

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.

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

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

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

Revised August 24, 2022. Subject to Change.

Check <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/> for latest updates. Email pretrialtaskforce@illinoiscourts.gov with any questions or suggested additions to this list of implementation considerations.

**Illinois Pretrial Implementation Task Force
Pretrial Fairness Act
Key Provisions and Implementation Considerations**

Pre-First Appearance Activities

HB 3653 Reference	Description	Considerations
Ensure a Meaningful First Appearance		
109-1(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.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none">● This section appears inconsistent with 725 ILCS 5/106D-1, which allows video conferences for first appearances when a person is in custody. <u>Operational Considerations</u> <ul style="list-style-type: none">● Conducting in-person first appearance hearings where defense counsel must be present may be a hardship for many counties, where public defenders cover multiple counties and courthouses are several hours away from each other.<ul style="list-style-type: none">○ Note that the person accused always has the option to waive an in-person hearing.● Video conference is not permitted for a hearing in which pretrial release will be denied.● In small counties, they must address the circumstances of transporting the charged person to court if the Sheriff is the only person on duty and the person charged is held in a different county.
109-1(a)	“A person arrested with or without a warrant for an offense for which pretrial release may be	<u>Operational Considerations</u>

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	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 ... and a charge must be filed”	<ul style="list-style-type: none"> ● Regarding the timing of the first appearance hearing, there is consensus that <i>Gerstein v. Pugh</i> requires that probable cause be established (ex parte is permitted) within 48 hours of custodial arrest. ● The timing of the first appearance must be “without unnecessary delay.” Statute does not define what constitutes “unnecessary delay.” ● If pretrial detention is sought by the State, the detention hearing must occur immediately unless a continuance is sought, in which case it must be held within either 24 or 48 hours of the first appearance. Counties are concerned that this will require court to be held on a weekend day. ● Please also see <i>Mitchell, et al. v. Doherty, No. 21-1764</i> (7th Cir. 2022).
110-5(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.”	<u>Operational Considerations</u> <ul style="list-style-type: none"> ● Chief Judges may wish to consider issuing a standing order to appoint the Public Defender or other counsel for all first appearances.
109-1(g)	Defense counsel shall be given adequate opportunity to confer with Defendant prior to any hearing in which conditions of release or the detention of the Defendant is to be considered, which a physical accommodation made to facilitate attorney/client consultation.	<u>Operational Considerations</u> <ul style="list-style-type: none"> ● Defense counsel and corrections need to collaborate to find space for private/confidential conversations to take place between counsel and the charged person. ● Note that Covid protocols could make it difficult for defense counsel to meet in-person with their client. ● Corrections and public defender/defense counsel should collaborate to decide if meeting with a client must be in person or not.
Conducting a Pretrial Assessment		
Pretrial Services Act	<ul style="list-style-type: none"> ● The pretrial services agency must interview the person and prepare a report for first appearance felony charges. Interviews must 	<u>Operational Considerations</u>

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	<p>be conducted individually, in facilities or locations that allow for adequate discussion.</p>	<ul style="list-style-type: none"> ● OSPS and other pretrial services agencies may need the time and opportunity to interview the person and prepare a report in advance of the hearing. <ul style="list-style-type: none"> ○ If that is the case, pretrial services agencies must coordinate with corrections to create a timely process as well as space for an interview to occur, and/or if the interview must be done in person. ○ However, note that under 110-6.4, if a risk assessment is used within a circuit that does not require a personal interview to be completed, the Chief Judge of the circuit or the director of the pretrial services agency may exempt the interview requirement under the Pretrial Services Act.
110-5(d)	<ul style="list-style-type: none"> ● The Court may use a regularly validated risk assessment tool to aid in its determination of appropriate conditions of 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. 	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● OSPS and other pretrial services agencies who use a risk assessment tool, must have time to conduct a validated assessment tool and prepare a report for the Court. ● This section applies to all assessment tools used, including DV-related risk assessment tools. <p><u>Impact on the Cindy Bischoff Law</u></p> <ul style="list-style-type: none"> ● The PFA repealed 110-5(f)(12) and replaced it with 110-5(d), the provision that governs risk assessments generally. This was intended to increase the ability of courts to use DV-specific risk assessments. ● The PFA did not repeal the Cindy Bischof Law. That law focused on ensuring people accused of violating Orders of Protection received proper attention and evaluation. Mandatory conditions such as staying away from the victim and the victim’s home for 72 hours remain in effect. Over time, language was added to that section of the law that created specific requirements around the use of risk assessments in domestic violence situations. The PFA removed those restrictions from 110-5 at the urging of advocates against domestic violence, who said

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		<p>that they were actually limiting the use of risk assessments in these cases (particularly 110-5(b)(12) prohibiting victim interviews). Now, risk assessment tools in domestic violence cases are governed by 110-5(d).</p> <ul style="list-style-type: none"> In addition, the PFA establishes a Domestic Violence Pretrial Practice Working Group convened by the Illinois Criminal Justice Information Authority (20 ILCS 3930/7.8). This working group will issue a final report issuing recommendations for evidence-based improvements to court procedures.
Protecting Victims		
109-1(c)	<p>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 [initial] hearing as required in paragraph (2) of subsection (b) 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.</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> State’s Attorney’s offices should have a policy and process (and a form) to provide notice to crime victims, sufficient time in advance of the scheduled date. State’s Attorneys should be prepared to seek orders of protection at the initial appearance. If court hearings will be held on the weekend, victim assistance groups must be notified to ensure assistance is available to victims as needed.