

## Pretrial Fairness Act, Effective 1/1/2023

## Release from Custody

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

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

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

**Police must maintain the following records:**

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

Is the offense one for which pretrial release may be denied under 110-6.1?

YES

NO

A presumption in favor of release without appearing before a judge shall be applied by an arresting officer in the exercise of their discretion under this Section. (109-1(a-3))

Are there circumstances that justify the officer using their general discretion to release the person?

NO

YES

The releasing officer shall issue the person a summons to appear within 21 days. (109-1(a-3))

Person is held for initial appearance before a judge.

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

Revised July 28, 2022. Subject to Change.

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.

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

**Release from Custody**

Statutory Reference	Description	Considerations
<b>Release from Custody</b>		
HB 3653 109-1(a-3)	“A person arrested with or without a warrant for an offense for which pretrial release may not be denied may, except as otherwise provided in this Code, be released by the officer without appearing before a judge. The releasing officer shall issue the person a summons to appear within 21 days. A presumption in favor of pretrial release shall be applied by an arresting officer in the exercise of his or her discretion under this Section.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"><li>● Question about whether the “arresting officer” is the only person authorized to release people.<ul style="list-style-type: none"><li>○ There are stakeholders who believe that other law enforcement officers are authorized to release people.</li></ul></li><li>● The Court is the only entity that can issue a summons. Officers can only issue citations/notices to appear.<ul style="list-style-type: none"><li>○ There are stakeholders who believe that this should be interpreted as allowing the officer to issue a citation/notice to appear.</li></ul></li></ul> <u>Operational Considerations</u> <ul style="list-style-type: none"><li>● Each law enforcement organization should provide operational guidance to their officers to ensure consistent application of this statute.<ul style="list-style-type: none"><li>○ When deciding whether to release someone from custody, should law enforcement organizations use the same standard used in 109-1(a-1) (“who pose no obvious threat to the community or any person, or who have no obvious medical or mental health issues that pose a risk to their own safety”)</li></ul></li></ul>

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		<ul style="list-style-type: none"> <li>○ If so, law enforcement should provide guidance on what rises to the level of an “obvious threat” and what qualifies as “obvious medical or mental health issues that pose a risk to their own safety”</li> <li>● Law enforcement organizations will need new forms for issuing the notice to appear. These forms should be clear about the conditions of release (i.e., return to court and no illegal behavior)</li> <li>● Law enforcement organizations should consider developing a process and resources for officers to refer people to treatment opportunities, even if they are given a notice to appear.</li> <li>● Law enforcement organizations need clear guidance on which offenses are eligible for different outcomes:               <ul style="list-style-type: none"> <li>○ Automatically held for first appearance: Class 3 felonies and above; all domestic violence and intimate partner violence offenses and all violations of probation; Class 4 felony gun offenses that are not probation eligible</li> <li>○ Discretion to release (in the field or from custody): Class A misdemeanors, Class 4 non-gun offenses, Class 4 gun offenses that are probation eligible</li> <li>○ Presumption of cite and release: Class B and C traffic and criminal offenses; petty offenses; ordinance violations..</li> </ul> </li> <li>● Will law enforcement have access to a person’s criminal records in the field or when brought into custody? That information may be relevant in their exercise of discretion to release.               <ul style="list-style-type: none"> <li>○ If someone is already on pretrial release and they are arrested for a felony or class A misdemeanor, they may be eligible for pretrial detention. Whether someone is already on pretrial release is relevant towards whether law enforcement should hold them for the initial appearance.</li> </ul> </li> </ul>

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		<ul style="list-style-type: none"> <li>● Law enforcement should train their officers in a consistent and comprehensive way on the statute, the new operational guidance, and any new forms or procedures.</li> <li>● If the county has a court reminder system, consider developing a process to enroll people who are given a notice to appear into that system.</li> <li>● Courts will need to consider how to respond to an increased volume of people appearing at first appearance who will not have been fingerprinted or photographed when cited</li> </ul> <p><u>Coordination between Law Enforcement and Clerk’s Office</u></p> <ul style="list-style-type: none"> <li>● Law enforcement and the Clerk’s Office will need to communicate about setting of court dates.</li> <li>● Law enforcement and Clerk’s Office must coordinate regarding any changes to technology or forms.</li> </ul>
<b>Rights in Custody</b>		
HB 3512 103-3.5	<ul style="list-style-type: none"> <li>● A person in police custody has the right to:               <ul style="list-style-type: none"> <li>○ communicate free of charge with an attorney of their choice and members of their family as soon as possible upon being taken into police custody but no later than three hours after arrival at the first place of detention</li> <li>○ access to use a telephone via a land line or cell phone to make three calls.</li> </ul> </li> <li>● Police must post a sign summarizing this information in bold block type in a conspicuous place.</li> </ul>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● When does “custody” begin? Does it begin when detained in a police car or when brought to a place of detention? <i>Note that HB3512 provides a definition of a “place of detention” (103-3.5(h))</i></li> <li>● If the person makes three calls and receives no answers, do they have a right to three more calls?</li> <li>● If the person makes three calls and is then transferred to another location, do they have a right to three more calls?</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>● The rights under this section apply to <b>all</b> people in police custody. Not just people who will be interrogated.</li> </ul>

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	<ul style="list-style-type: none"> <li>○ If the court in the local jurisdiction has appointed the public defender or other attorney to represent people in police custody, their telephone number must also be displayed. <i>[Note: Cook County is the only county where the PD is appointed to represent people in police custody.]</i></li> <li>● If person is transferred to a new place of detention, that person’s right to make 3 calls within 3 hours of arrival is renewed.</li> <li>● The 3-hour requirement does not apply while the person is asleep, unconscious, or otherwise incapacitated or an exigent circumstance prevents the officers from timely complying.               <ul style="list-style-type: none"> <li>○ If this happens, the details of the exigent circumstances must be documented in the police report.</li> </ul> </li> <li>● Police must maintain the following records: the number of calls the person made; the times of the calls; and if no calls are made, the reasons why.</li> </ul>	<ul style="list-style-type: none"> <li>● Law enforcement organizations should provide operational guidance to officers to ensure that the person's rights are honored and the records are completed in a consistent way.</li> <li>● Can the Illinois Chiefs of Police or Sheriff’s Association create a standard template for the sign that must be posted?</li> <li>● Police may wish to consider how to handle the situation when the person proceeds to call the victim of the crime, especially in domestic violence situations.</li> <li>● If the person calls their lawyer, must the law enforcement organization make sure the call is not recorded?</li> </ul>