

**Current as of December 12, 2022 (post-PFA Trailer Bill)**

For latest updates, check <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/>  
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The text in the flowchart is taken directly from the law with slight editing for brevity. Please see the accompanying considerations document for exact statute language and descriptions of nuances in the law.

# Detention Hearing

**Has the State filed a verified petition to detain the person in a timely manner? (110-6.1(c)(2))**

YES

**The court shall immediately hold a detention hearing. If a continuance is requested and granted, the hearing shall be held within 48 hours (if charged with first degree murder, a Class X, 1, 2, or 3) or 24 hours (Class 4 or misdemeanor) of the person's first appearance. (110-6.1(c)(2))**

NO

**The person shall be released and the court shall set mandatory and additional conditions, if needed. (109-1( b)(4))**

**TIMING OF PETITION**  
The petition may be filed at the first appearance hearing, or upon reasonable notice to defendant, within the 21 days after arrest and release of the person. (110-6.1(c)(1))  
The State may file a second or subsequent petition so long as it sets forth in detail any new facts not known or obtainable at the time of the previous filing. (110-6.1(d))

**INTEREST OF VICTIMS**  
Victims shall be given notice of this hearing and be informed of their opportunity to obtain a protective order. (110-6.1(m); see also relevant Task Force flowchart)

**CONDUCT OF HEARING**  
Both parties may present evidence by way of proffer. (110-6.1(f)(2))  
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. (110-6.1(f)(3)) The Court may deny a defendant's request to compel the complaining witness. (110-6.1(f)(4))

**Has the State proven by *clear and convincing evidence* that:**

YES

**PRE-HEARING TENDER**  
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 prosecutor's possession at the time of the hearing. (110-6.1(f))

**If alleging dangerousness:**  
(1) the proof is evident or the presumption great that the person committed an offense listed in paragraphs 110-6.1(a)(1) through (a)(7); **and** (2) the defendant poses a real and present threat to the safety of a person or the community (will vary depending on the charges), based on the specific, articulable facts of the case; **and** (3) no condition or combination of conditions can mitigate the real and present threat. (110-6.1(e))

For offenses under Section 407(b) of the Illinois Controlled Substances Act that fall under 110-6.1(a)(1), the State must prove (1) through (3) above **and** the defendant poses a serious risk to not appear in court as required. (110-6.1(e)(4))

**If alleging willfull flight:**  
(1) the proof is evident or the presumption great that the person committed a detention-eligible *felony* offense under 110-6.1(a)(1)-(7) or a felony under 110-6.1(a)(8); **and** (2) no condition or combination of conditions can mitigate the defendant's high likelihood of willfull flight. (110-6.1(e)) "Willfull flight" means "intentional conduct with a purpose to thwart the judicial process to avoid prosecution." (See 110-1(f) for complete definition)

**If the court decides to detain the defendant, the Court must make a *written finding* summarizing why *less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or prevent the defendant's willfull flight from prosecution.* (110-6.1(h)(1))**

**APPEAL**  
Either party may appeal any decision to detain or not to detain under this Section. (110-6.1(j),(k))

**At each subsequent appearance, the judge must find that continued detention is necessary. (110-6.1(i)(5))**

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

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

#### Detention Hearing

725 ILCS 5 Reference	Description	Considerations
<b>Eligibility for Detention for those Arrested before January 1, 2023</b>		
110-7.5	<i>See Section 110-7.5 and related considerations documents.</i>	
<b>Eligibility for Detention</b>		
110-2(a)	“All persons charged with an offense shall be eligible for pretrial release before conviction....Pretrial release may be denied only if a person is charged with an offense listed in Section 110-6.1 and after the court has held a hearing under Section 110-6.1, and in a manner consistent with subsections 25 (b), (c), and (d) of this Section.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"><li>• This subsection plainly states that everyone is eligible for pretrial release, and pretrial detention is only available for those charged with a detention-eligible offense and after a proper hearing.</li></ul>
110-2(c)	“When it is alleged that pretrial release should be denied to a person upon the grounds that the person presents a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, the burden of proof of such allegations shall be upon the State.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"><li>• The burden of proof to detain someone pretrial on the grounds of safety is on the State.</li></ul>

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110-2(e)	<p>“This Section shall be liberally construed to effectuate the purpose of relying on pretrial release by nonmonetary means to reasonably ensure an eligible person's appearance in court, the protection of the safety of any other person or the community, that the person will not attempt or obstruct the criminal justice process, and the person's compliance with all conditions of release, while authorizing the court, upon motion of a prosecutor, to order pretrial detention of the person under Section 110-6.1 when it finds clear and convincing evidence that no condition or combination of conditions can reasonably ensure the effectuation of these goals.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● The goals of pretrial are clearly articulated in this subsection: <ul style="list-style-type: none"> <li>○ to ensure the person’s appearance in court</li> <li>○ to keep a person or the community safe</li> <li>○ to prevent the obstruction of the criminal justice process</li> <li>○ to ensure the person’s compliance with all conditions of release</li> </ul> </li> <li>● Pretrial release with conditions is the preferred method to achieve these pretrial goals.</li> <li>● However, upon a prosecutor's motion, a court can order pretrial detention in certain circumstances when there is a finding of clear and convincing evidence that no condition or combination of conditions can reasonably ensure these goals can be met.</li> </ul>
110-6.1	<p>“Denial of pretrial release.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● This section outlines the eligibility and process for pretrial detention.</li> <li>● There are two standards under which a person can be detained pretrial: <ul style="list-style-type: none"> <li>○ <i>Dangerousness standard</i>: the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case.</li> </ul> </li> </ul>

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		<ul style="list-style-type: none"> <li>○ <u>Willful flight standard</u>: See 110-1(f), which defines “willful flight” as “intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.”</li> </ul>
110-6.1(a)	“(a) Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release only if: ...”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● To trigger a detention hearing, the State must file a verified petition.</li> <li>● To be eligible for detention, the person must be charged with an eligible offense/circumstance (as described in 110-6.1(a)(1)-(8)), <b>and</b> the State must allege that the person meets either the relevant dangerousness standard or the willful flight standard.</li> <li>● To order detention, the Court must also make other findings, listed in section 110-6.1(e). <i>See below</i>.</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>● Stakeholders have noted that detention hearings will take longer per case than the first appearance hearing, where conditions of release are decided. Consideration should be given to the time required for corrections to transport defendants in and out of court, the time for attorneys to present their respective arguments, and for the judge to articulate findings as per 110-6.1(h) (<i>see below</i>).</li> </ul>
110-6.1 (a)(1)	“the defendant is charged with a felony	<u>Interpretation Considerations</u>

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	<p>offense other than a forcible felony for which, based on the charge or the defendant's criminal history, 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 real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;"</p>	<ul style="list-style-type: none"> <li>● Subsection (a)(1) eligible offense/circumstance = <i>non-forcible</i> felonies that based on the charge <i>or</i> the person's criminal history require a sentence of imprisonment in a state-run facility. These are known as "non-probationable" felonies. <ul style="list-style-type: none"> <li>○ <i>Note:</i> Non-probationable felonies that would only require a jail sentence, rather than a state prison sentence, are excluded from this definition. <i>See 110-1(c):</i> "The phrase 'for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction' means an offense for which a sentence of imprisonment in the Department of Corrections, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction."</li> </ul> </li> <li>● Subsection (a)(1) dangerousness standard = the person's "pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case." <ul style="list-style-type: none"> <li>○ The addition of "specific articulable facts of the case" seems to direct the court to consider the current allegation, rather than only relying on someone's background or general history when alleging or evaluating their dangerousness.</li> </ul> </li> </ul>
110-6.1 (a)(1.5)	<p>"the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, and the defendant is charged with a forcible felony, which as used</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(1.5) eligible offense/circumstance = forcible felonies listed in this subsection. <ul style="list-style-type: none"> <li>○ The list is based on the forcible felony definition in 720 ILCS 5/2-8, but includes additional offenses.</li> </ul> </li> </ul>

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	<p>in this Section, means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement, or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement;”</p>	<ul style="list-style-type: none"> <li>○ The criteria “any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement” will make it difficult to compile a definitive list of offenses that are eligible for detention under this subsection.</li> <li>● Subsection (a)(1.5) dangerousness standard = the person’s “pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case.” <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>
110-6.1(a)(2)	<p>“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 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;”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(2) eligible offenses/circumstances = “stalking or aggravated stalking”</li> <li>● Subsection (a)(2) dangerousness standard = the person’s “pretrial release poses a real and present threat to the 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.” <ul style="list-style-type: none"> <li>○ Subsection (a)(2) eligible offenses/circumstances = “stalking or aggravated stalking”</li> </ul> </li> </ul>
110-6.1(a)(3)	<p>“the defendant is charged with a violation of an order of protection issued under Section 112A-</p>	<p><u>Interpretation Considerations</u></p>

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	14 of this Code or Section 214 of the Illinois Domestic Violence Act of 1986, a stalking no contact order under Section 80 of the Stalking No Contact Order Act, or of a civil no contact order under Section 213 of the Civil No Contact Order Act, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;"	<ul style="list-style-type: none"> <li>● Subsection (a)(3) eligible offenses/circumstances = violations of any of the following:               <ul style="list-style-type: none"> <li>○ an order of protection</li> <li>○ a stalking no contact order</li> <li>○ a civil no contact order</li> </ul> </li> <li>● Subsection (a)(3) dangerousness standard = the person's "pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case."               <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>
110-6.1(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 safety of any person or persons or the community, based on the specific articulable facts of the case;"	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(4) eligible offenses = domestic battery or aggravated domestic battery under Section 12-3.2 or 12-3.3 of the Criminal Code of 2012</li> <li>● Subsection (a)(4) dangerousness standard = the person's "pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case."               <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>
110-6.1(a)(5)	"the defendant is charged with any offense under Article 11 of the Criminal Code of 2012, except for Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35, 11-40, and 11-45 of the Criminal	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(5) eligible offenses = sex offenses listed in the criminal code as specified</li> </ul>

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	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 safety of any person or persons or the community, based on the specific articulable facts of the case;"	<ul style="list-style-type: none"> <li>● Subsection (a)(4) dangerousness standard = the person's "pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case."               <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>
110-6.1(a)(6)	"the defendant is charged with any of the following offenses under the Criminal Code of 2012, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case..."(See the offenses listed in the Appendix of this document)	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(6) eligible offenses = specific offenses listed in this subsection. <i>See subsections (A)-(W) and the final pages of this considerations document for the full list of offenses.</i></li> <li>● Subsection (a)(6) dangerousness standard = the person's "pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case."               <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>
110-6.1 (a)(6.5)	"the defendant is charged with any of the following offenses, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case:"(See the offenses listed in the Appendix of this document)	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(6.5) eligible offenses = specific offenses listed in this subsection (<i>mostly DUI related offenses; see the final page of this considerations document for the full list of offenses</i>)</li> <li>● Subsection (a)(6.5) dangerousness standard = the person's "pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case."               <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>

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110-6.1(a)(7)	“the defendant is charged with an attempt to commit any charge listed in paragraphs (1) through (6.5), and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case; or”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(7) eligible offenses = an attempt to commit any charge listed in subsections (a)(1) - (a)(6.5).</li> <li>● Subsection (a)(7) dangerousness standard = the person’s “pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case.” <ul style="list-style-type: none"> <li>○ The dangerousness standard is the same as subsection (a)(1) above.</li> </ul> </li> </ul>
110-6.1(a)(8)	<p>“the person has a high likelihood of willful flight to avoid prosecution and is charged with:</p> <p>(A) Any felony described in subdivisions (a)(1) through (a)(7) of this Section; or</p> <p>(B) A felony offense other than a Class 4 offense.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Subsection (a)(8) eligible offenses = any <i>felonies</i> that are eligible offenses under subsection (a)(1) to (a)(7); and any felonies Class 3 or higher <ul style="list-style-type: none"> <li>○ <i>Note:</i> It includes only felonies from (a)(1) through (a)(7) and it excludes (a)(8) (so it does <i>not</i> include any charges of attempt).</li> </ul> </li> <li>● Subsection (a)(8) willful flight standard = “the person has a high likelihood of willful flight to avoid prosecution” <ul style="list-style-type: none"> <li>○ 110-1(f) defines willful flight as “intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.”</li> </ul> </li> </ul>

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<b>Burden of Proof</b>		
110-2 (a), (b), (c), (d)	<p>“(a)...Pretrial release may be denied only if a person is charged with an offense listed in Section 110-6.1 and after the court has held a hearing under Section 110-6.1, and in a manner consistent with subsections (b), (c), and (d) of this Section.</p> <p>(b) At all pretrial hearings, the prosecution shall have the burden to prove by clear and convincing evidence that any condition of release is necessary.</p> <p>(c) When it is alleged that pretrial release should be denied to a person upon the grounds that the person presents a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, the burden of proof of such allegations shall be upon the State.</p> <p>(d) When it is alleged that pretrial release should be denied to a person charged with stalking or aggravated stalking upon the grounds set forth in Section 110-6.3, the burden of proof of those allegations shall be upon the State.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• In addition to the language in 110-6.1, section 110-2 includes specific language about the burden of proof of the allegations being on the prosecution.</li> </ul>

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110-6.1(e)	<p>“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:</p> <p>(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), and</p> <p>(2) for offenses listed in paragraphs (1) through (7) of subsection (a), the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, 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</p> <p>(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, for offenses listed in paragraphs (1) through (7) of subsection (a), or</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• This section lays out the burden of proof that the State must meet to detain someone pretrial.</li> <li>• Note that Section 110-6.1(g) lays out a long list of the non-inclusive factors the court may consider when deciding whether the dangerousness standard is met.</li> <li>• Subsection (e)(3) specifies that either the dangerousness standard or willful flight standard can be met with the requirements outlined in this section.</li> <li>• <i>Note:</i> Subsection (e)(4) states that certain drug related felonies included within subsection (a)(1) must meet the dangerousness standard <b>and</b> must also prove that the defendant poses a serious risk to not appear in court as required.</li> </ul>

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	<p>(ii) the defendant's willful flight for offenses listed in paragraph (8) of subsection (a), and</p> <p>(4) for offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to paragraph (1) of subsection (a), 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 community, based on the specific articulable facts of the case, and the defendant poses a serious risk to not appear in court as required.”</p>	
110-6.1 (g)	<p>“Factors to be considered in making a determination of dangerousness. The court may, in determining whether the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, consider, but shall not be limited to, evidence or testimony concerning:</p> <p>(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.</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• The court may consider a number of factors in determining whether the dangerousness standard is met. This is not an exhaustive list of factors that can be considered.</li> </ul>

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	<p>(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.</p> <p>(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.</p> <p>(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them.</p> <p>(5) The age and physical condition of the defendant.</p> <p>(6) The age and physical condition of any victim or complaining witness.</p> <p>(7) Whether the defendant is known to possess or have access to any weapon or weapons.;</p> <p>(8) Whether, at the time of the current offense or any other offense or arrest, the defendant was</p>	

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	<p>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.</p> <p>(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."</p>	
<b>Timing for Filing a Petition to Detain</b>		
110-6.1(c)(1)	<p>"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."</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Unless the petition is being filed to revoke a person's pretrial release (see Section 110-6), a petition to detain must be filed: <ul style="list-style-type: none"> <li>○ At the first appearance before a judge (for a defendant who is in custody after arrest) (no prior notice is needed); <b>or</b></li> <li>○ Within 21 calendar days after the person's arrest and release (for a defendant who is <b>not</b> in custody after arrest) (and reasonable notice of the filing of the petition must be given), the released person shall not be detained pending the detention hearing.</li> </ul> </li> </ul> <p><u>Operational Considerations</u></p>

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		<ul style="list-style-type: none"> <li>State’s Attorneys will have a short timeframe to file a petition for defendants in custody after arrest.</li> </ul>
<b>Timing of the Detention Hearing</b>		
110-6.1(c)(2)	<p>“Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant’s first appearance if the defendant is charged with first degree murder or 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 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.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>Subsection (c)(1) states that a previously released defendant shall not be detained pending the detention hearing. However, this subsection allows the Court to decide whether to detain or release the defendant if a continuance is granted.</li> <li>Stakeholders ask what does “immediately” mean? Does it mean “right now” or the “next available court date?” Either definition will present operational challenges to jurisdictions.</li> </ul> <p><u>Operational Considerations:</u></p> <ul style="list-style-type: none"> <li>The short timeframe of holding a hearing immediately or within 24 or 48 hours presents challenges to many stakeholders, including the defendant, because defense counsel will need time to prepare and review the petition to detain and the pre-hearing tender.</li> <li>Courts may need to consider working alongside domestic violence victim programs to facilitate notifying victims of the detention hearing.               <ul style="list-style-type: none"> <li>The State’s Attorney could provide notice to the victims, as this is paperwork that is already passed out, or law enforcement can include the next court date upon arrest.</li> <li>Notifying victims hospitalized or leaving the area due to safety concerns may pose significant issues.</li> </ul> </li> </ul>
<b>Contents of Petition</b>		

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110-6.1(d)	<p>“(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 real and present threat to the safety of any person or persons or the community, based on the specific articulable facts or flight risk, as appropriate.</p> <p>(2) If the State seeks to file a second or subsequent petition under this Section, the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• Petition must include grounds for denial of pretrial release on either the appropriate dangerousness standard or willful flight standard, or both.</li> <li>• The State is allowed to file subsequent petitions to detain as long as there are new facts that were not known or available at the time of the filing of the previous petition. There is no cap on the number of petitions that can be filed. And there does not seem to be any timing requirements related to the second and subsequent petitions.</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>• The petition must be individualized for the case and specify the circumstances or charged offense(s) that make the person eligible for detention. It must also allege with some specificity why the case meets one or both the dangerousness or willful flight standards.</li> </ul>
<b>Conduct of Hearings</b>		
110-6.1(f)(1)	<p>“Prior to the hearing, the State shall tender to the defendant copies of the 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 prosecutor's possession at the time of the hearing.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• Under paragraph (1), the State shall tender to the defense whatever information their office is relying on at the onset of the case, and which they will use at the detention hearing. The State does not have any discovery obligations until after an indictment.</li> </ul>

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110-6.1(f)(2)	“The State or defendant may present evidence at the hearing by way of proffer based upon reliable information.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Both the prosecution and defense may present evidence to support their case.</li> <li>● <i>Note:</i> The rules of evidence do not apply to these hearings.</li> </ul>
110-6.1(f)(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. Defense counsel shall be given adequate opportunity to confer with the defendant before any hearing at which conditions of release or the detention of the defendant are to be considered, with an accommodation for a physical condition made to facilitate attorney/client consultation. If defense counsel needs to confer or consult with the defendant during any hearing conducted via a two-way audio-visual communication system, such consultation shall not be recorded and shall be undertaken consistent with constitutional protections.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Note that there are multiple places in the statute where the defendant is explicitly given the right to counsel. Including here, in paragraph (3). Also, in 109-1(a-5) (for any hearing at which pretrial release is determined), 110-5(f) (for the initial appearance hearing), and 110-6(e) (for a sanctions hearing). <ul style="list-style-type: none"> <li>○ 55 ILCS 5/3-4014 establishes a public defender grant program: “the Administrative Office of the Illinois Courts shall establish a grant program for counties for the purpose of training and hiring attorneys on contract to assist the county public defender in pretrial detention hearings.”</li> </ul> </li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>● Stakeholders point out the challenges of providing defense counsel with adequate space to facilitate attorney/client consultation.</li> </ul>
110-6.1(f)(3.5)	“A hearing at which pretrial release may be denied must be conducted in person (and not by way of two-way audio visual communication) unless the accused waives the right to be	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● This subsection includes language regarding the waiver of in person appearances, and the approval by the court of remote appearances in lieu of an in-person appearance for the detention hearing. This uniform</li> </ul>

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	<p>present physically in court, the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court, or the chief judge of the circuit orders use of that system due to operational challenges in conducting the hearing in person. Such operational challenges must be documented and approved by the chief judge of the circuit, and a plan to address the challenges through reasonable efforts must be presented and approved by the Administrative Office of the Illinois Courts every 6 months.”</p>	<p>language is found throughout the PFA, and is supplemented by Supreme Court Rule 45 on remote appearances.</p> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>• <i>Note:</i> Under 20 ILCS 3930/7.7 (c), “The Pretrial Practices Data Oversight Board shall develop a strategy to collect quarterly, county-level data on...(2) information on the outcomes of pretrial conditions and pretrial detention hearings in the county courts, including but not limited to the number of hearings held, the number of defendants detained...and, beginning January 1, 2023, information comparing detention hearing outcomes when the hearing is held in person and by two-way audio-visual communication;”</li> <li>• Circuits and counties may want to consider drafting policies that outline the discretion in approving remote court appearances.</li> </ul>
110-6.1(f)(4)	<p><i>(broken into paragraphs for easier reading)</i>            “If the defense seeks to compel the complaining witness to testify 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 only on the issue of the defendant’s pretrial detention.</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• This subsection outlines criteria for compelling a witness to testify in a detention hearing as petitioned by the defense or through the court’s motion.</li> <li>• This subsection also reiterates what evidence the State must tender to defense prior to the detention hearing if available. Such tender includes, “copies, if any, of the defendant’s criminal history, if available, and any written or recorded statements and the substance of any oral statements made by any person...”</li> <li>• The detention hearing should not be used for the purposes of discovery and post arraignment rules of discovery do not apply.</li> <li>• Note that paragraphs (5) and (6) (not copied here) contain additional rules of evidence that govern the detention hearing.</li> </ul>

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	<p>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.</p> <p>The pre-trial detention hearing is not to be used for purposes of discovery, and the post arraignment rules of discovery do not apply. The State shall tender to the defendant, prior to the hearing, copies, if any, of the defendant's criminal history, if available, and any written or recorded statements and the substance of any oral statements made by any person, if in the State's Attorney's possession at the time of the hearing."</p>	

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110-6.1(m)	<p>“Interest of victims.</p> <p>(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 a protective order.</p> <p>(2) If 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.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• Notice to crime victims of the detention hearing is required.</li> <li>• The citation for the referenced provision of the Rights of Crime Victims and Witnesses Act appears to be incorrect; it should refer to paragraph (2) of subsection (b) (specifically, 725 ILCS 120/4.5 (b)(2)).</li> <li>• If detention is ordered, a court can impose a no contact order with the victim or other interested party to be enforced during the defendant’s detention.</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>• State’s Attorneys may want to operationalize this requirement by creating template notification forms.</li> </ul>
<b>Decision to Detain</b>		
110-6.1(f)(7)	<p>“Decisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention. Risk assessment tools may not be used as the sole basis to deny pretrial release.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• This subsection affirms that decisions must be individualized and cannot be based on one single factor or standard, and must not be solely reliant on the results of a risk assessment tool.</li> </ul>
110-6.1(h)	<p>“Detention order. The court shall, in any order for detention:</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• Written findings are required in the detention order.</li> </ul>

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	<p>(1) make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial including why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or prevent the defendant's willful flight from prosecution;</p> <p>(2) direct that the defendant be committed to the custody of the sheriff for confinement in the county jail pending trial;</p> <p>(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</p> <p>(4) direct that the sheriff deliver the defendant as required for appearances in connection with court proceedings."</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>Courts may want to operationalize the written finding requirement and the other requirements by creating template forms for judges.</li> </ul>
<b>Subsequent Appearances of the Defendant</b>		
110-6.1 (i-5)	"At each subsequent appearance of the defendant before the court, the judge must find that continued detention is necessary to avoid a	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>The Court must continue to affirm detention or the current set of conditions at each subsequent appearance of the defendant.</li> </ul>

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	real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or to prevent the defendant's willful flight from prosecution."	<ul style="list-style-type: none"> <li>Courts may want to operationalize these requirements by creating template forms for judges.</li> </ul>
<b>Speedy Trial</b>		
110-6.1(i)	"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 and any period of delay resulting from a continuance granted at the request of the State with good cause shown pursuant to Section 103-5."	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>The defendant must be released 90 days after the order for detention if the case is not otherwise resolved. However, this period is generally extended as a result of continuances granted at the request of the defense or continuances requested by the State with good cause and granted.</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>Courts may want to operationalize these requirements by creating template forms for judges.</li> </ul>
<b>Appeals</b>		
110-6.1(j)	"Rights of the defendant. The defendant shall be entitled to appeal any order entered under this Section denying his or her pretrial release."	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>The defendant has the right to appeal their pretrial detention.</li> <li>The Supreme Court will be issuing a new rule about the appeals process.</li> </ul>

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		<ul style="list-style-type: none"> <li>• This will likely create a new demand for the prompt appellate review of orders of detention.</li> <li>• Section 110-6.6 states that the AV recording or other electronic recording system, or transcription by a court reporter, shall be entered into the record for purposes of appeals.</li> </ul>
110-6.1(k)	<p>“Appeal. The State may appeal any order entered under this Section denying any motion for denial of pretrial release.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>• The State has the right to appeal a decision to release a defendant.</li> <li>• The Supreme Court will be issuing a new rule about the appeals process.</li> <li>• This will likely create a new demand for the prompt appellate review of the denial of pretrial detention.</li> <li>• Section 110-6.6 states that the AV recording or other electronic recording system, or transcription by a court reporter, shall be entered into the record for purposes of appeals. Section 110-6.6 states that the AV recording or other electronic recording system, or transcription by a court reporter, shall be entered into the record for purposes of appeals.</li> </ul>
<p><b>Transporting Defendant if Warrant in Another County</b></p>		
109-2 (c)	<p>“If a person is taken before a judge in any county and a warrant for arrest issued by another Illinois county exists for that person, the court in the arresting county shall hold for that person a detention hearing under Section 110-6.1, or other hearing under Section 110-5 or Section 110-6.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>• The Court will hold a release or detention hearing based on the charge of the new arrest.</li> <li>• Circuits and counties may want to work with local law enforcement organizations to outline a communications protocol.</li> </ul>

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109-2 (e)	<p>“If a person has a warrant in another county for an offense, then, no later than 5 calendar days after the end of any detention issued on the charge in the arresting county, the county where the warrant is outstanding shall do one of the following:</p> <p>(1) transport the person to the county where the warrant was issued for a hearing under Section 110-6 or 110-6.1 in the matter for which the warrant was issued; or</p> <p>(2) quash the warrant and order the person released on the case for which the warrant was issued only when the county that issued the warrant fails to transport the defendant in the timeline as proscribed.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• Subsection (f) outlines further steps if the county that issued the warrant fails to take any action under (e).</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>• Circuits and counties may want to work with local law enforcement organizations to outline a communications protocol.</li> <li>• Circuits and counties may also need to create a plan to follow subsection (e)</li> </ul>
<b>Pregnancy and Pretrial Detention</b>		
110-5.2 (b)	<p>“If the court reasonably believes that a pre-trial detainee will give birth while in custody, the court shall order an alternative to custody unless, after a hearing, the court determines:</p> <p>(1) the pregnant pretrial detainee is charged with an offense for which pretrial release may be denied under Section 110-6.1; and</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• It is Illinois state policy that a pregnant detainee should not be required to give birth while in pretrial custody unless the standards outlined in this section are met. This includes meeting the dangerousness or willful flight standards.</li> </ul>

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	(2) after a hearing under Section 110-6.1 that considers the circumstances of the pregnancy, the court determines that continued detention is the only way to prevent a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or prevent the defendant's willful flight.”	

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

#### Detention Hearing *Appendix*

##### Offenses Eligible for Detention Under Subsection 110-6.1(a)(6)

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| <ul style="list-style-type: none"><li>(A) Section 24-1.2 (aggravated discharge of a firearm);</li><li>(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);</li><li>(C) Section 24-1.5 (reckless discharge of a firearm);</li><li>(D) Section 24-1.7 (armed habitual criminal);</li><li>(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);</li><li>(F) Section 24-3 (unlawful sale or delivery of firearms);</li><li>(G) Section 24-3.3 (unlawful sale or delivery of firearms on the premises of any school);</li><li>(H) Section 24-34 (unlawful sale of firearms by liquor license);</li><li>(I) Section 24-3.5 (unlawful purchase of a firearm);</li><li>(J) Section 24-3A (gunrunning); or</li><li>(K) Section on 24-3B (firearms trafficking);</li><li>(L) Section 10-9 (b) (involuntary servitude);</li></ul> | <ul style="list-style-type: none"><li>(M) Section 10-9 (c) (involuntary sexual servitude of a minor);</li><li>(N) Section 10-9(d) (trafficking in persons);</li><li>(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);</li><li>(P) Section 9-3 (reckless homicide and involuntary manslaughter);</li><li>(Q) Section 19-3 (residential burglary);</li><li>(R) Section 10-5 (child abduction);</li><li>(S) Felony violations of Section 12C-5 (child endangerment);</li><li>(T) Section 12-7.1 (hate crime);</li><li>(U) Section 10-3.1 (aggravated unlawful restraint);</li><li>(V) Section 12-9 (threatening a public official);</li><li>(W) Subdivision (f)(1) of Section 12-3.05 (aggravated battery with a deadly weapon other than by discharge of a firearm).</li></ul> |
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This document is a product of the Illinois Supreme Court Implementation Task Force. This is not an official resource from the Supreme Court.

## Current as of December 14, 2022 (post-PFA Trailer Bill)

Check <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/> for latest updates.

Email [pretrialtaskforce@illinoiscourts.gov](mailto:pretrialtaskforce@illinoiscourts.gov) with any questions or suggested additions to this list of implementation considerations.

### Offenses Eligible for Detention Under Subsection 110-6.1(a)(6.5)

- (A) Felony violations of Sections 3.01, 3.02, or 3.03 of the Humane Care for Animals Act (cruel treatment, aggravated cruelty, and animal torture);
- (B) Subdivision (d)(1)(B) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence while operating a school bus with passengers);
- (C) Subdivision (d)(1)(C) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence causing great bodily harm);
- (D) Subdivision (d)(1)(D) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence after a previous reckless homicide conviction);
- (E) Subdivision (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence leading to death); or
- (F) Subdivision (d)(1)(J) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence that resulted in bodily harm to a child under the age of 16).