



## ARGUMENT

**The requirement that the State timely file a petition to deny pretrial release under 725 ILCS 5/110-6.1(c)(1) is mandatory; where a defendant objects to an untimely petition to deny pretrial release, the trial court should strike the petition.**

In this case, the State did not file a petition to deny Johnny Williams pretrial release either at his first appearance or within 21 calendar days, but four months later. (Sup. R. 4-7; C. 60) Although the appellate court agreed that the filing was untimely, it affirmed, reasoning that the timely-filing requirement was directory, rather than mandatory, so that no consequence followed from the untimely petition absent a showing that Williams suffered additional prejudice. *People v. Williams*, 2025 IL App (2d) 250370, ¶¶ 35, 44. This conclusion, however, undercuts the purposes of Section 110-6.1(c)(1) as effectively as eliminating the time limit entirely, and would be an unwarranted change to the system of pretrial detention the legislature intended in the Pretrial Fairness Act (“the Act”). This Court should reverse the appellate court decision and find that Section 110-6.1(c)(1) imposes a mandatory timing requirement for the filing of a petition to deny pretrial release.

In response, the State urges that its petition was timely filed, that the absence of explicit language commanding mandatory consequences shows on its own that the legislature did not intend a mandatory rule, and that the interests protected by having a mandatory timely-filing requirement do not warrant the risk that a prosecutor will, for some reason, unwisely fail to seek detention of a particular detention eligible defendant until more than 21 days have passed since the defendant’s release. None of its arguments are sound.

**A. The Pretrial Fairness Act creates a presumption in favor of pretrial release and sets forth a detailed scheme that balances the interests of defendants and the safety of the community.**

The State does not contest that all defendants are presumed eligible for release unless the State files a petition to detain and demonstrates that those charged with specific offenses pose a threat to others or a flight risk. (State's Br. at 6.) It also agrees that a statutory requirement, such as Section 110-6.1(c), is mandatory when the purposes it is supposed to protect would be injured under a directory reading. (State's Br. at 12.)

**B. The appellate court correctly found that the State violated the 21-day time limit for filing a petition to detain after a defendant is arrested and released.**

As noted in Williams' initial brief, the trial court correctly found that the State's petition to deny Williams pretrial release was not filed within the time limits of Section 110-6.1(c). (Williams Br. at 8.) Williams first appeared in the case pursuant to a writ of *habeas corpus* for prosecution on January 16, 2025, and he was not denied pretrial release. The State's petition was filed on May 22, 2025, neither at Williams' first appearance nor within 21 days of his release. In response, the State urges that its petition was timely because Mr. Williams "was neither arrested nor released on the relevant charges." (State's Br. at 6.) Its argument is contrary to ordinary usage.

First, the State's argument that Williams was never "arrested . . . on the relevant charges" is contrary to the accurate definition of "arrest" that it itself offers: "[t]he taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge." (State's Br. at 8) (citing Black's Law Dictionary (12th ed 2024)). Williams was brought to the courtroom by state agents in compliance

with a court order for a writ of *habeas corpus* requiring that Williams be brought there “in the order that he . . . may be prosecuted” on the charges in this case. (C. 25.) The State’s further reach for the appellate court’s language that Williams was never “formally arrested,” *People v. Williams*, 2025 IL App (2d) 250370, ¶ 35, and trial counsel’s statement that Williams “has never technically been arrested” (R. 4), are an implicit argument that “arrest” should be interpreted far more narrowly than its proffered definition, to mean “arrested by law enforcement while not otherwise subjected to state custody for some other reason” – basically, the stereotypical idea of an arrest on the street. There is no reason to read in that limitation.

Second, the State urges that Williams was never released, in that he was never “freed from constraint or confinement,” as “he remained in IDOC custody on the prior convictions.” (State’s Br. at 9.) Critically, in so doing it silently abandons its earlier assertion that Williams was not “released *on the relevant charges*.” (State’s Br. at 6) (emphasis added). “A court must view [a] statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation.” *People v. Jackson*, 2011 IL 110615, ¶ 12. Section 110-6.1 is concerned throughout with whether a defendant will be denied pretrial release in connection with a particular pending charge enumerated in Section 110-6.1(a). In this context, “arrest” in Section 110-6.1(c)(1) means “arrest on the detention-eligible charges,” as the State itself notes. (See, e.g. State’s Br. at 8) (“he was never ‘arrest[ed]’ on the instant charges”).

Similarly, “release” in Section 110-6.1(c) means “release on the detention-eligible charges.” *People v. Schwedler*, 2025 IL App (1st) 242157, ¶ 25 (“release’

for purposes of [a] new case” occurred at the first appearance “because the State decided not to file a petition at his first appearance”). After Williams was brought into the court in compliance with a writ of *habeas corpus*, the court appearance ended without an order for denial of pretrial release, either temporary or permanent. So far as this case was concerned, he no longer faced “restraint or confinement.” (State’s Br. at 9) (quoting Black’s Law Dictionary (12th ed. 2024)). The State’s citation to *Hatch*, which addressed the Speedy Trial Act’s phrase “in custody in this State for an alleged offense,” further supports that interpretation. 725 ILCS 5/103-5(a). (See also State’s Br. at 9). In *Hatch*, the appellate court held that when a defendant in Kane County custody was writtten to a DuPage County court for arraignment on separate charges, then returned to the Kane County Jail to face the original charges, he was not in custody for the DuPage charges until the Kane County proceedings ended. *People v. Hatch*, 110 Ill. App. 3d 531, 533-36 (2d Dist. 1982). Similarly, where Williams was arraigned in this case and returned to IDOC custody without an order denying pretrial release, he was released on the charges in this case for purposes of Section 110-6.1(c)(1).

Williams was released at his first appearance on January 16, 2026, and the State’s petition was not filed either at that appearance or within 21 days of that release. The appellate court correctly held the petition was untimely.

**C. As Williams established and preserved that the State’s petition was untimely, the issue before this Court is whether the 21-day timing provision is directory or mandatory.**

As set forth in Williams’ initial brief, there is a presumption that statutory language issuing a procedural command to a government official is directory, rather than mandatory, which is overcome either if the statute explicitly prohibits further

action in the case of noncompliance, or if the right the statute is designed to protect would generally be issued under a directory reading. *People v. Cooper*, 2025 IL 130946, ¶ 33. At points in its brief, the State alters this rule, asserting that the lack of an explicit prohibition of further action *affirmatively* “demonstrates that the time limit is intended to be directory, rather than mandatory.” (State’s Br. at 12, 17) (“[T]he General Assembly knows how to render time limitations mandatory when it wants to do so.”). Urging that “where the legislature uses different language, it intends different results,” the State argues that a lack of discussion of consequences for a violation in a statute is equivalent to an explicit statement that the statute is not mandatory. (State’s Br. at 17.)

This Court has never so held, and such a holding would be contrary to the basic rule that the goal of statutory construction is to determine the legislature’s intent, and that the plain language of the statute is generally the best means to determine that intent. *Cooper*, 2025 IL 130946, ¶ 27. This Court has consistently held that the default interpretation of a procedural statutory command to a government official is directory. *See, e.g., Cooper*, 2025 IL 130946, ¶ 33; *People ex rel. Agnew v. Graham*, 267 Ill. 426, 436-37 (1915) (“In general, statutes directing the mode of proceeding by public officers are deemed advisory, and strict compliance with their detailed provisions is not considered indispensable to the validity of acts done under them.”). But the legislature can still make a such a requirement mandatory, either by saying so directly or by implication based on the statute’s purpose. *Cooper*, 2025 IL 130946, ¶ 33. *Accord Graham*, 267 Ill. at 436 (“No universal rule can be given to distinguish between directory and mandatory provisions. The controlling question in this as in all other rules of construction is, what was

the intention of the Legislature?”).

This Court has never held that a statute’s silence on consequences for a violation of a requirement is the same thing as an explicit statement that the legislature intended the requirement to be directory and not mandatory. To the contrary, it has held that the legislature can create a mandatory rule either explicitly or implicitly, and it has never treated the absence of an express mandatory rule as additional or strong evidence that the legislature did not intend one implicitly. Indeed, it is just as possible for a legislature to “expressly provide[]” that a command is directory and carries no specific consequence as it is to expressly state that a command is mandatory, and the General Assembly has at times done so. *People ex rel. Dep’t of Human Rights v. Interstate Realty Mgmt., L.P.*, 2022 IL App (5th) 210161, ¶ 26 (discussing 775 ILCS 5/7B-102(G)(1)) (requiring the Department of Human Rights to file a complaint or order no complaint “within 100 days” of the filing of a charge, “unless it is impractical to do so”; failing to do either within 100 days “does not deprive the Department of jurisdiction over the charge”).

The rule of statutory construction the State advances would require unnatural precision from the legislature and artificially restrict the way the legislature normally communicates its intentions: ordinary language. *Cooper*, 2025 IL 130946, ¶ 27. It would consequently also be an unwarranted intrusion by the judicial branch on the legislature’s authority to legislate.

The State offers a pair of citations in connection with this argument, neither helpful to it. First, it asserts this Court in *Cooper* “deem[ed] lack of an express consequence a strong indication that the General Assembly did *not* intend [a] statutory requirement to be mandatory.” (State’s Br. at 17) (citing *Cooper*, 2025

IL 130946, ¶ 34) (emphasis in State’s Br.). In fact, the phrase “strong indication” appears nowhere in *Cooper*, including the cited paragraph, where this Court noted that Section 110-6.1(c)(2) “d[id] not specify a consequence for noncompliance” before going on to address in the next paragraph whether the statute fit within the “second exception” for a mandatory requirement, that is, whether the requirement was implicitly mandatory in light of the purposes of the statute. *Cooper*, 2025 IL 130946, ¶¶ 34-35.

Second, the State urges that “where the legislature uses different language, it intends different results,” citing *People v. Hunter*, 2017 IL 121306, ¶ 48. (State’s Br. at 17.) *Hunter* in fact addressed the canon that inclusion and omission of language in different “section[s] of the same statute” are “presume[d] . . . intentional[]” and show differing intentions. *Hunter*, 2017 IL 121306, ¶ 48 (quoting *People v. Smith*, 2016 IL 119659, ¶ 30) (emphasis added). But legislative practice is not so consistent between statutes. Indeed, as already noted in Williams’ initial brief, this Court has previously found an implicit mandatory rule in a statute based partly on its similarity in purpose to an explicitly mandatory statute. See *People v. Cosenza*, 215 Ill. 2d 308, 315 (2005) (construing time limit for hearing on statutory summary suspension of driving privileges, which is not explicitly mandatory, “on the basis of reference to” the criminal speedy-trial statute, which is) (cited in Williams Br. at 17 n. 2).

The lack of an express consequence in the statute is not dispositive. Consequently, the issue before this court is whether the purposes the statute is designed to serve would be generally injured under a directory reading. *Cooper*, 2025 IL 130946, ¶¶ 33, 35.

**D. A mandatory reading of 21-day requirement to file a petition to detain is necessary to avoid generally injuring the rights the rule is designed to protect and balance these rights with the goal of the protecting the community.**

As set forth in Williams’ initial brief, this Court should hold that because the failure to comply with the 21-day filing requirement will generally injure the right the rule is designed to protect, and the effect of a mandatory rule on countervailing statutory purposes is minimal, the rule is mandatory. In response, the State urges that the Act as a whole has only two purposes that merit discussion: detaining individuals that meet the requirements for detention under Section 110-6.1(e), and expeditiously ensuring that defendants who do not meet those requirements are released from custody. (State’s Br. at 14) (citing *People v. Cooper*, 2025 IL 130946, ¶¶ 37-39).

In so doing, the State ignores a key distinction between this case and *Cooper*: the Act explicitly gives the State discretion to file or not file a petition to deny pretrial release, and the time limit of Section 110-6.1(c)(1) governs that discretionary choice, rather than the mandatory process triggered once the State exercises it. (See Williams Br. at 17-18.) The State argues that “courts *always* have the obligation to consider the danger that a defendant poses to others and the community when deciding whether pretrial release is appropriate.” (State’s Br. at 14) (quoting *People v. Cooper*, 2025 IL 130946, ¶ 38) (emphasis in *Cooper*). But that argument ignores the critical role that the Act assigns to the prosecutor: a court has no authority to decide that pretrial release is inappropriate at all unless the State first files a petition to deny pretrial release. See 725 ILCS 5/110-6.1(a) (“Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release.”); compare 725 ILCS 5/110-6(a) (pretrial release may be revoked “after

a hearing on the court's own motion or upon the filing of a verified petition by the State"). Giving prosecutors this discretionary authority was a deliberate policy choice by the General Assembly, one important enough to merit repetition in the Act's purposes provision. *See* 725 ILCS 5/110-2(e) ("This Section shall be liberally construed to effectuate the purpose of . . . authorizing the court, *upon motion of a prosecutor*, to order pretrial detention of the person under Section 110-6.1.") (emphasis added).

The State's brief consistently ignores this policy choice, which is at odds with the purposes the State asserts are the only ones within the General Assembly's consideration. Forbidding *sua sponte* denial of pretrial release means that a prosecutor may decide not to file a petition when a judge would be inclined to grant one. In granting this discretionary authority to prosecutors, the General Assembly necessarily anticipated and accepted the possibility that a prosecutor might use that discretion in an unwise or unpopular way, just as a prosecutor make an unwise or unpopular decision not to bring criminal charges in the first place. *See People ex rel. Daley v. Moran*, 94 Ill. 2d 41, 46 (1983) (court has no authority to require prosecutor to bring charges). This means that the statutory purposes to be balanced, and the effect of a mandatory and directory rule on both, are significantly different than in *Cooper* itself.

As set forth in Williams' initial brief, the General Assembly's decision to cabin the State's exercise of its discretion whether to seek to deny pretrial release with a time limit serves three significant interests: permitting defendants to have some certainty in their detention status as they prepare for trial, encouraging expeditious action by the State, and protecting against abusive litigation tactics. (Williams Br. at 11-14.) As to the second and third purposes, the State urges that

that prosecutors can be trusted to use the granted discretion expeditiously and appropriately absent any restrictions, but it offers no argument in support beyond the substantive burden of proof when it *does* seek to deny pretrial release, ignoring the role and effect of its own discretion entirely. (State’s Br. at 16) (citing *People v. Morgan*, 2025 IL 130626, ¶ 24.) Aside from this it offers nothing in support for the idea that prosecutors reliably exercise sound discretion, only its own say-so. (State’s Br. at 16.) That the General Assembly chose to impose a time limit suggests it felt differently.

As to the first purpose, the State simply urges that allowing any criminal defendants to face their charges with some certainty as to their detention status is not a sufficiently “weighty” concern to warrant any risk of any defendant that satisfied Section 110-6.1(e)’s requirements ever being released pretrial. It contends that this Court ruled as much in *Cooper*. (State’s Br. at 15-16) (citing *inter alia*, *Cooper* 2025 IL 130946, ¶¶ 36-40).

However, this Court in *Cooper* did not hold that the General Assembly intended that no statutory purpose could ever outweigh the importance of detaining defendants that satisfied Section 110-6.1(e)’s substantive requirements for detention in any context. Rather, it held that the particular purpose of ensuring defendants have a hearing without even “minor” delay after 48 hours from the State’s filing of a petition did not outweigh the importance of avoiding “the release of defendants” to whom the State had – timely, in *Cooper* – sought to deny pretrial release. *Cooper*, 2025 IL 130946, ¶ 39 (citing *United States v. Montalvo-Murillo*, 495 U.S. 711, 718-22 (1990)).

In this case, by contrast, not only are the purposes of Section 110-6.1(c)(1)’s time limit different, but the risk of releasing otherwise detention-eligible defendants

is also importantly different. As noted above, the General Assembly’s decision to grant discretion to the State already anticipates and accepts a risk that the State may not seek to detain every defendant who satisfies the requirements of Section 110-6.1(e). At issue in this case is whether the benefits of limiting the State’s authority to seek detention to 21 days after release are outweighed specifically by the risk that the State will first unwisely decline to seek detention, and then *recognize* that decision as unwise *only after 21 days have passed*.

As noted in Williams’ initial brief, that specific risk is quite small, particularly compared to the risk of being unable to hold a hearing on a petition within 48 hours of filing this Court addressed in *Cooper*. (Williams Br. at 18-19.) The unpredictable complications that arise at the start of a case against a defendant in temporary detention make it “inevitable that, despite the most diligent efforts” of the parties, a tight 48-hour deadline for a detention hearing can expire and “no real blame can be fixed” for the delay. *Montalvo-Murillo*, 495 U.S. at 720. The same cannot be said of a prosecutor who has decided to bring a case allowing 21 days to pass from a defendant’s first appearance or release from custody without deciding whether to seek detention in the first place. A mandatory rule requiring the State to seek to deny pretrial release within 21 days will not do significant harm to the Act’s goal of ensuring public safety beyond that inherent in granting the State discretionary authority to seek or not seek detention.

**E. A directory reading of Section 110-6.1(c)(1)’s timing requirement is not easily amendable to a traditional prejudice analysis.**

The purposes of the timely filing requirement would, however, “generally be injured under a directory reading,” as the interests protected are not directly associated with a traditional showing of prejudice that any defendant could

demonstrate in a particular case. (Williams Br. at 15-16) (quoting *People v. Cooper*, 2025 IL 130946, ¶ 33). The State does not dispute this and indeed itself argues as much. If the Act’s only significant purpose is quickly determining whether a defendant satisfies the detention requirements of Section 110-6.1(e), then, according to the State, a late-filed petition could never prejudice anyone, because “[a]t most, an untimely petition provides an otherwise detainable individual with additional time at liberty.” (State’s Br. at 14; *accord* State’s Br. at 16) (“[R]egardless of when the People file their petition to deny pretrial release, they must still carry their burden to prove that the defendant is dangerous or a flight risk.”) (State’s Br. at 17) (“[T]he only real consequence of the People filing a meritorious petition more than 21 days after a defendant’s arrest and release is that the defendant subject to detention enjoyed extra days of freedom.”).

This is a *reductio ad absurdum*, and further demonstrates that the State’s premise – that the Act’s only relevant purpose is quickly adjudicating a whether a defendant satisfies the detention requirements of Section 110-6.1(e) – is incorrect. (*See supra*, Issue I.D.) Generally, a statute should be construed “so that no part of it is rendered meaningless or superfluous.” *People v. Giraud*, 2012 IL 113116, ¶ 6 (quoting *People v. Perry*, 224 Ill. 2d 312, 323 (2007)). If the State’s argument is correct, then 725 ILCS 5/110-6.1(c)(1)’s timing provision serves no purpose: its violation will never raise any concern worth addressing. If pursued further, the State’s logic would also render irrelevant Section 110-2(e) and 110-6.1(a)’s requirement that pretrial release be denied only upon the State’s motion. If the evidence shows “the defendant is dangerous or a flight risk,” the State could just as easily argue it makes no difference to a defendant whether the State or court initiated the process of seeking to deny release. (State’s Br. at 16.)

The statute the State imagines is not beyond what lawmakers could rationally enact. As noted in Mr. Williams’ initial brief, New Jersey permits prosecutors to seek pretrial detention “at any time.” (N.J. Stat. Ann. § 2A:162-19 (West 2017)) (cited in Williams Br. at 17-18). Similarly, the federal government permits trial courts to deny release *sua sponte* in some circumstances. 18 U.S.C. 3142(f)(2).

But the statute the Illinois General Assembly actually enacted is plainly different and reflects different policy choices: pretrial detention can only be initiated by the prosecutor, and only within a set time. 725 ILCS 5/110-6.1(a), (c)(1). The State’s argument that these provisions do not protect interests worthy of consideration would render those interests entirely without protection. (*See supra*, Issue I.D.) And its suggestion that the General Assembly needs to use unequivocal language to make it clear to the courts that its enactments are to be taken seriously is no excuse for ignoring the legislature’s intent. (*See supra*, Issue I.C.)

Consequently, this Court should hold that Section 110-6.1(c)(1)’s 21-day filing requirement is mandatory, as a mandatory reading reflects the balance the General Assembly intended between the interests of defendants and the safety of the community. This Court should vacate the trial court’s order denying Williams’ motion to strike the State’s untimely-filed petition to deny pretrial release and remand for a conditions of release hearing.

## CONCLUSION

For the foregoing reasons, Johnny Williams, Defendant-Appellant, respectfully requests that this Court hold that the timely-filing requirement of Section 110-6.1(c)(1) is mandatory, reverse the appellate court, and remand for a conditions of release hearing.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 14 pages.

/s/ Benjamin Wimmer  
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IN THE

## SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF | ) | Appeal from the Appellate Court of  |
| ILLINOIS,              | ) | Illinois, No. 2-25-0370.            |
|                        | ) |                                     |
| Plaintiff-Appellee,    | ) | There on appeal from the Circuit    |
|                        | ) | Court of the Sixteenth Judicial     |
| -vs-                   | ) | Circuit, Kane County, Illinois, No. |
|                        | ) | 24CF2627.                           |
|                        | ) |                                     |
| JOHNNY WILLIAMS,       | ) | Honorable                           |
|                        | ) | John A. Barsanti,                   |
| Defendant-Appellant.   | ) | Judge Presiding.                    |

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**NOTICE AND PROOF OF SERVICE**

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 28, 2026, the Reply Brief for Defendant-Appellant in Support of Rule 604(h) Appeal was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the Defendant-Appellant in an envelope deposited in a U.S. mailbox in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief for Defendant-Appellant in Support of Rule 604(h) Appeal to the Clerk of the above Court.

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