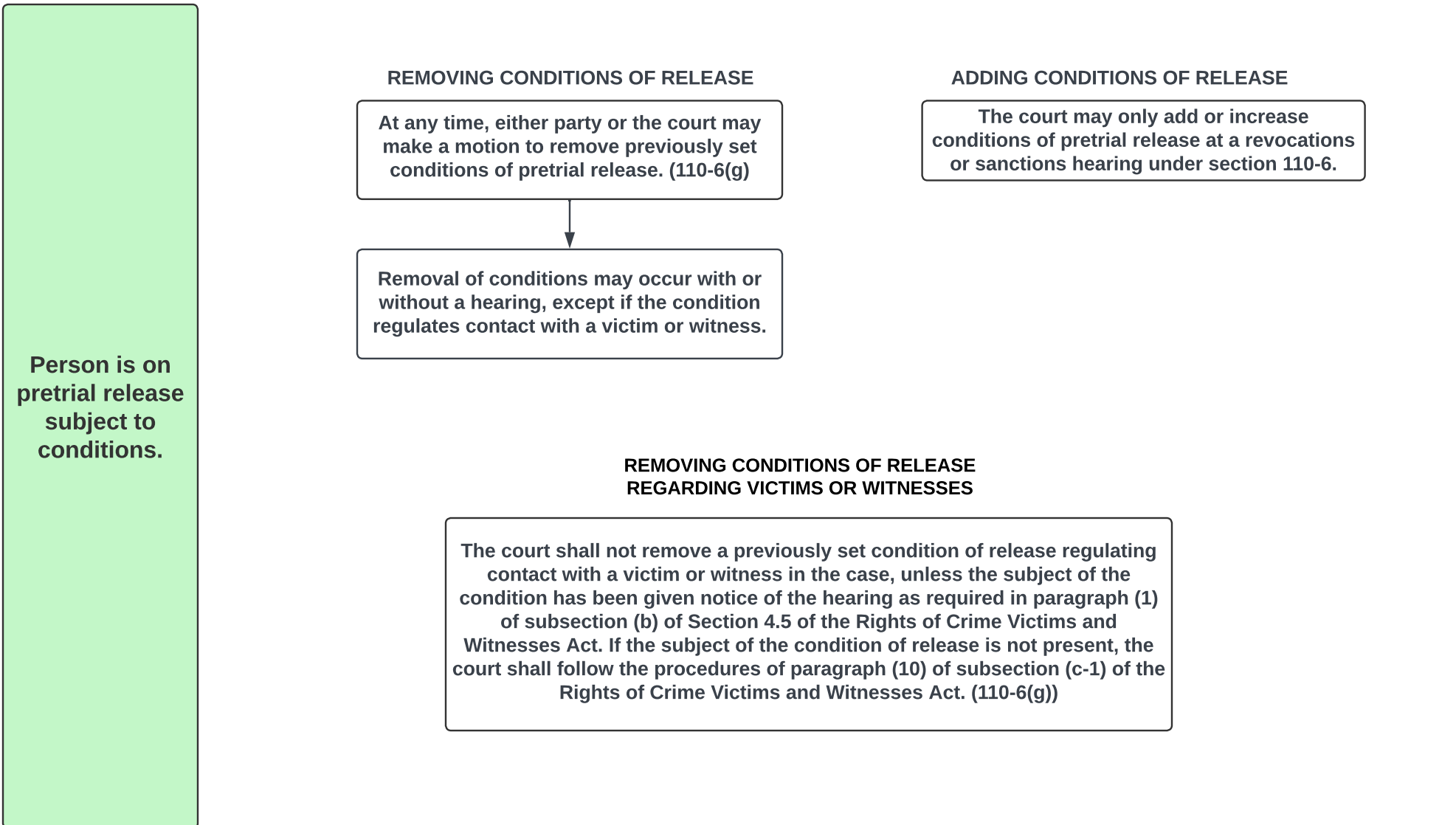


Modifying Conditions of Pretrial Release

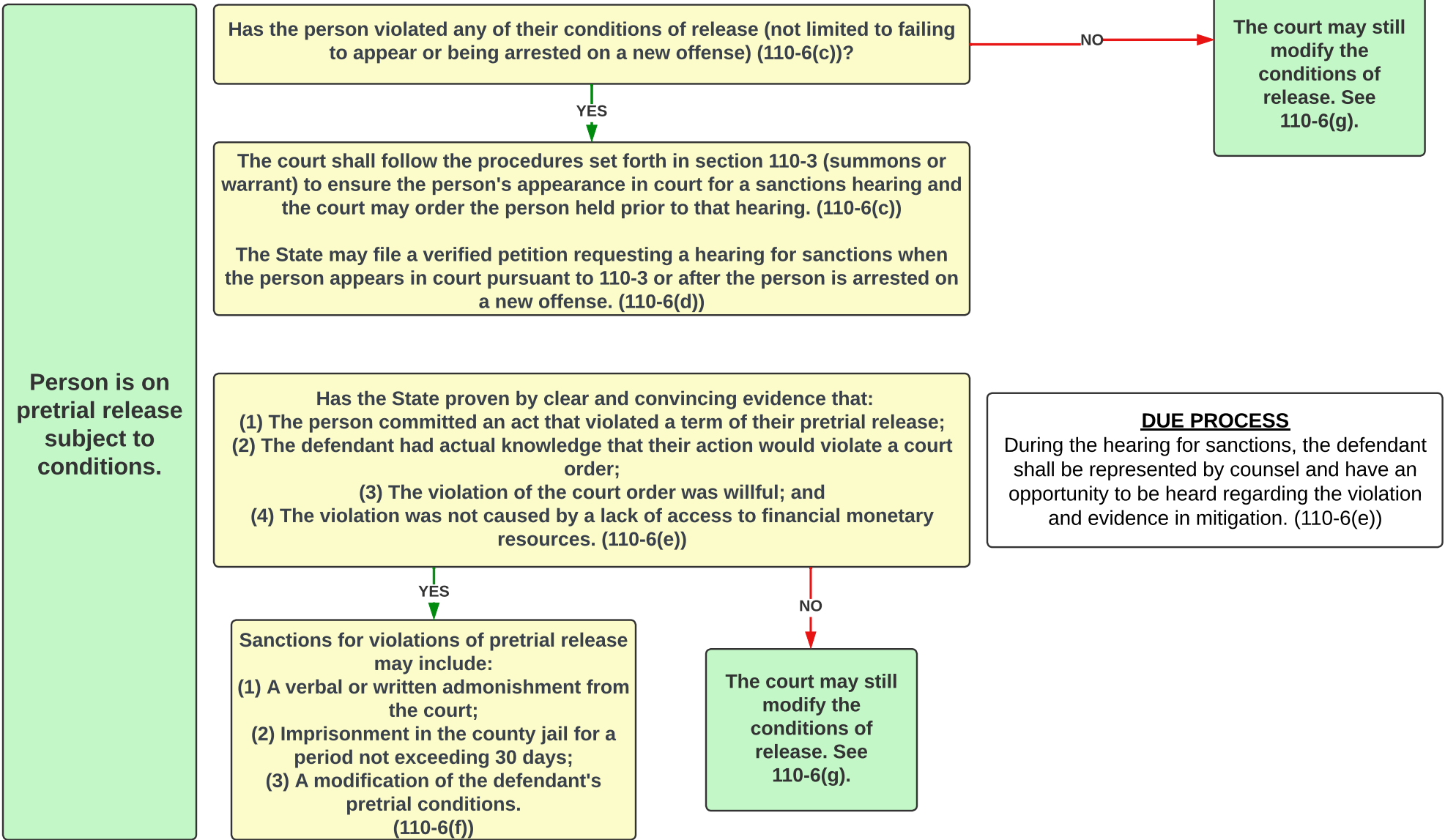


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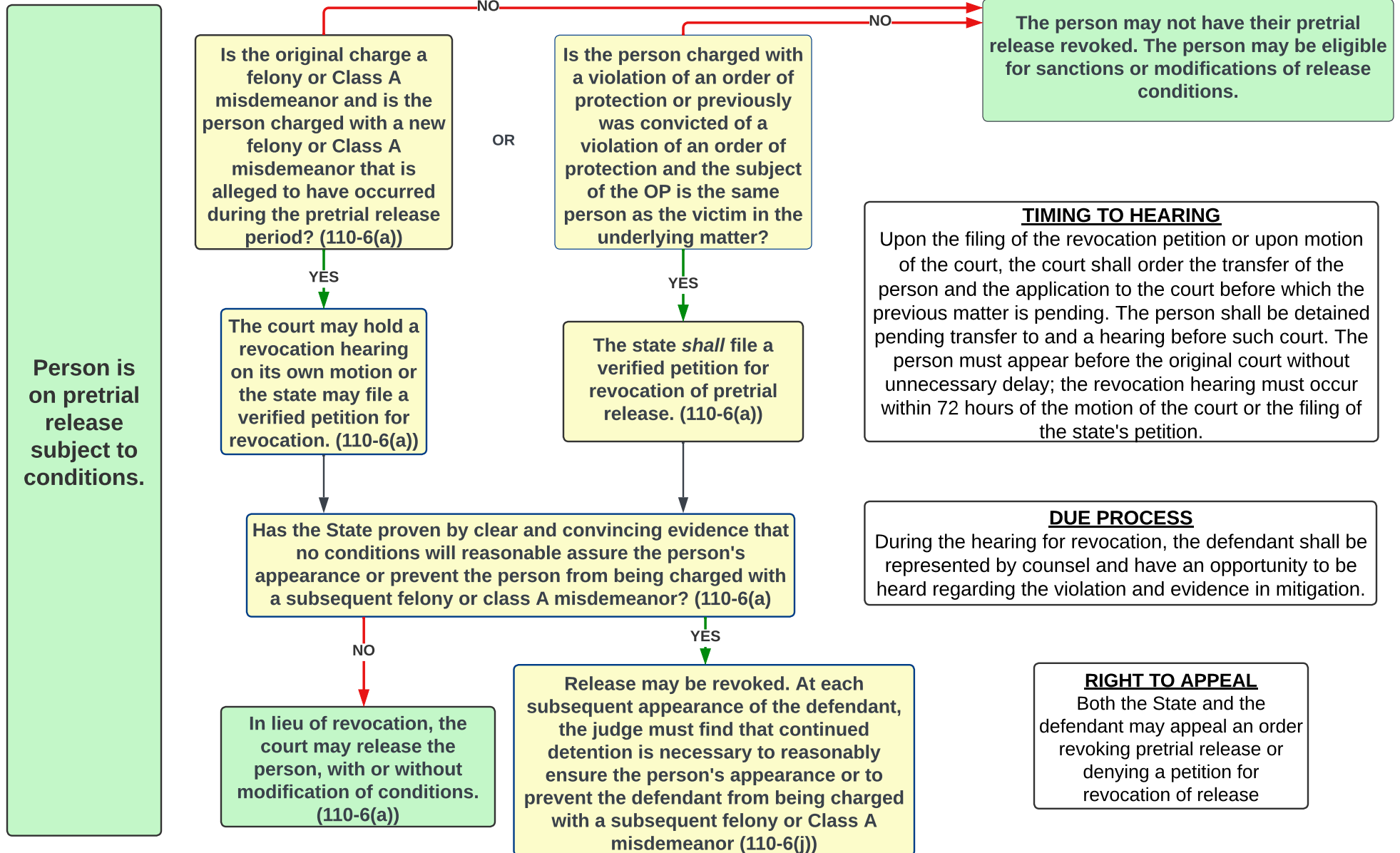
The text in the flowchart is taken directly from the law with slight editing for brevity. Please see the accompanying considerations document for exact statute language and descriptions of nuances in the law.

Sanctions for Violating Conditions of Pretrial Release



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

Revocation of Pretrial Release



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

Responding to Violations: Modifying, Sanctioning, and Revoking Pretrial Release

725 ILCS 5 Reference	Description	Considerations
Responding to Violations		
720 ILCS 5/32-10	<p><i>(The amendments deleted subsection (a) and amended c):)</i></p> <p>“(c) Whoever, having been released pretrial for appearance before any court of this State for a felony, Class A misdemeanor or a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963, is charged with any other felony, Class A misdemeanor, or a criminal offense in which the victim is a family or household member as defined in Article 112A of the Code of Criminal Procedure of 1963 while on this release, must appear before the court and may not be released by law enforcement under 109-1 of</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none">• The deletion of subsection (a) means that someone who violates their conditions of pretrial release cannot be charged with a new separate criminal offense for the fact of that violation.• Subsection (c) mandates custody for rearrests relating to domestic violence charges.

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725 ILCS 5 Reference	Description	Considerations
	the Code of Criminal Procedure of 1963 prior to the court appearance.”	
Responding to Electronic Monitoring Violations		
730 ILCS 5/5-8A-4.1	<p>“(a) A person charged with a felony ... who knowingly escapes or leaves from the geographical boundaries of an electronic monitoring or home detention program with the intent to evade prosecution ...is guilty of a Class 3 felony.”</p> <p>“(b) A person charged with a misdemeanor ... who knowingly escapes or leaves from the geographical boundaries of an electronic monitoring or home detention program with the intent to evade prosecution ...is guilty of a Class B misdemeanor.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> Assures that people placed on location monitoring who violate the geographical boundaries of the program are not charged with a new offense unless the violation is an attempt to abscond.
730 ILCS 5/5-8A-4.15	<p>“Failure to comply with a condition of the electronic monitoring or home detention program.</p> <p>(a) A person charged with a felony or a misdemeanor, ... who knowingly and intentionally violates a condition of the electronic monitoring or home detention program without notification to the proper authority is subject to sanctions as outlined in section 110-6.</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> These provisions specify that a person who violates the conditions of a location monitoring program is subject to sanctions under Section 110-6 (see below). They are not subject to a new offense. However, a person who intentionally damages their electronic monitoring equipment may be charged with a new felony or misdemeanor, as provided in the subsection described in the row above.

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725 ILCS 5 Reference	Description	Considerations
	(b) A person who violates a condition of the electronic monitoring or home detention program by knowingly and intentionally removing, disabling, destroying, or circumventing the operation of an approved electronic monitoring device shall be subject to penalties for escape under Section 5-8A-4.1.”	
Modifying Release Conditions		
110-6(g)	“The court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in this subsection. The court may only add or increase conditions of pretrial release at a hearing under this Section.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● To remove release conditions: Except in the circumstance of a condition regulating contact with a victim or witness (see below), either party, at any time, may file a motion asking the court to remove previously set conditions of release. <ul style="list-style-type: none"> ○ This seems to imply that the court can remove conditions without a hearing. ○ Also per section 110-5(f-5), at each appearance of a defendant on pretrial release after the initial appearance, “the judge must find that the current conditions imposed are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendant with all the conditions of pretrial release. The court is not required to be presented with new information or a change in circumstances to remove pretrial conditions.” ● To add release conditions: Conditions can be added only at a hearing under this section. ● <i>Note:</i> Under 110-5(k), either party may appeal court orders imposing release conditions.

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725 ILCS 5 Reference	Description	Considerations
110-5(d)	"When a person is charged with a violation of a protective order, the court may order the defendant placed under electronic surveillance as a condition of pretrial release, as provided in Section 5-8A-7 of the Unified Code of Corrections, based on the information collected under paragraph (6) of subsection (a) of this Section, the results of any assessment conducted, or other circumstances of the violation."	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> This subsection allows the court to add the condition of electronic surveillance as a condition of pretrial release, if the person violates a protective order.
110-6(g)	"The court shall not remove a previously set condition of pretrial release regulating contact with a victim or witness in the case, unless the subject of the condition has been given notice of the hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act. If the subject of the condition of release is not present, the court shall follow the procedures of paragraph (10) of subsection (c-1) of the Rights of Crime Victims and Witnesses Act."	<u>Operational Considerations</u> <ul style="list-style-type: none"> The court may not remove a condition regulating contact with a victim or witness without a hearing, and the victim/witness must be given notice of the hearing.
Request for Sanctions		
110-6(b)	"If a defendant previously has been granted pretrial release under this Section for a Class B or Class C misdemeanor offense, a petty or business offense, or an ordinance violation and if the defendant is subsequently charged with a felony that is alleged to have occurred during	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> This subsection makes clear that revocation is <i>not</i> available for someone on pretrial release for a Class B misdemeanor or lower offense. Sanctions <i>are</i> available. Sanctions are also available for the circumstances available in subsection (c) below: basically, the State can request sanctions for

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725 ILCS 5 Reference	Description	Considerations
	the defendant's pretrial release or a Class A misdemeanor offense that is alleged to have occurred during the defendant's pretrial release, such pretrial release may not be revoked, but the court may impose sanctions under subsection (c)."	violation of any release condition (e.g., failure to appear, new arrest, any other violation)..
110-6(c)	<p>"The court shall follow the procedures set forth in Section 110-3 to ensure the defendant's appearance in court if the defendant:</p> <p>(1) fails to appear in court as required by the defendant's conditions of release;</p> <p>(2) is charged with a felony or Class A misdemeanor offense that is alleged to have occurred during the defendant's pretrial release after having been previously granted pretrial release for a Class B or Class C misdemeanor, a petty or business offense, or an ordinance violation that is alleged to have occurred during the defendant's pretrial release;</p> <p>(3) is charged with a Class B or C misdemeanor offense, petty or business offense, or ordinance violation that is alleged to have occurred during the defendant's pretrial release; or</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● This subsection first instructs the court to follow the procedures in Section 110-3 to get the defendant to appear in court. ● The final paragraph of this subsection also allows the court to issue a warrant specifying that the defendant must appear before the court for a hearing for sanctions and may not be released by law enforcement before that appearance. <ul style="list-style-type: none"> ○ It is unclear whether the state must still file a petition for a sanctions hearing if the court elects this process. ○ It is also unclear whether the state may request sanctions at a hearing, without first filing a petition.

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	<p>(4) violates any other condition of pretrial release set by the court.</p> <p>In response to a violation described in this subsection, the court may issue a warrant specifying that the defendant must appear before the court for a hearing for sanctions and may not be released by law enforcement before that appearance.”</p>	
110-6(d)	<p>“When a defendant appears in court pursuant to a summons or warrant issued in accordance with Section 110-3 or after being arrested for an offense that is alleged to have occurred during the defendant's pretrial release, the State may file a verified petition requesting a hearing for sanctions.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● To trigger a hearing for sanctions, it seems that the State must file a verified petition requesting such a hearing. <i>(But see the notes about section 110-6(c) above)</i> ● The State may file such a petition in two circumstances: <ul style="list-style-type: none"> ○ When the defendant appears in court after a summons or warrant issued under Section 110-3, or ○ After the defendant is arrested for any offense during their pretrial release. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● This subsection seems to suggest that a petition requesting a hearing for sanctions cannot be filed until the defendant appears in court after a summons or warrant. So, the person may appear in court per the summons or warrant, the State may file a petition for sanctions, and the parties may be asked to review the petition on its merit immediately. ● All parties must be prepared to review the petition for sanctions and discuss it on its merits at the immediate hearing.

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725 ILCS 5 Reference	Description	Considerations
Sanctions Hearing		
110-6(e)	<p>“During the hearing for sanctions, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. The State shall bear the burden of proving by clear and convincing evidence that:</p> <p>(1) the defendant committed an act that violated a term of the defendant’s pretrial release;</p> <p>(2) the defendant had actual knowledge that the defendant’s action would violate a court order;</p> <p>(3) the violation of the court order was willful; and</p> <p>(4) the violation was not caused by a lack of access to financial monetary resources.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● Burden of proof is on the State. ● Standard of proof is clear and convincing evidence to prove (1) through (4). <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● Due process for the defendant for the sanctions hearing: <ul style="list-style-type: none"> ○ Defendant shall be represented ○ Defendant shall have an opportunity to be heard and present evidence in mitigation
110-6(f)	<p>“Sanctions for violations of pretrial release may include:</p> <p>(1) a verbal or written admonishment from the court;</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● This subsection is the only place in the PFA where the term “imprisonment” is used. That is a term that usually refers to a sentence upon conviction. It is concerning to public defenders and others that this subsection authorizes a sentence to jail when there is no conviction.

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725 ILCS 5 Reference	Description	Considerations
	<p>(2) imprisonment in the county jail for a period not exceeding 30 days;</p> <p>(3) [blank]; or</p> <p>(4) a modification of the defendant's pretrial conditions."</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> Many pretrial services agencies have a decision matrix that recommends appropriate sanctions, based on the risk level of the person and the severity of the violation. County stakeholders should discuss if their pretrial services agency has such a matrix and its relevance to the sanctions procedure outlined here.
Revocation of Pretrial Release		
110-6(a)	<p>"When a defendant has previously been granted pretrial release under this Section for a felony or Class A misdemeanor, that pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release after a hearing on the court's own motion or upon the filing of a verified petition by the State."</p> <p>"When a defendant released pretrial is charged with a violation of a protective order or was previously convicted of a violation of a protective order and the subject of the protective order is the same person as the victim in the current underlying matter, the State shall file a verified petition seeking revocation of pretrial release."</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> This subsection makes clear that revocation of pretrial release is available only in two circumstances: <ol style="list-style-type: none"> For a person who is on pretrial release for a felony or Class A misdemeanor and is charged with a new felony or Class A misdemeanor that is alleged to have occurred while the person is on pretrial release. In the circumstances described regarding a violation of a protective order. In the first circumstance, the revocation may be initiated by the court or by the State. If by the State, the State must file a verified petition to revoke. In the second circumstance, the State is <i>required</i> to file a petition for revocation. There is no discretion. <i>Note:</i> See subsection (i) below, which seems to make clear that even if the circumstance is not eligible for revocation, the State may still file a petition to detain in eligible circumstances.

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		<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● Regarding the second circumstances, State’s attorneys may not be aware of violations of protective orders from one county to the next. ● Victims sometimes ask for support from their partner, which leads to a violation; but the State is still required to file a petition.
110-6(a)	<p>“Upon the filing of a petition or upon motion of the court seeking revocation, the court shall order the transfer of the defendant and the petition or motion to the court before which the previous felony or Class A misdemeanor is pending. The defendant may be held in custody pending transfer to and a hearing before such court. The defendant shall be transferred to the court before which the previous matter is pending without unnecessary delay, and the revocation hearing shall occur within 72 hours of the filing of the State’s petition or the court’s motion for revocation.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● This subsection seems to require an automatic hold and transfer of the case to the court in which the original case was heard when the State or court seeks revocation. ● The revocation hearing must occur within 72 hours of the request for revocation. ● This presumes that the person was held in custody on the new charge and not released by citation or from custody under section 109-1. ● If the person’s new charge is in a different county from the earlier charge, stakeholders must discuss who is responsible for transporting the person to the court before which the previous matter is pending. This transportation issue may cause a problem for leanly staffed sheriff’s offices. See also sections 109-2(d), (e), which addresses out of county warrants. ● The 72-hour timeline may cause problems for rural counties and others that do not hold court on a daily basis. Those counties will need to discuss how to strive for compliance with this timeline. ● The process outlined in this subsection may conflict with the process for handling the new offense. However, in most instances, the initial appearance on the new offense will address the release conditions and then the person must be held and within 72 hours be brought before the court that handled the original case to hear the revocation petition.

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725 ILCS 5 Reference	Description	Considerations
Revocation Hearing		
110-6(a)	<p>“A hearing at which pretrial release may be revoked must be conducted in person (and not by way of two-way audio-visual communication) unless the accused waives the right to be 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><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● If the accused waives the right to be present in court, must their defense counsel be present in court? <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● The default is that the revocation hearing be in-person. ● There are standard exceptions: <ul style="list-style-type: none"> ○ The accused waives the right to be present 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. ○ Chief judge of the circuit allows for virtual proceedings due to operational challenges.
110-6(a)	<p>“The court before which the previous felony matter or Class A misdemeanor is pending may revoke the defendant's pretrial release after a hearing. During the hearing for revocation, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. The court shall consider all relevant circumstances,</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● Revocation is not allowed until after a hearing. ● Due process for the revocation hearing: <ul style="list-style-type: none"> ○ Person must be represented by counsel ○ Person must have the opportunity to be heard regarding the violation and present evidence in mitigation ● Burden of proof is on the State

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725 ILCS 5 Reference	Description	Considerations
	including, but not limited to, the nature and seriousness of the violation or criminal act alleged. The State shall bear the burden of proving, by clear and convincing evidence, that no condition or combination of conditions of release would reasonably ensure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.”	<ul style="list-style-type: none"> ● Standard of proof is clear and convincing evidence that no condition or combination of conditions would reasonably ensure: <ul style="list-style-type: none"> ○ the appearance of the defendant for later hearings, or ○ prevent the defendant from being charged with a subsequent felony or Class A misdemeanor
110-6(a)	“In lieu of revocation, the court may release the defendant pre-trial, with or without modification of conditions of pretrial release.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● If the court decides against revocation, the court may modify the person’s release conditions. ● Although not stated here, it seems the State may also seek sanctions for someone otherwise eligible for revocation. It is unclear whether the court can sanction the defendant instead of revoking their release at this hearing; sanctions require a different standard of proof.
110-6(a)	“If the case that caused the revocation is dismissed, the defendant is found not guilty in the case causing the revocation, or the defendant completes a lawfully imposed sentence on the case causing the revocation, the court shall, without unnecessary delay, hold a hearing on conditions of pretrial release pursuant to Section 110-5 and release the	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● If the person’s release is revoked, and then if the person’s new case is dismissed, or the person is found not guilty of the new case, or the person completes an imposed sentence for that new case, the court <i>must</i> hold a hearing on conditions of release and release the person on the original or modified conditions of release. ● How does this hearing get triggered? By the court? Upon motion of defense counsel?

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725 ILCS 5 Reference	Description	Considerations
	defendant with or without modification of conditions of pretrial release.”	
110-6(a)	“Both the State and the defendant may appeal an order revoking pretrial release or denying a petition for revocation of release.”	<u>Operational Considerations</u> <ul style="list-style-type: none"> ● The revocation decision is appealable by both parties. ● The Supreme Court will be issuing a new rule about the appeals process. ● This will likely create a new demand for the prompt appellate review of revocation decisions. ● 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.
110-6(i)	“Nothing in this Section shall be construed to limit the State's ability to file a verified petition seeking denial of pretrial release under subsection (a) of Section 110-6.1 or subdivision (d)(2) of Section 110-6.1.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> ● This subsection makes clear that even if the circumstance is not eligible for revocation, the State may still file a petition to detain in eligible circumstances.
110-6(j)	“ At each subsequent appearance of the defendant before the court, the judge must find that continued detention under this Section is necessary to reasonably ensure the appearance of the defendant for later hearings or to prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> ● This subsection seems to apply after a defendant’s pretrial release is revoked, and it requires the Court to continue to examine whether detention is necessary.
Protecting Victims		

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725 ILCS 5 Reference	Description	Considerations
110-6(h)	"Crime victims shall be given notice by the State's Attorney's office of all hearings under this Section as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at these hearings to obtain a protective order."	<u>Operational Considerations</u> <ul style="list-style-type: none">• Crime victims must be given notice of all revocation, sanction, and modification hearings under this section.• 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)).

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