recognizance upon signature. The defendant's address shall at all times remain a matter of public record with the clerk of the court. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in Section 32-10 of the Criminal Code of 2012 for violation of the conditions of pretrial release.

(d) If, after the procedures set out in Section 110-6.1, the court decides to detain the defendant, the Court must make a written finding as to why less restrictive conditions would not assure safety to the community and assure the defendant's appearance in court. At each subsequent appearance of the defendant before the Court, the judge must find that continued detention or the current set of conditions imposed are necessary to avoid the specific, real and present threat to any person or of willful flight from prosecution to continue detention of the defendant. The court is not required to be presented with new information or a change in circumstance to consider reconsidering pretrial detention on current conditions.

(e) This Section shall be liberally construed to effectuate the purpose of relying upon contempt of court proceedings or criminal sanctions instead of financial loss to assure the appearance of the defendant, and that the defendant will not pose a danger to any person or the community and that the defendant will not pose a danger to any person or the community and that the defendant will comply with all conditions of pretrial release.

(Source: P.A. 101-652, eff. 1-1-23.)

(Text of Section after amendment by P.A. 101-652)

Sec. 110-3. Options for warrant alternatives.

(a) Upon failure to comply with any condition of pretrial release or recognizance, the court having jurisdiction at the time of such failure may, on its own motion or upon motion from the State, issue an order to show cause as to why he or she shall not be subject to revocation of pretrial release, or for sanctions, as provided in Section 110-6. Nothing in this Section prohibits the court from issuing a warrant under subsection (c) upon failure to comply with any condition of pretrial release or recognizance.

(b) The order issued by the court shall state the facts alleged to constitute the hearing to show cause or otherwise why the person is subject to revocation of pretrial release. A certified copy of the order shall be served upon the person at least 48 hours in advance of the scheduled hearing.

(c) If the person does not appear at the hearing to show cause or absconds, the court may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on pretrial release. The contents of such a warrant shall be the same as required for an arrest warrant issued upon complaint and may modify any previously imposed conditions placed upon the person, rather than revoking pretrial release or issuing a warrant for the person in accordance with the requirements in subsections (d) and (e) of Section 110-5. When a defendant is at liberty on pretrial release or his own recognizance on a felony charge and fails to appear in court as directed, the court may issue a warrant for the arrest of such person after his or her failure to appear at the show for cause hearing as provided in this Section. Such warrant shall be noted with a directive to peace officers to arrest the person and hold such person without pretrial release and to deliver such person before the court for further proceedings.

(d) If the order as described in subsection (b) is issued, a failure to appear shall not be recorded until the defendant fails to appear at the hearing to show cause. For the purpose of any risk assessment or future evaluation of risk of willful flight or risk of failure to appear, a non-appearance in court cured by an appearance at the hearing to show cause shall not be considered as evidence of future likelihood of appearance in court.

(Source: P.A. 101-652, eff. 1-1-23; 102-813, eff. 5-13-22.)

(Text of Section after amendment by P.A. 101-652)

Sec. 110-5. Determining the amount of bail and conditions of release.

(a) In determining which conditions of pretrial release, if any, will reasonably assure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release, the court shall, on the basis of available information, take into account such matters as:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded;
- (3) the history and characteristics of the eligible defendant, including:
 - (A) the eligible defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, history criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the eligible defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;
- (4) the nature and seriousness of the specific, real and present threat to any person that would be posed by the eligible defendant's release, if applicable, as required under paragraph (7.5) of Section 4 of the Rights of Crime Victims and Witnesses Act; and
- (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the eligible defendant's release, if applicable.

(b) The court shall impose any conditions that are mandatory under Section 110-10. The court may impose any conditions that are permissible under Section 110-10.

(b-5) When a person is charged with a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012 or when a person is charged with domestic battery, aggravated domestic battery, kidnapping, aggravated kidnaping, unlawful restraint, aggravated unlawful restraint, stalking, aggravated stalking, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against an intimate partner regardless whether an order of protection has been issued against the person,

(1) whether the alleged incident involved harassment or abuse, as defined in the Illinois Domestic Violence Act of 1986;

(2) whether the person has a history of domestic violence, as defined in the Illinois Domestic Violence Act, or a history of other criminal acts;

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

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

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

(7) Any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior.

(d) The Court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release as provided for in Section 110-6.4. Risk assessment tools may not be used as the sole basis to deny pretrial release. If a risk assessment tool is used, the defendant's counsel shall be provided with the information and scoring system of the risk assessment tool used to arrive at the determination. The defendant retains the right to challenge the validity of a risk assessment tool used by the court and to present evidence relevant to the defendant's challenge.

(e) If a person remains in pretrial detention after his or her pretrial conditions hearing after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably assure the appearance of a defendant as required or the safety of any other person and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant.

(f) Prior to the defendant's first appearance, the Court shall appoint the public defender or a licensed attorney at law of this State to represent the defendant for purposes of that hearing, unless the defendant has obtained licensed counsel for themselves.

(g) Electronic monitoring, GPS monitoring, or home confinement can only be imposed as a condition of pretrial release if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.

(h) If the court imposes electronic monitoring, GPS monitoring, or home confinement, the court shall set forth in the record the basis for its finding. A defendant shall be given custodial credit for each day he or she was subjected to that program, at the same rate described in subsection (b) of Section 5-4.5-100 of the Unified Code of Corrections.

(i) If electronic monitoring, GPS monitoring, or home confinement is imposed, the court shall determine every 60 days if no less restrictive condition of release or combination of less restrictive conditions of release would reasonably ensure the appearance, or continued appearance, of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm. If the court finds that there are less restrictive conditions of release, the court shall order that the condition be removed. This subsection takes effect January 1, 2022.

(j) Crime Victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain an order of protection under Article 112A of this Code.

(Source: P.A. 101-652, eff. 1-1-23; 102-28, eff. 6-25-21; 102-558, eff. 8-20-21; 102-813, eff. 5-13-22.)

(Text of Section after amendment by P.A. 101-652)

Sec. 110-6. Revocation of pretrial release, modification of conditions of pretrial release, and sanctions for violations of conditions of pretrial release.

(a) When a defendant is granted pretrial release under this section, that pretrial release may be revoked only under the following conditions:

(1) if the defendant is charged with a detainable felony as defined in 110-6.1, a defendant may be detained after the State files a verified petition for such a hearing, and gives the defendant notice as prescribed in 110-6.1; or

(2) in accordance with subsection (b) of this section.

(b) Revocation due to a new criminal charge: If an individual, while on pretrial release for a Felony or Class A misdemeanor under this Section, is charged with a new felony or Class A misdemeanor under the Criminal Code of 2012, the court may, on its own motion or motion of the state, begin proceedings to revoke the individual's pretrial release.

(1) When the defendant is charged with a felony or class A misdemeanor offense and while free on pretrial release bail is charged with a subsequent felony or class A misdemeanor offense that is alleged to have occurred during the defendant's pretrial release, the state may file a verified petition for revocation of pretrial release.

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

(3) Upon the filing of this petition, the court shall order the transfer of the defendant and the application to the court before which the previous felony matter is pending. The defendant shall be held without bond pending transfer to and a hearing before such court. The defendant shall be transferred to the court before which the previous matter is pending without unnecessary delay. In no event shall the time between the filing of the state's petition for revocation and the defendant's appearance before the court before which the previous matter is pending exceed 72 hours.

(4) The court before which the previous felony matter is pending may revoke the defendant's pretrial release only if it finds, after considering all relevant circumstances including, but not limited to, the nature and seriousness of the violation or criminal act alleged, by the court finds clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or class A misdemeanor.

(5) In lieu of revocation, the court may release the defendant pre-trial, with or without modification of conditions of pretrial release.

(6) If the case that caused the revocation is dismissed, the defendant is found not guilty in the case causing the revocation, or the defendant completes a lawfully imposed sentence on the case causing the revocation, the court shall, without unnecessary delay, hold a hearing on conditions of release pursuant to section 110-5 and release the defendant with or without modification of conditions of pretrial release.

(7) Both the state and the defense may appeal an order revoking pretrial release or denying a petition for revocation of release.

(c) Violations other than re-arrest for a felony or class A misdemeanor. If a defendant:

(1) fails to appear in court as required by their conditions of release;

(2) is charged with a class B or C misdemeanor, petty offense, traffic offense, or ordinance violation that is alleged to have occurred during the defendant's pretrial release; or

(3) violates any other condition of release set by the court,

the court shall follow the procedures set forth in Section 110-3 to ensure the defendant's appearance in court to address the violation.

(d) When a defendant appears in court for a notice to show cause hearing, or after being arrested on a warrant issued because of a failure to appear at a notice to show cause hearing, or after being arrested for an offense other than a felony or class A misdemeanor, the state may file a verified petition requesting a hearing for sanctions.

(e) During the hearing for sanctions, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. The court shall only impose sanctions if it finds by clear and convincing evidence that:

1. The defendant committed an act that violated a term of their pretrial release;
2. The defendant had actual knowledge that their action would violate a court order;
3. The violation of the court order was willful; and
4. The violation was not caused by a lack of access to financial monetary resources.

(f) Sanctions: sanctions for violations of pretrial release may include:

1. A verbal or written admonishment from the court;
2. Imprisonment in the county jail for a period not exceeding 30 days;
3. A fine of not more than \$200; or
4. A modification of the defendant's pretrial conditions.

(g) Modification of Pretrial Conditions

(a) The court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in section (e). The court may only add or increase conditions of pretrial release at a hearing under this Section, in a warrant issued under Section 110-3, or upon motion from the state.

(b) Modification of conditions of release regarding contact with victims or witnesses. The court shall not remove a previously set condition of bond regulating contact with a victim or witness in the case, unless the subject of the condition has been given notice of the hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act. If the subject of the condition of release is not present, the court shall follow the procedures of paragraph (10) of subsection (c-1) of the Rights of Crime Victims and Witnesses Act.

(h) Notice to Victims: Crime Victims shall be given notice by the State's Attorney's office of all hearings in this section as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at these hearing to obtain an order of protection under Article 112A of this Code.

(Source: P.A. 100-1, eff. 1-1-18; 100-929, eff. 1-1-19; 101-652, eff. 1-1-23.)

725 ILCS 5/110-6.1

(Text of Section after amendment by P.A. 101-652)

Sec. 110-6.1. Denial of pretrial release.

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

(1) the defendant is charged with a forcible felony offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, and it is alleged that the defendant's pretrial release poses a specific, real and present threat to any person or the community.;

(2) the defendant is charged with stalking or aggravated stalking and it is alleged that the defendant's pre-trial release poses a real and present threat to the physical safety of a victim of the alleged offense, and denial of release is necessary to prevent fulfillment of the threat upon which the charge is based;

(3) the victim of abuse was a family or household member as defined by paragraph (6) of Section 103 of the Illinois Domestic Violence Act of 1986, and the person charged, at the time of the alleged offense, was subject to the terms of an order of protection issued under Section 112A-14 of this Code, or Section 214 of the Illinois Domestic Violence Act of 1986 or previously was convicted of a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012 or a violent crime if the victim was a family or household member as defined by paragraph (6) of the Illinois Domestic Violence Act of 1986 at the time of the offense or a violation of a substantially similar municipal ordinance or law of this or any other state or the United States if the victim was a family or household member as defined by paragraph (6) of Section 103 of the Illinois Domestic Violence Act of 1986 at the time of the offense, and it is alleged that the defendant's pre-trial release poses a real and present threat to the physical safety of any person or persons;

(4) the defendant is charged with domestic battery or aggravated domestic battery under Section 12-3.2 or 12-3.3 of the Criminal Code of 2012 and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of any person or persons;

(5) the defendant is charged with any offense under Article 11 of the Criminal Code of 2012, except for Sections 11-30, 11-35, 11-40, and 11-45 of the Criminal Code of 2012, or similar provisions of the Criminal Code of 1961 and it is alleged that the defendant's pretrial release poses a real and present threat to the physical safety of any person or persons;

(6) the defendant is charged with any of these violations under the Criminal Code of 2012 and it is alleged that the defendant's pretrial releases poses a real and present threat to the physical safety of any specifically identifiable person or persons.

(A) Section 24-1.2 (aggravated discharge of a firearm);

(B) Section 24-2.5 (aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm);

(C) Section 24-1.5 (reckless discharge of a firearm);

(D) Section 24-1.7 (armed habitual criminal);

(E) Section 24-2.2 2 (manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon's breath shotgun shells, bolo shells or flechette shells);

(F) Section 24-3 (unlawful sale or delivery of firearms);

(G) Section 24-3.3 (unlawful sale or delivery of firearms on the premises of any school);

(H) Section 24-34 (unlawful sale of firearms by liquor license);

(I) Section 24-3.5 {unlawful purchase of a firearm);

(J) Section 24-3A (gunrunning); or

(K) Section on 24-3B (firearms trafficking);

(L) Section 10-9 (b) (involuntary servitude);

(M) Section 10-9 (c) (involuntary sexual servitude of a minor);

(N) Section 10-9(d) (trafficking in persons);

(O) Non-probationable violations: (i) (unlawful use or possession of weapons by felons or persons in the Custody of the Department of Corrections facilities (Section 24-1.1), (ii) aggravated unlawful use of a weapon (Section 24-1.6, or (iii) aggravated possession of a stolen firearm (Section 24-3.9);

(7) the person has a high likelihood of willful flight to avoid prosecution and is charged with:

(A) Any felony described in Sections (a)(1) through (a)(5) of this Section; or

(B) A felony offense other than a Class 4 offense.

(b) If the charged offense is a felony, the Court shall hold a hearing pursuant to 109-3 of this Code to determine whether there is probable cause the defendant has committed an offense, unless a grand jury has returned a true bill of indictment against the defendant. If there is a finding of no probable cause, the defendant shall be released. No such finding is necessary if the defendant is charged with a misdemeanor.

(c) Timing of petition.

(1) A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant; provided that while such petition is pending before the court, the defendant if previously released shall not be detained.

(2) (2) Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested, the hearing shall be held within 48 hours of the defendant's first appearance if the defendant is charged with a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny and or grant the request for continuance. If the court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing.

(d) Contents of petition.

(1) The petition shall be verified by the State and shall state the grounds upon which it contends the defendant should be denied pretrial release, including the identity of the specific person or persons the State believes the defendant poses a danger to.

(2) Only one petition may be filed under this Section.

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

(1) the proof is evident or the presumption great that the defendant has committed an offense listed in paragraphs (1) through (6) of subsection (a), and

(2) the defendant poses a real and present threat to the safety of a specific, identifiable person or persons, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, and

(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate the real and present threat to the safety of any person or persons or the defendant's willful flight.

(f) Conduct of the hearings.

(1) Prior to the hearing the State shall tender to the defendant copies of defendant's criminal history available, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the State's Attorney's possession at the time of the hearing that are required to be disclosed to the defense under Illinois Supreme Court rules.

(2) The State or defendant may present evidence at the hearing by way of proffer based upon reliable information.

(3) The defendant has the right to be represented by counsel, and if he or she is indigent, to have counsel appointed for him or her. The defendant shall have the opportunity to testify, to present witnesses on his or her own behalf, and to cross-examine any witnesses that are called by the State.

(4) If the defense seeks to call the complaining witness as a witness in its favor, it shall petition the court for permission. When the ends of justice so require, the court may exercise its

discretion and compel the appearance of a complaining witness. The court shall state on the record reasons for granting a defense request to compel the presence of a complaining witness. In making a determination under this section, the court shall state on the record the reason for granting a defense request to compel the presence of a complaining witness, and only grant the request if the court finds by clear and convincing evidence that the defendant will be materially prejudiced if the complaining witness does not appear. Cross-examination of a complaining witness at the pretrial detention hearing for the purpose of impeaching the witness' credibility is insufficient reason to compel the presence of the witness. In deciding whether to compel the appearance of a complaining witness, the court shall be considerate of the emotional and physical well-being of the witness. The pre-trial detention hearing is not to be used for purposes of discovery, and the post arraignment rules of discovery do not apply.

(5) The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. At the trial concerning the offense for which the hearing was conducted neither the finding of the court nor any transcript or other record of the hearing shall be admissible in the State's case in chief, but shall be admissible for impeachment, or as provided in Section 115-10.1 of this Code, or in a perjury proceeding.

(6) The defendant may not move to suppress evidence or a confession, however, evidence that proof of the charged crime may have been the result of an unlawful search or seizure, or both, or through improper interrogation, is relevant in assessing the weight of the evidence against the defendant.

(7) Decisions regarding release, conditions of release and detention prior trial should be individualized, and no single factor or standard should be used exclusively to make a condition or detention decision.

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

(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. Such evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations or other proceedings.

(B) Any evidence of the defendant's psychological, psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat;

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;

(5) The age and physical condition of the defendant;

(6) The age and physical condition of any victim or complaining witness;

(7) Whether the defendant is known to possess or have access to any weapon or weapons;

(8) Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law;

(9) Any other factors, including those listed in Section 110-5 of this Article deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of such behavior.

(h) Detention order. The court shall, in any order for detention:

(1) briefly summarize the evidence of the defendant's guilt or innocence, and the court's reasons for concluding that the defendant should be denied pretrial release;

(2) direct that the defendant be committed to the custody of the sheriff for confinement in the county jail pending trial;

(3) direct that the defendant be given a reasonable opportunity for private consultation with counsel, and for communication with others of his or her choice by visitation, mail and telephone; and

(4) direct that the sheriff deliver the defendant as required for appearances in connection with court proceedings.

(i) Detention. If the court enters an order for the detention of the defendant pursuant to subsection (e) of this Section, the defendant shall be brought to trial on the offense for which he is detained within 90 days after the date on which the order for detention was entered. If the defendant is not brought to trial within the 90 day period required by the preceding sentence, he shall not be denied pretrial release. In computing the 90 day period, the court shall omit any period of delay resulting from a continuance granted at the request of the defendant.

(j) Rights of the defendant. Any person shall be entitled to appeal any order entered under this Section denying pretrial release to the defendant.

(k) Appeal. The State may appeal any order entered under this Section denying any motion for denial of pretrial release.

(l) Presumption of innocence. Nothing in this Section shall be construed as modifying or limiting in any way the defendant's presumption of innocence in further criminal proceedings.

(m) Victim notice.

(1) Crime victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain an order of protection under Article 112A of this Code.

(Source: P.A. 101-652, eff. 1-1-23.)

(Text of Section after amendment by P.A. 101-652)

Sec. 110-10. Conditions of pretrial release.

(a) If a person is released prior to conviction, the conditions of pretrial release shall be that he or she will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(2) Submit himself or herself to the orders and process of the court;

(3) (Blank);

(4) Not violate any criminal statute of any jurisdiction;

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

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

Psychological evaluations ordered pursuant to this Section shall be completed promptly and made available to the State, the defendant, and the court. As a further condition of pretrial release under these circumstances, the court shall order the defendant to refrain from entering upon the property of the school, including any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or on any public way within 1,000 feet of real property comprising any school. Upon receipt of the psychological evaluation, either the State or the defendant may request a change in the conditions of pretrial release, pursuant to Section 110-6 of this Code. The court may change the conditions of pretrial release to include a requirement that the defendant follow the recommendations of the psychological

evaluation, including undergoing psychiatric treatment. The conclusions of the psychological evaluation and any statements elicited from the defendant during its administration are not admissible as evidence of guilt during the course of any trial on the charged offense, unless the defendant places his or her mental competency in issue.

(b) The court may impose other conditions, such as the following, if the court finds that such conditions are reasonably necessary to assure the defendant's appearance in court, protect the public from the defendant, or prevent the defendant's unlawful interference with the orderly administration of justice:

- (0.05) Not depart this State without leave of the court;
- (1) Report to or appear in person before such person or agency as the court may direct;
- (2) Refrain from possessing a firearm or other dangerous weapon;
- (3) Refrain from approaching or communicating with particular persons or classes of persons;
- (4) Refrain from going to certain described geographical areas or premises;
- (5) Refrain from engaging in certain activities or indulging in intoxicating liquors or in certain drugs;
- (6) Undergo treatment for drug addiction or alcoholism;
- (7) Undergo medical or psychiatric treatment;
- (8) Work or pursue a course of study or vocational training;
- (9) Attend or reside in a facility designated by the court;
- (10) Support his or her dependents;
- (11) If a minor resides with his or her parents or in a foster home, attend school, attend a non-residential program for youths, and contribute to his or her own support at home or in a foster home;
- (12) Observe any curfew ordered by the court;
- (13) Remain in the custody of such designated person or organization agreeing to supervise his release. Such third party custodian shall be responsible for notifying the court if the defendant fails to observe the conditions of release which the custodian has agreed to monitor, and shall be subject to contempt of court for failure so to notify the court;
- (14) Be placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device subject to Article 8A of Chapter V of the Unified Code of Corrections;

(14.1) The court may impose upon a defendant who is charged with any alcohol, cannabis, methamphetamine, or controlled substance violation and is placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial home supervision capacity with the use of an approved monitoring device, as a condition of such pretrial monitoring, a fee that represents costs incidental to the electronic monitoring for each day of such pretrial supervision ordered by the court, unless after determining the inability of the defendant to pay the fee, the court assesses a lesser fee or no fee as the case may be. The fee shall be collected by the clerk of the circuit court, except as provided in an administrative order of the Chief Judge of the circuit court. The clerk of the circuit court shall pay all monies collected from this fee to the county treasurer for deposit in the substance abuse services fund under Section 5-1086.1 of the Counties Code, except as provided in an administrative order of the Chief Judge of the circuit court.

The Chief Judge of the circuit court of the county may by administrative order establish a program for electronic monitoring of offenders with regard to drug-related and alcohol-related offenses, in which a vendor supplies and monitors the operation of the electronic monitoring device, and collects the fees on behalf of the county. The program shall include provisions for indigent offenders and the collection of unpaid fees. The program shall not unduly burden the offender and shall be subject to review by the Chief Judge.

The Chief Judge of the circuit court may suspend any additional charges or fees for late payment, interest, or damage to any device;

(14.2) The court may impose upon all defendants, including those defendants subject to paragraph (14.1) above, placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial home supervision capacity with the use of an approved monitoring device, as a condition of such release, a fee which shall represent costs incidental to such electronic monitoring for each day of such supervision ordered by the court, unless after determining the inability of the defendant to pay the fee, the court assesses a lesser fee or no fee as the case may be. The fee shall be collected by the clerk of the circuit court, except as provided in an administrative order of the Chief Judge of the circuit court. The clerk of the circuit court shall pay all monies collected from this fee to the county treasurer who shall use the monies collected to defray the costs of corrections. The county treasurer shall deposit the fee collected in the county working cash fund under Section 6-27001 or Section 6-29002 of the Counties Code, as the case may be, except as provided in an administrative order of the Chief Judge of the circuit court.

The Chief Judge of the circuit court of the county may by administrative order establish a program for electronic monitoring of offenders with regard to drug-related and alcohol-related offenses, in which a vendor supplies and monitors the operation of the electronic monitoring device, and collects the fees on behalf of the county. The program shall include provisions for indigent offenders and the collection of unpaid fees. The program shall not unduly burden the offender and shall be subject to review by the Chief Judge.

The Chief Judge of the circuit court may suspend any additional charges or fees for late payment, interest, or damage to any device;

(14.3) The Chief Judge of the Judicial Circuit may establish reasonable fees to be paid by a person receiving pretrial services while under supervision of a pretrial services agency, probation department, or court services department. Reasonable fees may be charged for pretrial services including, but not limited to, pretrial supervision, diversion programs, electronic monitoring, victim impact services, drug and alcohol testing, DNA testing, GPS electronic monitoring, assessments and evaluations related to domestic violence and other victims, and victim mediation services. The person receiving pretrial services may be ordered to pay all costs incidental to pretrial services in accordance with his or her ability to pay those costs;

(14.4) For persons charged with violating Section 11-501 of the Illinois Vehicle Code, refrain from operating a motor vehicle not equipped with an ignition interlock device, as defined in Section 1-129.1 of the Illinois Vehicle Code, pursuant to the rules promulgated by the Secretary of State for the installation of ignition interlock devices. Under this condition the court may allow a defendant who is not self-employed to operate a vehicle owned by the defendant's employer that is not equipped with an ignition interlock device in the course and scope of the defendant's employment;

(15) Comply with the terms and conditions of an order of protection issued by the court under the Illinois Domestic Violence Act of 1986 or an order of protection issued by the court of another state, tribe, or United States territory;

(16) (Blank); and

(17) Such other reasonable conditions as the court may impose.

(c) When a person is charged with an offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012, involving a victim who is a minor under 18 years of age living in the same household with the defendant at the time of the offense, in releasing the defendant, the judge shall impose conditions to restrict the defendant's access to the victim which may include, but are not limited to conditions that he will:

1. Vacate the household.
2. Make payment of temporary support to his dependents.
3. Refrain from contact or communication with the child victim, except as ordered by the court.

(d) When a person is charged with a criminal offense and the victim is a family or household member as defined in Article 112A, conditions shall be imposed at the time of the defendant's release that restrict the defendant's access to the victim. Unless provided otherwise by the court, the restrictions shall include requirements that the defendant do the following:

(1) refrain from contact or communication with the victim for a minimum period of 72 hours following the defendant's release; and

(2) refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following the defendant's release.

(e) Local law enforcement agencies shall develop standardized pretrial release forms for use in cases involving family or household members as defined in Article 112A, including specific conditions of pretrial release as provided in subsection (d). Failure of any law enforcement department to develop or use those forms shall in no way limit the applicability and enforcement of subsections (d) and (f).

(f) If the defendant is released after conviction following appeal or other post-conviction proceeding, the conditions of the pretrial release shall be that he will, in addition to the conditions set forth in subsections (a) and (b) hereof:

(1) Duly prosecute his appeal;

(2) Appear at such time and place as the court may direct;

(3) Not depart this State without leave of the court;

(4) Comply with such other reasonable conditions as the court may impose; and

(5) If the judgment is affirmed or the cause reversed and remanded for a new trial, forthwith surrender to the officer from whose custody he was released.

(g) Upon a finding of guilty for any felony offense, the defendant shall physically surrender, at a time and place designated by the court, any and all firearms in his or her possession and his or her Firearm Owner's Identification Card as a condition of being released pending sentencing.

(h) In the event the defendant is denied pretrial release, the court may impose a no contact provision with the victim or other interested party that shall be enforced while the defendant remains in custody.

(Source: P.A. 101-138, eff. 1-1-20; 101-652, eff. 1-1-23.)

725 ILCS 120/et seq.
RIGHTS OF CRIME VICTIMS
and WITNESSES ACT as amended

Rights of Crime Victims, Sec. 4	9-2
Procedures to implement the rights of crime victims, Sec. 4.5	9-4

(Text of Section after amendment by P.A. 101-652)

Sec. 4. Rights of crime victims.

(a) Crime victims shall have the following rights:

(1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.

(1.5) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.

(2) The right to timely notification of all court proceedings.

(3) The right to communicate with the prosecution.

(4) The right to be heard at any post-arraignment court proceeding in which a right of the victim is at issue and any court proceeding involving a post-arraignment release decision, plea, or sentencing.

(5) The right to be notified of the conviction, the sentence, the imprisonment and the release of the accused.

(6) The right to the timely disposition of the case following the arrest of the accused.

(7) The right to be reasonably protected from the accused through the criminal justice process.

(7.5) The right to have the safety of the victim and the victim's family considered in determining whether to release the defendant and setting conditions of release after arrest and conviction.

(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

(9) The right to have present at all court proceedings, including proceedings under the Juvenile Court Act of 1987, subject to the rules of evidence, an advocate and other support person of the victim's choice.

(10) The right to restitution.

(b) Any law enforcement agency that investigates an offense committed in this State shall provide a crime victim with a written statement and explanation of the rights of crime victims under this amendatory Act of the 99th General Assembly within 48 hours of law enforcement's initial contact with a victim. The statement shall include information about crime victim compensation, including how to contact the Office of the Illinois Attorney General to file a

claim, and appropriate referrals to local and State programs that provide victim services. The content of the statement shall be provided to law enforcement by the Attorney General. Law enforcement shall also provide a crime victim with a sign-off sheet that the victim shall sign and date as an acknowledgement that he or she has been furnished with information and an explanation of the rights of crime victims and compensation set forth in this Act.

(b-5) Upon the request of the victim, the law enforcement agency having jurisdiction shall provide a free copy of the police report concerning the victim's incident, as soon as practicable, but in no event later than 5 business days from the request.

(c) The Clerk of the Circuit Court shall post the rights of crime victims set forth in Article I, Section 8.1(a) of the Illinois Constitution and subsection (a) of this Section within 3 feet of the door to any courtroom where criminal proceedings are conducted. The clerk may also post the rights in other locations in the courthouse.

(d) At any point, the victim has the right to retain a victim's attorney who may be present during all stages of any interview, investigation, or other interaction with representatives of the criminal justice system. Treatment of the victim should not be affected or altered in any way as a result of the victim's decision to exercise this right.

(Source: P.A. 100-1087, eff. 1-1-19; 101-652, eff. 1-1-23.)

(Text of Section after amendment by P.A. 101-652)

Sec. 4.5. Procedures to implement the rights of crime victims. To afford crime victims their rights, law enforcement, prosecutors, judges, and corrections will provide information, as appropriate, of the following procedures:

(a) At the request of the crime victim, law enforcement authorities investigating the case shall provide notice of the status of the investigation, except where the State's Attorney determines that disclosure of such information would unreasonably interfere with the investigation, until such time as the alleged assailant is apprehended or the investigation is closed.

(a-5) When law enforcement authorities reopen a closed case to resume investigating, they shall provide notice of the reopening of the case, except where the State's Attorney determines that disclosure of such information would unreasonably interfere with the investigation.

(b) The office of the State's Attorney:

(1) shall provide notice of the filing of an information, the return of an indictment, or the filing of a petition to adjudicate a minor as a delinquent for a violent crime;

(2) shall provide timely notice of the date, time, and place of court proceedings; of any change in the date, time, and place of court proceedings; and of any cancellation of court proceedings. Notice shall be provided in sufficient time, wherever possible, for the victim to make arrangements to attend or to prevent an unnecessary appearance at court proceedings;

(3) or victim advocate personnel shall provide information of social services and financial assistance available for victims of crime, including information of how to apply for these services and assistance;

(3.5) or victim advocate personnel shall provide information about available victim services, including referrals to programs, counselors, and agencies that assist a victim to deal with trauma, loss, and grief;

(4) shall assist in having any stolen or other personal property held by law enforcement authorities for evidentiary or other purposes returned as expeditiously as possible, pursuant to the procedures set out in Section 115-9 of the Code of Criminal Procedure of 1963;

(5) or victim advocate personnel shall provide appropriate employer intercession services to ensure that employers of victims will cooperate with the criminal justice system in order to minimize an employee's loss of pay and other benefits resulting from court appearances;

(6) shall provide, whenever possible, a secure waiting area during court proceedings that does not require victims to be in close proximity to defendants or juveniles accused of a violent crime, and their families and friends;

(7) shall provide notice to the crime victim of the right to have a translator present at all court proceedings and, in compliance with the federal Americans with Disabilities Act of 1990, the right to communications access through a sign language interpreter or by other means;

(8) (blank);

(8.5) shall inform the victim of the right to be present at all court proceedings, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at trial;

(9) shall inform the victim of the right to have present at all court proceedings, subject to the rules of evidence and confidentiality, an advocate and other support person of the victim's choice;

(9.3) shall inform the victim of the right to retain an attorney, at the victim's own expense, who, upon written notice filed with the clerk of the court and State's Attorney, is to receive copies of all notices, motions, and court orders filed thereafter in the case, in the same manner as if the victim were a named party in the case;

(9.5) shall inform the victim of (A) the victim's right under Section 6 of this Act to make a statement at the sentencing hearing; (B) the right of the victim's spouse, guardian, parent, grandparent, and other immediate family and household members under Section 6 of this Act to present a statement at sentencing; and (C) if a presentence report is to be prepared, the right of the victim's spouse, guardian, parent, grandparent, and other immediate family and household members to submit information to the preparer of the presentence report about the effect the offense has had on the victim and the person;

(10) at the sentencing shall make a good faith attempt to explain the minimum amount of time during which the defendant may actually be physically imprisoned. The Office of the State's Attorney shall further notify the crime victim of the right to request from the Prisoner Review Board or Department of Juvenile Justice information concerning the release of the defendant;

(11) shall request restitution at sentencing and as part of a plea agreement if the victim requests restitution;

(12) shall, upon the court entering a verdict of not guilty by reason of insanity, inform the victim of the notification services available from the Department of Human Services, including the statewide telephone number, under subparagraph (d)(2) of this Section;

(13) shall provide notice within a reasonable time after receipt of notice from the custodian, of the release of the defendant on pretrial release or personal recognizance or the release from detention of a minor who has been detained;

(14) shall explain in nontechnical language the details of any plea or verdict of a defendant, or any adjudication of a juvenile as a delinquent;

(15) shall make all reasonable efforts to consult with the crime victim before the Office of the State's Attorney makes an offer of a plea bargain to the defendant or enters into negotiations

with the defendant concerning a possible plea agreement, and shall consider the written statement, if prepared prior to entering into a plea agreement. The right to consult with the prosecutor does not include the right to veto a plea agreement or to insist the case go to trial. If the State's Attorney has not consulted with the victim prior to making an offer or entering into plea negotiations with the defendant, the Office of the State's Attorney shall notify the victim of the offer or the negotiations within 2 business days and confer with the victim;

(16) shall provide notice of the ultimate disposition of the cases arising from an indictment or an information, or a petition to have a juvenile adjudicated as a delinquent for a violent crime;

(17) shall provide notice of any appeal taken by the defendant and information on how to contact the appropriate agency handling the appeal, and how to request notice of any hearing, oral argument, or decision of an appellate court;

(18) shall provide timely notice of any request for post-conviction review filed by the defendant under Article 122 of the Code of Criminal Procedure of 1963, and of the date, time and place of any hearing concerning the petition. Whenever possible, notice of the hearing shall be given within 48 hours of the court's scheduling of the hearing;

(19) shall forward a copy of any statement presented under Section 6 to the Prisoner Review Board or Department of Juvenile Justice to be considered in making a determination under Section 3-2.5-85 or subsection (b) of Section 3-3-8 of the Unified Code of Corrections;

(20) shall, within a reasonable time, offer to meet with the crime victim regarding the decision of the State's Attorney not to charge an offense, and shall meet with the victim, if the victim agrees. The victim has a right to have an attorney, advocate, and other support person of the victim's choice attend this meeting with the victim; and

(21) shall give the crime victim timely notice of any decision not to pursue charges and consider the safety of the victim when deciding how to give such notice.

(c) The court shall ensure that the rights of the victim are afforded.

(c-5) The following procedures shall be followed to afford victims the rights guaranteed by Article I, Section 8.1 of the Illinois Constitution:

(1) Written notice. A victim may complete a written notice of intent to assert rights on a form prepared by the Office of the Attorney General and provided to the victim by the State's Attorney. The victim may at any time provide a revised written notice to the State's Attorney. The State's Attorney shall file the written notice with the court. At the beginning of any court proceeding in which the right of a victim may be at issue, the court and prosecutor shall review the written notice to determine whether the victim has asserted the right that may be at issue.

(2) Victim's retained attorney. A victim's attorney shall file an entry of appearance limited to assertion of the victim's rights. Upon the filing of the entry of appearance and service on the State's Attorney and the defendant, the attorney is to receive copies of all notices, motions and court orders filed thereafter in the case.

(3) Standing. The victim has standing to assert the rights enumerated in subsection (a) of Article I, Section 8.1 of the Illinois Constitution and the statutory rights under Section 4 of this Act in any court exercising jurisdiction over the criminal case. The prosecuting attorney, a victim, or the victim's retained attorney may assert the victim's rights. The defendant in the criminal case has no standing to assert a right of the victim in any court proceeding, including on appeal.

(4) Assertion of and enforcement of rights.

(A) The prosecuting attorney shall assert a victim's right or request enforcement of a right by filing a motion or by orally asserting the right or requesting enforcement in open court in the criminal case outside the presence of the jury. The prosecuting attorney shall consult with the victim and the victim's attorney regarding the assertion or enforcement of a right. If the prosecuting attorney decides not to assert or enforce a victim's right, the prosecuting attorney shall notify the victim or the victim's attorney in sufficient time to allow the victim or the victim's attorney to assert the right or to seek enforcement of a right.

(B) If the prosecuting attorney elects not to assert a victim's right or to seek enforcement of a right, the victim or the victim's attorney may assert the victim's right or request enforcement of a right by filing a motion or by orally asserting the right or requesting enforcement in open court in the criminal case outside the presence of the jury.

(C) If the prosecuting attorney asserts a victim's right or seeks enforcement of a right, unless the prosecuting attorney objects or the trial court does not allow it, the victim or the victim's attorney may be heard regarding the prosecuting attorney's motion or may file a simultaneous motion to assert or request enforcement of the victim's right. If the victim or the victim's attorney was not allowed to be heard at the hearing regarding the prosecuting attorney's motion, and the court denies the prosecuting attorney's assertion of the right or denies the request for enforcement of a right, the victim or victim's attorney may file a motion to assert the victim's right or to request enforcement of the right within 10 days of the court's ruling. The motion need not demonstrate the grounds for a motion for reconsideration. The court shall rule on the merits of the motion.

(D) The court shall take up and decide any motion or request asserting or seeking enforcement of a victim's right without delay, unless a specific time period is specified by law or court rule. The reasons for any decision denying the motion or request shall be clearly stated on the record.

(E) No later than January 1, 2023, the Office of the Attorney General shall:

(i) designate an administrative authority within the Office of the Attorney General to receive and investigate complaints relating to the provision or violation of the rights of a crime victim as described in Article I, Section 8.1 of the Illinois Constitution and in this Act;

(ii) create and administer a course of training for employees and offices of the State of Illinois that fail to comply with provisions of Illinois law pertaining to the treatment of crime

victims as described in Article I, Section 8.1 of the Illinois Constitution and in this Act as required by the court under Section 5 of this Act; and

(iii) have the authority to make recommendations to employees and offices of the State of Illinois to respond more effectively to the needs of crime victims, including regarding the violation of the rights of a crime victim.

(F) Crime victims' rights may also be asserted by filing a complaint for mandamus, injunctive, or declaratory relief in the jurisdiction in which the victim's right is being violated or where the crime is being prosecuted. For complaints or motions filed by or on behalf of the victim, the clerk of court shall waive filing fees that would otherwise be owed by the victim for any court filing with the purpose of enforcing crime victims' rights. If the court denies the relief sought by the victim, the reasons for the denial shall be clearly stated on the record in the transcript of the proceedings, in a written opinion, or in the docket entry, and the victim may appeal the circuit court's decision to the appellate court. The court shall issue prompt rulings regarding victims' rights. Proceedings seeking to enforce victims' rights shall not be stayed or subject to unreasonable delay via continuances.

(5) Violation of rights and remedies.

(A) If the court determines that a victim's right has been violated, the court shall determine the appropriate remedy for the violation of the victim's right by hearing from the victim and the parties, considering all factors relevant to the issue, and then awarding appropriate relief to the victim.

(A-5) Consideration of an issue of a substantive nature or an issue that implicates the constitutional or statutory right of a victim at a court proceeding labeled as a status hearing shall constitute a per se violation of a victim's right.

(B) The appropriate remedy shall include only actions necessary to provide the victim the right to which the victim was entitled. Remedies may include, but are not limited to: injunctive relief requiring the victim's right to be afforded; declaratory judgment recognizing or clarifying the victim's rights; a writ of mandamus; and may include reopening previously held proceedings; however, in no event shall the court vacate a conviction. Any remedy shall be tailored to provide the victim an appropriate remedy without violating any constitutional right of the defendant. In no event shall the appropriate remedy to the victim be a new trial or damages.

The court shall impose a mandatory training course provided by the Attorney General for the employee under item (ii) of subparagraph (E) of paragraph (4), which must be successfully completed within 6 months of the entry of the court order.

This paragraph (5) takes effect January 2, 2023.

(6) Right to be heard. Whenever a victim has the right to be heard, the court shall allow the victim to exercise the right in any reasonable manner the victim chooses.

(7) Right to attend trial. A party must file a written motion to exclude a victim from trial at least 60 days prior to the date set for trial. The motion must state with specificity the reason

exclusion is necessary to protect a constitutional right of the party, and must contain an offer of proof. The court shall rule on the motion within 30 days. If the motion is granted, the court shall set forth on the record the facts that support its finding that the victim's testimony will be materially affected if the victim hears other testimony at trial.

(8) Right to have advocate and support person present at court proceedings.

(A) A party who intends to call an advocate as a witness at trial must seek permission of the court before the subpoena is issued. The party must file a written motion at least 90 days before trial that sets forth specifically the issues on which the advocate's testimony is sought and an offer of proof regarding (i) the content of the anticipated testimony of the advocate; and (ii) the relevance, admissibility, and materiality of the anticipated testimony. The court shall consider the motion and make findings within 30 days of the filing of the motion. If the court finds by a preponderance of the evidence that: (i) the anticipated testimony is not protected by an absolute privilege; and (ii) the anticipated testimony contains relevant, admissible, and material evidence that is not available through other witnesses or evidence, the court shall issue a subpoena requiring the advocate to appear to testify at an in camera hearing. The prosecuting attorney and the victim shall have 15 days to seek appellate review before the advocate is required to testify at an ex parte in camera proceeding.

The prosecuting attorney, the victim, and the advocate's attorney shall be allowed to be present at the ex parte in camera proceeding. If, after conducting the ex parte in camera hearing, the court determines that due process requires any testimony regarding confidential or privileged information or communications, the court shall provide to the prosecuting attorney, the victim, and the advocate's attorney a written memorandum on the substance of the advocate's testimony. The prosecuting attorney, the victim, and the advocate's attorney shall have 15 days to seek appellate review before a subpoena may be issued for the advocate to testify at trial. The presence of the prosecuting attorney at the ex parte in camera proceeding does not make the substance of the advocate's testimony that the court has ruled inadmissible subject to discovery.

(B) If a victim has asserted the right to have a support person present at the court proceedings, the victim shall provide the name of the person the victim has chosen to be the victim's support person to the prosecuting attorney, within 60 days of trial. The prosecuting attorney shall provide the name to the defendant. If the defendant intends to call the support person as a witness at trial, the defendant must seek permission of the court before a subpoena is issued. The defendant must file a written motion at least 45 days prior to trial that sets forth specifically the issues on which the support person will testify and an offer of proof regarding: (i) the content of the anticipated testimony of the support person; and (ii) the relevance, admissibility, and materiality of the anticipated testimony.

If the prosecuting attorney intends to call the support person as a witness during the State's case-in-chief, the prosecuting attorney shall inform the court of this intent in the response to the defendant's written motion. The victim may choose a different person to be the victim's support person. The court may allow the defendant to inquire about matters outside the scope of the direct examination during cross-examination. If the court allows the defendant to do so, the

support person shall be allowed to remain in the courtroom after the support person has testified. A defendant who fails to question the support person about matters outside the scope of direct examination during the State's case-in-chief waives the right to challenge the presence of the support person on appeal. The court shall allow the support person to testify if called as a witness in the defendant's case-in-chief or the State's rebuttal.

If the court does not allow the defendant to inquire about matters outside the scope of the direct examination, the support person shall be allowed to remain in the courtroom after the support person has been called by the defendant or the defendant has rested. The court shall allow the support person to testify in the State's rebuttal.

If the prosecuting attorney does not intend to call the support person in the State's case-in-chief, the court shall verify with the support person whether the support person, if called as a witness, would testify as set forth in the offer of proof. If the court finds that the support person would testify as set forth in the offer of proof, the court shall rule on the relevance, materiality, and admissibility of the anticipated testimony. If the court rules the anticipated testimony is admissible, the court shall issue the subpoena. The support person may remain in the courtroom after the support person testifies and shall be allowed to testify in rebuttal.

If the court excludes the victim's support person during the State's case-in-chief, the victim shall be allowed to choose another support person to be present in court.

If the victim fails to designate a support person within 60 days of trial and the defendant has subpoenaed the support person to testify at trial, the court may exclude the support person from the trial until the support person testifies. If the court excludes the support person the victim may choose another person as a support person.

(9) Right to notice and hearing before disclosure of confidential or privileged information or records.

(A) A defendant who seeks to subpoena testimony or records of or concerning the victim that are confidential or privileged by law must seek permission of the court before the subpoena is issued. The defendant must file a written motion and an offer of proof regarding the relevance, admissibility and materiality of the testimony or records. If the court finds by a preponderance of the evidence that:

(i) the testimony or records are not protected by an absolute privilege and

(ii) the testimony or records contain relevant, admissible, and material evidence that is not available through other witnesses or evidence, the court shall issue a subpoena requiring the witness to appear in camera or a sealed copy of the records be delivered to the court to be reviewed in camera. If, after conducting an in camera review of the witness statement or records, the court determines that due process requires disclosure of any potential testimony or any portion of the records, the court shall provide copies of the records that it intends to disclose to the prosecuting attorney and the victim. The prosecuting attorney and the victim shall have 30 days to seek appellate review before the records are disclosed to the defendant, used in any court proceeding, or disclosed to anyone or in any way that would subject the testimony or records to

public review. The disclosure of copies of any portion of the testimony or records to the prosecuting attorney under this Section does not make the records subject to discovery or required to be provided to the defendant.

(B) A prosecuting attorney who seeks to subpoena information or records concerning the victim that are confidential or privileged by law must first request the written consent of the crime victim. If the victim does not provide such written consent, including where necessary the appropriate signed document required for waiving privilege, the prosecuting attorney must serve the subpoena at least 21 days prior to the date a response or appearance is required to allow the subject of the subpoena time to file a motion to quash or request a hearing. The prosecuting attorney must also send a written notice to the victim at least 21 days prior to the response date to allow the victim to file a motion or request a hearing. The notice to the victim shall inform the victim (i) that a subpoena has been issued for confidential information or records concerning the victim, (ii) that the victim has the right to request a hearing prior to the response date of the subpoena, and (iii) how to request the hearing. The notice to the victim shall also include a copy of the subpoena. If requested, a hearing regarding the subpoena shall occur before information or records are provided to the prosecuting attorney.

(10) Right to notice of court proceedings. If the victim is not present at a court proceeding in which a right of the victim is at issue, the court shall ask the prosecuting attorney whether the victim was notified of the time, place, and purpose of the court proceeding and that the victim had a right to be heard at the court proceeding. If the court determines that timely notice was not given or that the victim was not adequately informed of the nature of the court proceeding, the court shall not rule on any substantive issues, accept a plea, or impose a sentence and shall continue the hearing for the time necessary to notify the victim of the time, place and nature of the court proceeding. The time between court proceedings shall not be attributable to the State under Section 103-5 of the Code of Criminal Procedure of 1963.

(11) Right to timely disposition of the case. A victim has the right to timely disposition of the case so as to minimize the stress, cost, and inconvenience resulting from the victim's involvement in the case. Before ruling on a motion to continue trial or other court proceeding, the court shall inquire into the circumstances for the request for the delay and, if the victim has provided written notice of the assertion of the right to a timely disposition, and whether the victim objects to the delay. If the victim objects, the prosecutor shall inform the court of the victim's objections. If the prosecutor has not conferred with the victim about the continuance, the prosecutor shall inform the court of the attempts to confer. If the court finds the attempts of the prosecutor to confer with the victim were inadequate to protect the victim's right to be heard, the court shall give the prosecutor at least 3 but not more than 5 business days to confer with the victim. In ruling on a motion to continue, the court shall consider the reasons for the requested continuance, the number and length of continuances that have been granted, the victim's objections and procedures to avoid further delays. If a continuance is granted over the victim's objection, the court shall specify on the record the reasons for the continuance and the procedures that have been or will be taken to avoid further delays.

(12) Right to Restitution.

(A) If the victim has asserted the right to restitution and the amount of restitution is known at the time of sentencing, the court shall enter the judgment of restitution at the time of sentencing.

(B) If the victim has asserted the right to restitution and the amount of restitution is not known at the time of sentencing, the prosecutor shall, within 5 days after sentencing, notify the victim what information and documentation related to restitution is needed and that the information and documentation must be provided to the prosecutor within 45 days after sentencing. Failure to timely provide information and documentation related to restitution shall be deemed a waiver of the right to restitution. The prosecutor shall file and serve within 60 days after sentencing a proposed judgment for restitution and a notice that includes information concerning the identity of any victims or other persons seeking restitution, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers. Within 30 days after receipt of the proposed judgment for restitution, the defendant shall file any objection to the proposed judgment, a statement of grounds for the objection, and a financial statement. If the defendant does not file an objection, the court may enter the judgment for restitution without further proceedings. If the defendant files an objection and either party requests a hearing, the court shall schedule a hearing.

(13) Access to presentence reports.

(A) The victim may request a copy of the presentence report prepared under the Unified Code of Corrections from the State's Attorney. The State's Attorney shall redact the following information before providing a copy of the report:

- (i) the defendant's mental history and condition;
- (ii) any evaluation prepared under subsection (b) or (b-5) of Section 5-3-2; and
- (iii) the name, address, phone number, and other personal information about any other victim.

(B) The State's Attorney or the defendant may request the court redact other information in the report that may endanger the safety of any person.

(C) The State's Attorney may orally disclose to the victim any of the information that has been redacted if there is a reasonable likelihood that the information will be stated in court at the sentencing.

(D) The State's Attorney must advise the victim that the victim must maintain the confidentiality of the report and other information. Any dissemination of the report or information that was not stated at a court proceeding constitutes indirect criminal contempt of court.

(14) Appellate relief. If the trial court denies the relief requested, the victim, the victim's attorney, or the prosecuting attorney may file an appeal within 30 days of the trial court's ruling. The trial or appellate court may stay the court proceedings if the court finds that a stay would not

violate a constitutional right of the defendant. If the appellate court denies the relief sought, the reasons for the denial shall be clearly stated in a written opinion. In any appeal in a criminal case, the State may assert as error the court's denial of any crime victim's right in the proceeding to which the appeal relates.

(15) Limitation on appellate relief. In no case shall an appellate court provide a new trial to remedy the violation of a victim's right.

(16) The right to be reasonably protected from the accused throughout the criminal justice process and the right to have the safety of the victim and the victim's family considered in determining whether to release the defendant, and setting conditions of release after arrest and conviction. A victim of domestic violence, a sexual offense, or stalking may request the entry of a protective order under Article 112A of the Code of Criminal Procedure of 1963.

(d) Procedures after the imposition of sentence.

(1) The Prisoner Review Board shall inform a victim or any other concerned citizen, upon written request, of the prisoner's release on parole, mandatory supervised release, electronic detention, work release, international transfer or exchange, or by the custodian, other than the Department of Juvenile Justice, of the discharge of any individual who was adjudicated a delinquent for a crime from State custody and by the sheriff of the appropriate county of any such person's final discharge from county custody. The Prisoner Review Board, upon written request, shall provide to a victim or any other concerned citizen a recent photograph of any person convicted of a felony, upon his or her release from custody. The Prisoner Review Board, upon written request, shall inform a victim or any other concerned citizen when feasible at least 7 days prior to the prisoner's release on furlough of the times and dates of such furlough. Upon written request by the victim or any other concerned citizen, the State's Attorney shall notify the person once of the times and dates of release of a prisoner sentenced to periodic imprisonment. Notification shall be based on the most recent information as to the victim's or other concerned citizen's residence or other location available to the notifying authority.

(2) When the defendant has been committed to the Department of Human Services pursuant to Section 5-2-4 or any other provision of the Unified Code of Corrections, the victim may request to be notified by the releasing authority of the approval by the court of an on-grounds pass, a supervised off-grounds pass, an unsupervised off-grounds pass, or conditional release; the release on an off-grounds pass; the return from an off-grounds pass; transfer to another facility; conditional release; escape; death; or final discharge from State custody. The Department of Human Services shall establish and maintain a statewide telephone number to be used by victims to make notification requests under these provisions and shall publicize this telephone number on its website and to the State's Attorney of each county.

(3) In the event of an escape from State custody, the Department of Corrections or the Department of Juvenile Justice immediately shall notify the Prisoner Review Board of the escape and the Prisoner Review Board shall notify the victim. The notification shall be based upon the most recent information as to the victim's residence or other location available to the Board. When no such information is available, the Board shall make all reasonable efforts to obtain the

information and make the notification. When the escapee is apprehended, the Department of Corrections or the Department of Juvenile Justice immediately shall notify the Prisoner Review Board and the Board shall notify the victim.

(4) The victim of the crime for which the prisoner has been sentenced has the right to register with the Prisoner Review Board's victim registry. Victims registered with the Board shall receive reasonable written notice not less than 30 days prior to the parole hearing or target aftercare release date. The victim has the right to submit a victim statement for consideration by the Prisoner Review Board or the Department of Juvenile Justice in writing, on film, videotape, or other electronic means, or in the form of a recording prior to the parole hearing or target aftercare release date, or in person at the parole hearing or aftercare release protest hearing, or by calling the toll-free number established in subsection (f) of this Section. The victim shall be notified within 7 days after the prisoner has been granted parole or aftercare release and shall be informed of the right to inspect the registry of parole decisions, established under subsection (g) of Section 3-3-5 of the Unified Code of Corrections. The provisions of this paragraph (4) are subject to the Open Parole Hearings Act. Victim statements provided to the Board shall be confidential and privileged, including any statements received prior to January 1, 2020 (the effective date of Public Act 101-288), except if the statement was an oral statement made by the victim at a hearing open to the public.

(4-1) The crime victim has the right to submit a victim statement for consideration by the Prisoner Review Board or the Department of Juvenile Justice prior to or at a hearing to determine the conditions of mandatory supervised release of a person sentenced to a determinate sentence or at a hearing on revocation of mandatory supervised release of a person sentenced to a determinate sentence. A victim statement may be submitted in writing, on film, videotape, or other electronic means, or in the form of a recording, or orally at a hearing, or by calling the toll-free number established in subsection (f) of this Section. Victim statements provided to the Board shall be confidential and privileged, including any statements received prior to January 1, 2020 (the effective date of Public Act 101-288), except if the statement was an oral statement made by the victim at a hearing open to the public.

(4-2) The crime victim has the right to submit a victim statement to the Prisoner Review Board for consideration at an executive clemency hearing as provided in Section 3-3-13 of the Unified Code of Corrections. A victim statement may be submitted in writing, on film, videotape, or other electronic means, or in the form of a recording prior to a hearing, or orally at a hearing, or by calling the toll-free number established in subsection (f) of this Section. Victim statements provided to the Board shall be confidential and privileged, including any statements received prior to January 1, 2020 (the effective date of Public Act 101-288), except if the statement was an oral statement made by the victim at a hearing open to the public.

(5) If a statement is presented under Section 6, the Prisoner Review Board or Department of Juvenile Justice shall inform the victim of any order of discharge pursuant to Section 3-2.5-85 or 3-3-8 of the Unified Code of Corrections.

(6) At the written or oral request of the victim of the crime for which the prisoner was sentenced or the State's Attorney of the county where the person seeking parole or aftercare release was prosecuted, the Prisoner Review Board or Department of Juvenile Justice shall notify the victim and the State's Attorney of the county where the person seeking parole or aftercare release was prosecuted of the death of the prisoner if the prisoner died while on parole or aftercare release or mandatory supervised release.

(7) When a defendant who has been committed to the Department of Corrections, the Department of Juvenile Justice, or the Department of Human Services is released or discharged and subsequently committed to the Department of Human Services as a sexually violent person and the victim had requested to be notified by the releasing authority of the defendant's discharge, conditional release, death, or escape from State custody, the releasing authority shall provide to the Department of Human Services such information that would allow the Department of Human Services to contact the victim.

(8) When a defendant has been convicted of a sex offense as defined in Section 2 of the Sex Offender Registration Act and has been sentenced to the Department of Corrections or the Department of Juvenile Justice, the Prisoner Review Board or the Department of Juvenile Justice shall notify the victim of the sex offense of the prisoner's eligibility for release on parole, aftercare release, mandatory supervised release, electronic detention, work release, international transfer or exchange, or by the custodian of the discharge of any individual who was adjudicated a delinquent for a sex offense from State custody and by the sheriff of the appropriate county of any such person's final discharge from county custody. The notification shall be made to the victim at least 30 days, whenever possible, before release of the sex offender.

(e) The officials named in this Section may satisfy some or all of their obligations to provide notices and other information through participation in a statewide victim and witness notification system established by the Attorney General under Section 8.5 of this Act.

(f) The Prisoner Review Board shall establish a toll-free number that may be accessed by the crime victim to present a victim statement to the Board in accordance with paragraphs (4), (4-1), and (4-2) of subsection (d).

(Source: P.A. 101-81, eff. 7-12-19; 101-288, eff. 1-1-20; 101-652, eff. 1-1-23; 102-22, eff. 6-25-21; 102-558, eff. 8-20-21; 102-813, eff. 5-13-22.)

725 ILCS 195/et seq. QUASI-CRIMINAL
& MISDEMEANOR BAIL ACT
as amended

Conditions of pretrial release, Sec. 2 10-2

725 ILCS 195/2

(Text of Section after amendment by P.A. 101-652)

Sec. 2. The conditions of the pretrial release shall be that the accused will appear to answer the charge in court at a time and place specified in the pretrial release form and thereafter as ordered by the court until discharged on final order of the court and to submit himself to the orders and process of the court. The accused shall be furnished with an official receipt on a form prescribed by rule of court and shall receive a copy of the pretrial release form specifying the time and place of his court appearance.

Upon performance of the conditions of the pretrial release, the pretrial release form shall be null and void and the accused shall be released from the conditions of pretrial release.

(Source: P.A. 101-652, eff. 1-1-23.)