THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. 132652

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT IN SUPPORT OF RULE 604(h) APPEAL

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NATURE OF THE CASE

Johnny Williams, Defendant-Appellant, appeals from a circuit court judgment under the pretrial release statute. The court issued its judgment on July 25, 2025. On August 18, 2025, Defendant-Appellant filed a motion for relief, which was denied on August 21, 2025.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether the requirement that the State timely file a petition to deny pretrial release under 725 ILCS 5/110-6.1(c)(1) is mandatory or directory.

STATUTES INVOLVED

725 ILCS 5/110-2 (West 2022). Pretrial release.

(a) All persons charged with an offense shall be eligible for pretrial release before conviction. It is presumed that a defendant is entitled to pretrial release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense, and complies with all terms of pretrial release . . . . 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.

. . .

(e) This Section shall be liberally construed to effectuate the purpose of relying on pretrial release by nonmonetary means to reasonably ensure a 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.

725 ILCS 5/110-6.1. Denial of pretrial release.

(a) Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release . . .

. . .

(c) Timing of petition (West 2022).

> (1) 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.
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> (2) 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 of 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.

STATEMENT OF FACTS

On December 18, 2024, the State charged Johnny Williams with nine counts of predatory criminal sexual assault of a child and four counts of aggravated criminal sexual abuse; all counts alleged conduct that took place between January 1, 2023, and May 12, 2024, that involved a minor, A.M. (C. 6-18.) At the time charges were brought, Williams was in the Illinois Department of Corrections ("IDOC") serving a sentence on an unrelated matter, and had been since May 15, 2024; his projected release date was August 1, 2025. (C. 51.)[1]

On January 16, 2025, Williams appeared before the trial court in this case on a writ from IDOC. (Sup. R. 4-5.) The State did not petition to deny Williams pretrial release. (Sup. R. 5-7.)

On May 22, 2025 – four months later, and two months before his projected release date from IDOC – the State petitioned to deny Williams pretrial release, noting that Williams was currently in IDOC custody for an MSR violation in a different case. (C. 60, 63.) On July 23, 2025, Williams moved to strike the State's petition as untimely because it was filed four months after Williams' first appearance in the case. (C. 76-77.) Williams noted that under Section 5/110-6.1(c)(1), the State was required to file any petition to deny pretrial release at Williams' first appearance or within 21 days "after arrest and release of the defendant." (C. 76.) Williams argued that he "was released back to" IDOC at his first appearance, more than 21 days had passed since, and the State's petition was untimely. (C. 76-77.)

On July 23, 2025, the State filed a response to the motion to strike, arguing

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[1]Specifically, Williams was serving a term of reconfinement or recommitment for a violation of a condition of a mandatory supervised release term. *See* 730 ILCS 5/3-3-9(a)(3).

that its petition was timely filed under Section 110-6.1(c)(1). (C. 79-80.) In the alternative, the State argued that the timely filing requirement of that Section was directory, rather than mandatory, citing *People v. Cooper*, 2025 IL 130946, which found that the 48-hour hearing requirement in Section 110-6.1(c)(2) was directory. (C. 80-81.) It argued that because the timely filing requirement was directory, Williams could not obtain relief unless he was prejudiced by the untimely filing, and he was not prejudiced because he was and would continue to be in IDOC custody until two months after filing. (C. 81.)

On July 25, 2025, the court heard Williams' motion to strike. (R. 2-3.) After oral argument, it denied the motion, holding that the timely filing requirement of Section 110-6.1(c)(1) was directory and that Williams was not prejudiced by the State's four-month delay. (R. 17.) The court then heard and granted the State's petition to deny pretrial release, and ordered Williams detained pending trial. (R. 18, 27; C. 85.)

On August 18, 2025, Williams filed a motion for relief from the trial court's order, arguing that the trial court erred in denying his motion to strike the State's petition to deny pretrial release, because the timely filing requirement of Section 110-6.1(c)(1) was mandatory. (C. 93-94.) The trial court heard and denied the motion for relief on August 21, 2025. (R. 30-40.)

Williams appealed, (C. 98), claiming that the trial court erred in denying his motion to strike the State's petition to deny pretrial release as untimely. The appellate court agreed that the State's petition to deny pretrial release was untimely. *People v. Williams*, 2025 IL App (2d) 250370, ¶ 35. However, it concluded that the timely filing requirement of Section 110-6.1(c)(1) was directory, rather than mandatory:

> "A directory reading of section 110-6.1(c)(1) would not defeat defendant's right to a prompt and orderly detention procedure with individualized assessment of dangerousness without 'the practice of detaining those charged with a crime who did not pose a threat to their community or a risk of flight but could not afford to pay a money bail.' [*People v. Cooper*, 2025 IL 130946, ¶ 37.] But if we were to read section 110-6.1(c)(1) as mandatory, we would certainly 'defeat the community's expectation that public safety will be considered.'" *People v. Williams*, 2025 IL App (2d) 250370, ¶ 44, quoting *People v. Cooper*, 2024 IL App (4th) 240589-U, ¶ 29, 2024 WL 3341336 (Doherty, J., dissenting).

The court found that Williams was not prejudiced by the State's delay in filing, although it did "not condone the state's violation of this provision, which was included in the acts by the legislature 'to secure order, system, and dispatch' (*French*[*v. Edwards*], 80 U.S. [506,] 511 [1871])." *Id.* ¶ 46. It affirmed the grant of the petition to deny Williams pretrial release. *Id.* ¶ 58.

No petition for rehearing was filed.

This Court granted leave to appeal on January 29, 2026.

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.

The State filed its petition to deny pretrial release four months after Johnny William's first appearance – far outside the 21-day window prescribed in Section 110-6.1(c)(1) of the Pretrial Fairnes Act (the "Act"). The courts below agreed that the petition to detain was untimely filed, but relied on *People v. Cooper*, 2025 IL 130946, to find that the timing requirement in Section 110-6.1(c)(1) was directory rather than mandatory. This finding was erroneous. Unlike the 48-hour rule on holding a detention hearing at issue in *Cooper,* the 21-day rule for filing a petition to detain is mandatory because the rights that the statutory provision protects will be "generally injured under a directory reading." *Cooper,* 2025 IL 130946, ¶ 33. A mandatory reading also upholds the purposes of the Act, which provides a detailed scheme that balances the interest of defendants and the safety of the community.

In determining the meaning of Section 110-6.1(c)(1), this Court must ascertain the purposes in enacting the timing provision within the structure of the Act, the importance the General Assembly assigned to those purposes, the harms that would come from a mandatory or directory reading, and determine whether the General Assembly intended that a mandatory or directory reading would "properly balance[]" those multiple "purposes." *Id*. ¶ 39; accord *People v. Partee*, 125 Ill. 2d 24, 40-41 (1988). The appeal therefore turns on the interpretation of statutes and caselaw, which presents purely legal questions, subject to *de novo* review. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 154 (2007) (issues involving "the selection, interpretation, and application of legal precepts " are reviewed *de novo*); see also *People v. Geiler*, 2016 IL 119095, ¶ 17 ("Whether an obligation is mandatory or directory is a question of construction subject to *de novo* review.").

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 Act abolished monetary bail in favor of a presumption of pretrial release on personal recognizance or with conditions of release (725 ILCS 5/110-1.5, 110-2(a) (West 2022)). *Cooper*, 2025 IL 130946, ¶ 18. In order for a defendant to be detained, State must file a verified petition stating 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." 725 ILCS 5/110-6.1(d)(1) (West 2022). The State bears the burden of proving by clear and convincing evidence that (1) the proof is evident or presumption great that defendant committed a detainable offense; (2) defendant poses a real and present threat to any person, persons, or the community or is a flight risk; and (3) no conditions could mitigate this threat 110-6.1(a). *Cooper*, 2025 IL 130946, ¶ 19. The Act also requires that "[d]ecisions regarding release, conditions of release, and detention prior to trial must be individualized, and not single factor or standard may be used exclusive to order detention." 725 ILCS 5/110-6.1(f)(7) (West 2022). Finally, as this Court recognized in *Cooper*, the Act has a dual purpose of "focusing on individualized assessment to ensure *both* public safety and fair outcomes, while ensuring that defendants are released pretrial unless there is clear and convincing evidence that they pose a risk of flight or a threat to others. *Cooper*, 2025 IL 130946, ¶ 37 (emphasis in original) (citing 725 ILCS 5/110-2(e)) (West 2022).

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.

The Act strictly limits the time in which the State can seek to deny pretrial release. Pretrial release can be denied "only" "[u]pon verified petition by the State." 725 ILCS 5/110-6.1(a) (West 2022). Under 725 ILCS 5/110-6.1(c) (West 2022), entitled "[t]iming of petition":

> "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." 725 ILCS 5/110-6.1(c)(1) (West 2022).

Johnny Williams was in the Illinois Department of Corrections (IDOC) serving a sentence unrelated to the instant case, when on December 18, 2024, the State charged him with several counts of predatory criminal assault of a child and aggravated criminal sexual assault of a child. (C. 6-18.) On January 16, 2025, Williams appeared before the trial court on a writ from IDOC for arraignment. Relying on *People v. Clark*, 2024 IL 130364, ¶ 26, the appellate court held that Williams' "first appearance" occurred on January 16, 2026, and because the State elected not to file a petition to detain on the new charges, constituted his release. *People v. Williams*, 2025 IL App (2d) 250370, ¶ 35. Accordingly, the 21-day period to file the petition to detain began on January 16, 2025, and the State's petition, which was not filed until May 22, 2025, was untimely. *Id.* ¶ 35.

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.

While the appellate court correctly found that the petition was untimely filed, it erred when it applied *Cooper's* mandatory/directory analysis to determine the consequences of noncompliance with the 21-day filing requirement, and concluded that the provision was directory. *Williams*, 2025 IL App (2d) 250370, ¶¶ 37-47. Specifically, in *Cooper*, 2025 IL 130946, ¶ 29, this Court held that Section 110-6.1(c)(2)'s requirement that upon a granting of a continuance, a detention hearing "shall be held within 48 hours of the defendant's first appearance . . ." was directory, and that a violation of the timing requirement did not result in the automatic dismissal of the petition to detain if the defendant could not demonstrate prejudice. *Id.* ¶¶ 40-46.

In reviewing the statutory provision in *Cooper*, this Court explained that whether a timing requirement is mandatory or directory relates to the consequences when the State violates that provision. *Id.* ¶ 32. If the requirement is mandatory, the failure to comply will invalidate the government action to which the timing requirement applies. *Id.* ¶ 32. If it is directory, there is no automatic remedy and the defendant must show prejudice from the violation. *Id.*

While there is a presumption that statutory language issuing a procedural command to a government official is directory, rather than mandatory, that presumption is overcome "only if (1) negative language in the statute or rule prohibits further action in the case of noncompliance or (2) the right the statute or rule is designed to protect would generally be injured under a directory. *Id.* ¶ 33. Additionally, a rule is often part of a statutory scheme that is designed to "properly balance[ ]" multiple "purposes" that are at odds with one another. *Id.* ¶ 39; accord *People v. Partee,* 125 Ill. 2d 24, 40 (1988) (requirement that court admonish defendant regarding possibility of trial *in absentia* was "part of a complex series of tradeoffs designed to balance" a defendant's rights and the State's interests). Thus, to determine the legislature's intent in enacting a rule "a court may consider

. . . the reason and necessity for the law, the problems sought to be remedied, the purpose to be achieved, and the consequences of construing the statute one way or another." *Cooper*, 2025 IL 130946, ¶ 27.

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 to balance these rights with the goal of protecting the community.

Like the timing provision in *Cooper*, Section 5/110-6.1(c)(1) "does not specify a consequence for noncompliance with the timing requirement and does not contain any negative language prohibiting detention or further action in the case of noncompliance." *Cooper*, 2025 IL 130946, ¶ 34. Nonetheless, 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, the rule is mandatory.

The purpose of the Act "is to effectuate the goal of utilizing pretrial release by nonmonetary means to reasonably ensure an eligible person's appearance in court, the safety of the community, and compliance with the law and with pretrial conditions, while authorizing the court, upon motion of the prosecutor, to detain when it finds by clear and convincing evidence that no condition or combination of conditions can reasonably ensure those goals." *People v. Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 17. This reflects a sound balancing of interests - those of the defendant and those of the public - and a directory reading of the Act would generally injure the rights of defendants on pretrial release while a mandatory reading will protect those rights while ensuring public safety.

The 48-hour time limit to hold the detention hearing after a request for a continuance in *Cooper* is distinguishable from the 21-day time limit for the State to file a petition to detain after a defendant is released and there are important rights that will be injured under a directory reading of the 21-day provision that are not present in the 48-hour requirement. The General Assembly gave the State discretion to restrict a defendant's liberty and the 21-day requirement to file a detention petition is a legitimate limit on the State's use of this discretion. Indeed, the 21-day requirement provides sufficient time for the State to file a petition and it will not be burdened by this requirement in the same way it would by a mandatory reading of the 48-hour rule. And in the rare instance when the State inadvertently fails to file a petition to detain within 21 days, public safety is still assured given that the Act imposes mandatory conditions of pretrial release. 725 ILCS 5/110 *et seq*. (West 2022).

While Section 110-6.1(c)(1) states only that "[a] petition may be filed" at the prescribed times, the "may" refers to the discretion the State has to file or not file a petition to detain. It would be counterintuitive for the General Assembly to specify times at which the State "may" file a petition if it intended that the State could file a petition at any time. 725 ILCS 5/110-6.1(c)(1) (West 2022). Otherwise, it would not have bothered to specify particular times at which the State could file. See *In re. C.C.*, 2011 IL 111795, ¶ 34 ("When a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation."). Nor is the use of the words "may" or "shall" determinative on whether a rule is directory or mandatory where, for instance, in *Cooper*, this Court found that despite the Section 110-6.1(c)(2)'s use of the word "shall", the rule was not mandatory. *Cooper*, 2025 IL 130946, ¶ 31.

Additionally, unlike Section 110-6.1(c)(2), Section 110-6.1(c)(1)'s timing requirement promotes three important purposes: (1) ensuring that a defendant who has been released is not left in an indefinite state of uncertainty regarding their detention status as they prepare for trial, (2) giving the State an incentive to use its discretion quickly against legitimately dangerous or flight-prone defendants and (3) discouraging the use of that power as an abusive litigation tactic. None of these considerations were implicated by the 48-hour timing requirement in *Cooper*, where the defendant merely argued that any delay would thwart his liberty interest. *Cooper*, 2025 IL 130946, ¶ 36.

(1) A mandatory reading of Section 110-6.1(c)(1)'s timing requirement protects a defendant's interest in avoiding an ongoing "state of uncertainty" regarding their detention status prior to trial.

The benefits of being on pretrial release go beyond not being physically in jail: when released, a defendant can meet with their attorney, seek employment, education, and housing (subject to conditions of pretrial release that are imposed by the court). All of these things, and planning generally, are easier when the threat of detention is no longer a concern. The timely-filing requirement serves to protect a defendant's interest in avoiding an ongoing "state of uncertainty" regarding their detention status prior to trial, ensuring that the defendant can live their life and "prepare for trial" in an orderly fashion. *In re M.I.*, 2013 IL 113776, ¶ 25.

The Act also emphasizes that "a defendant is entitled to release on personal recognizance" subject to pretrial release conditions. 725 ILCS 5/110-2(a), (e) (West 2022). This general preference for release is reflected in the structure of the Act. The Act limits both the occasions on which a defendant can be detained, and which actors can do so. The most stringent limits affect the denial of pretrial release: only the State can initiate the process, at the defendant's first appearance in court or within 21 days of the defendant's "release," and the State must show an unmitigable threat to safety or high likelihood of willful flight. 725 ILCS 5/110-6.1(a), (c)(1), (e) (West 2022). In contrast, revocation of pretrial release has less stringent limitations, which the court can initiate *sua sponte* whenever a defendant on release is charged with a felony or Class A misdemeanor, and only requires a showing that detention is necessary to reasonably ensure the defendant's future appearance and prevent future charges. 725 ILCS 5/110-6(a) (West 2022). Given this structure, the 21-day time limit for filing a detention petition delineates when a defendant is no longer under the threat of possible detention and can be reasonably confident that they will be able to remain on release while preparing for trial. Under a directory rule, that confidence would be illusory.

(2) A mandatory reading of Section 110-6.1(c)(1)'s timing requirement incentives the State to act expeditiously in seeking the detention of potentially dangerous of flight-prone defendants.

Additionally, Section 110-6.1(c)(1) incentivizes the State to act expeditiously against potentially dangerous or flight-prone defendants. Compare *People v. Shinaul*, 2017 IL 120162, ¶ 17 (purposes of criminal statute of limitations include "to provide an incentive for swift governmental action in criminal cases"). In order to deny pretrial release, the State must show by clear and convincing evidence that a defendant poses a "real and present threat to . . . safety" or a "high likelihood of willful flight." 725 ILCS 5/110-6.1(a) (West 2022). If the State genuinely believes that a defendant satisfies either criterion and warrants detention, the 21-day period provides sufficient time to seek detention while ensuring public safety.

(3) A mandatory reading of Section 110-6.1(c)(1)'s timing requirement protects against the possibility of abusive litigation tactics.

Further, there is no question that the State "possesses great power and resources" compared to an individual defendant. *People v. Goodwin*, 2017 IL App (5th) 140432, ¶ 14 (internal quotation marks omitted). This power it tempered by Section 110-6.1(c)(1)'s timing requirement, which ensures that the decision to seek pretrial detention is based on an assessment of a defendant's dangerousness or likelihood of willful flight, rather than dissatisfaction about the progress of litigation. In doing so, it safeguards against the potential for abusive practices.

For instance, if a defendant filed a motion to suppress, the State could respond by filing a petition to deny pretrial release, suspecting that the defendant might be less willing to pursue the motion if this means he would be spending additional time in jail. *See* 725 ILCS 5/110-6.1(i) (West 2022) (90-day period for trial while detained "shall omit any period of delay resulting from a continuance granted at the request of the defendant."). Similarly, where a defendant refuses to accept the State's plea offer, the State could file a petition to deny pretrial release in order to pressure the defendant to immediately end the case. In *In re M.I.*, this Court recognized the importance of limiting abusive pretrial litigation tactics but held that the defendant's reading of the Extended Juvenile Jurisdiction statute would not have prevented the complained-of harm. *In re M.I.*, 2013 IL 113776, ¶ 26. Here though, a mandatory reading of 21-day timing requirement ensures that the State cannot use an untimely-filed detention petition as a coercive litigation tactic.

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

The purposes of the timely filing requirement would "generally be injured under a directory reading," as the interests protected, while important and systemic, are not directly associated with a traditional showing of prejudice that any defendant could demonstrate in a particular case. *Cooper,* 2025 IL 130946, ¶ 33 (quoting *People v. Geiler,* 2016 IL 119095, ¶ 18). Permitting the State to ignore the timely-filing requirement absent a showing of prejudice by a defendant would fundamentally undermine the purposes of the Act.

It is also important to recognize that none of these identifiable interests are easily associated with a showing of prejudice that a defendant could make in a particular case. *People ex rel. Agnew v. Graham*, 267 Ill. 426, 436 (1915). A time limit on the State's discretionary authority clearly affects its decisions in general, but the effect will be "necessarily unquantifiable and indeterminate." *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993) (describing structural error consideration when the right to a properly instructed jury is violated). Indeed, with regard to the lack of certainty, it will be difficult, if not impossible, for a defendant to quantify how the inability to make significant decisions while awaiting trial negatively affected him. Similarly, while the timing requirement incentivizes the State to quickly use its discretion to seek the detention of dangerous or likely-to-flee defendants, it is unclear how a particular defendant would be able to show "prejudice" relating to this purpose of the time limit.

Reducing the potential for coercive litigation tactics cannot be vindicated by prejudice where there is no available, effective mechanism to police the punitive use of detention in individual cases. In fact, there is no statutory or constitutional prohibition against a party making a motion or taking other legal action in part for litigation advantage, so long as the claim is "not frivolous" as a matter of substantive law. Ill. R. Prof. Conduct 4.4(a) ("[A] lawyer shall not use means that *have no substantial purpose other* than to embarrass, delay, or burden a third person.") (emphasis added). And even if the decision to seek detention was just a litigation tactic, it would be extremely difficult for any particular defendant to *prove* a prosecutor's motivation. See *United States v. Armstrong*, 517 U.S. 456, 465 (1996) (quoting *Wayte v. United States*, 470 U.S. 598, 608 (1985)) (defendant claiming prosecution in violation of the Equal Protection Clause must show prosecutorial policy "was motivated by a discriminatory purpose"). Thus, prejudice is almost impossible to prove when a petition to detain is filed outside of the 21-day timing requirement.

The criminal statute of limitations, which similarly places time limits on a discretionary State power to bring criminal charges, is instructive. See 725 ILCS 5/3-5 through 3-8 (West 2022). The time limit serves to encourage the State to direct its resources to the prosecution of significant cases and to ensure a case is tried before potential exculpatory evidence is lost. *Toussie v. United States*, 397 U.S. 112, 114-15 (1970); *People v. Shinaul*, 2017 IL 120162, ¶ 17. If the statute of limitations were merely directory, no showing of prejudice any particular defendant could make would be related to those purposes. While the time limit focuses the State on more serious crimes, no crime is so unimportant that a particular defendant has a *legal right* not to be charged with it. Similarly, while the time limit does serve to prevent charges after the loss of exculpatory evidence, no defendant would easily prove that he lost *exculpatory* evidence because of the

State's delay.[2]

The common feature of all these statutory purposes is that there is no reliable way to protect them *at all* without applying the rule as written in every case. This is the classic indication of an implicit mandatory rule. *Graham*, 267 Ill. at 436.

The 21-day rule is a legitimate limit on the State's discretionary power to detain defendants. However, the State has no legal duty, "mandatory or directory," to file a petition to deny pretrial release; rather, the Act grants a "permissive" power to file a petition. *Cooper*, 2025 IL 130946, ¶ 30 (quoting *People v. Ousley*, 235 Ill. 2d 299, 311 (2009)). In light of this great power, and in order to protect core liberty interests, the General Assembly limited the State's discretion: if the State files a petition, it must do so at the "first appearance before a judge, or within the 21 calendar days" after the defendant's release in the case. 725 ILCS 5/110-6.1(c)(1). This limitation was a deliberate choice by General Assembly where prior to the abolition of cash bail, Illinois allowed detention for defendants charged with certain eligible offenses prior to any hearing. See 725 ILCS 5/110-4(b) (West 2022). The General Assembly was also likely aware that New Jersey, the other state to place significant limits on the use of cash bail, had since 2017 explicitly permitted prosecutors to file a motion "seeking the pretrial detention of an eligible defendant" "at any time, including any time before or after an eligible defendant's release"

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[2]Statutes of limitations are generally written to be *explicitly* mandatory. *See* 725 ILCS 5/114-1(a)(2) (West 2022) (authorizing motion to dismiss charge based upon violation of statute of limitations). The underlying purposes of the statute nonetheless illustrate *why* the legislature would make a mandatory rule. *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).

on conditions. N.J. Stat. Ann. § 2A:162-19 (West 2017); *see also* 102d Ill. Gen. Assem., House Proceedings, Dec. 1, 2022, at 61 (statements of Representative Slaughter) ("What we've seen in other states like New Jersey, which is really the only state that we can compare this to."). It nonetheless decided to impose a time limit that balances the legitimate interests of the defendants and community at large.

Twenty-one days is ample time for the State to decide if it wants to seek pretrial detention and the other provision of the Act protect the public. Filing a petition is little more than making a decision whether to seek to deny pretrial release. The petition itself need not contain a detailed factual proffer; bare-bones petitions merely reciting the relevant charge and subdivision of Section 110-6.1(a) that justifies a filing are used in courts throughout Illinois. 725 ILCS 5/110-6.1(a), (d)(1) (West 2022). The State will already have enough evidence to constitute probable cause for the charged offense at an initial appearance, and can collect more information from law enforcement both about the offense itself and any prior convictions the defendant may have, and to speak with alleged victims about any concerns they may have.

Importantly, the task of filing a petition is significantly easier than the "more substantial task" addressed in *Cooper*: *adjudicating* a petition to deny pretrial release. See *Brock v. Pierce County*, 476 U.S. 253, 261 (1986) (resolving a dispute "is a more substantial task than filing a complaint, and the Secretary's ability to complete it within 120 days is subject to factors beyond his control"). Preparing for, and holding, a hearing is more difficult than deciding on a course of action, and arranging even a summary hearing within 48-hours can sometimes be unreasonably difficult even for diligent attorneys and courts, particularly when delay might be necessary to safeguard other rights of the defendant. See, e.g., *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991) (holding that a "bona fide emergency or other extraordinary circumstance" could justify holding *Gerstein* probable cause hearing later than 48 hours after arrest). All these circumstances mean that a tight hearing deadline can be violated even where skilled attorneys and courts diligently seek to apply the law.

The General Assembly also included other provisions in the Act to protect public safety when a petition to detain is not filed and a defendant is on pretrial release. For example, in addition to mandatory conditions of release, the trial court has broad discretion to impose discretionary conditions of release, including home confinement, electronic monitoring, and no-contact orders. 725 ILCS 5/110-10 (West 2022). It also has the ability to impose sanctions for technical violations that can include up to 30-days in jail. 725 ILCS 5/110-6 (West 2022). Further, if the defendant commits a Class A misdemeanor or felony, the trial court can *sua sponte* revoke pretrial release and order immediate detention. *Id*. The availability of all of these restrictions that can be imposed on defendants on pretrial release demonstrates that the General Assembly correctly balanced public safety while allowing the State 21-days to seek pretrial detention.

Consequently, this Court should hold that Section 110-6.1(c)(1)'s 21-day filing requirement is mandatory where a directory reading of the 21-day filing requirement would undermine the purposes of Section 110-6.1(c)(1) and effectively nullify the provision. A directory reading would also impose an unwarranted and unintended change to the system of pretrial release that was included in the Act by the General Assembly. A mandatory reading balances the interests of defendants and the safety of the community, and as such, this Court should vacate the trial court's order denying Williams' motion to strike the State's untimely-filed petition to detain 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,

CAROLYN R. KLARQUIST
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COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341© certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 21 pages.

/s/ Benjamin Wimmer
BENJAMIN WIMMER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

INDEX TO THE RECORD

Common Law Record ("C") **Page**

Kane County Circuit Court THERESA E. BARREIRO ACCEPTED: 8/25/2025 10:16 AM By: DH Env #34151819

IN THE CIRCUIT COURT OF Kane COUNTY
Second JUDICIAL CIRCUIT

Theresa E. Barreiro
Clerk of the Circuit Court
Kane County, Illinois
8/25/2025 9:33 AM
FILED/IMAGED

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee, 2-25-0370

-vs-

Johnny Williams,
Defendant-Appellant.

No. 2024-CF-2627

E-FILED
Transaction ID: 2-25-0370
File Date: 8/28/2025 3:16 PM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

NOTICE OF APPEAL FROM PRETRIAL DETENTION OR RELEASE ORDER PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)

(Defendant as Appellant)

Court from which appeal is taken:

Circuit Court of Kane County.

The Judge who entered the order on the motion for relief under Rule 604(h)(2): J. Borsanti

Date of Order on Motion for Relief*: 8/21/2025

***Without an Order on a Motion for Relief, this notice of appeal is prohibited by Rule 604(h)(2).**

Date(s) of Hearing(s) Regarding Pretrial Release: 7/25/2025
8/21/2025

Court to which appeal is taken:

Appellate Court of Illinois, Second Judicial District

Name of Defendant and address to which notices shall be sent (if Defendant has no attorney):

Defendant's Name: Johnny Williams
Defendant's Address: Kane County Jail 37W755 IL Rt 38
Defendant's E-mail: St. Charles, IL 60175
Defendant's Phone:

If Defendant is indigent and has no attorney, does he or she want one appointed? ☑ Yes ☐ No

Name of Defendant's attorney on appeal (if any):

Attorney's Name: Office of the State Appellate Defender
Attorney's Address: 1 Douglas Ave, #2, Elgin Ave 60120
Attorney's E-mail:
Attorney's Phone: 847-695-8822

Name of Defendant's trial attorney (if any):

Attorney's Name: Joseph Sanchez
Attorney's Address: 37W777 Route 38, Suite 200, KCJC, St. Charles, IL 60175
Attorney's E-mail: jsanchez@kanepublicdefender.org
Attorney's Phone: 630-232-5835
Is the trial attorney a public defender? ☑ Yes ☐ No

Nature of Order Appealed (check only one):

☑ Denying pretrial release
☐ Revoking pretrial release
☐ Imposing conditions of pretrial release

Are there currently pending any other appeals in this matter by the same party under the Pretrial Fairness Act? ☐ Yes* ☑ No

***If Yes, this notice of appeal is prohibited by Rule 604(h)(11).**

I certify that everything in this NOTICE OF APPEAL FROM PRETRIAL DETENTION OR RELEASE ORDER PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Your Signature

Joseph A. Sanchez
Printed Name

6313692
Attorney # (if any)

2025 IL App (2d) 250370
No. 2-25-0370
Opinion filed December 1, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 24-CF-2627
	)	
	)	
JOHNNY WILLIAMS,	)	Honorable
	)	John A. Barsanti,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE MULLEN delivered the judgment of the court, with opinion.
Presiding Justice Kennedy and Justice Jorgensen concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Johnny Williams, appeals from orders of the circuit court of Kane County granting the State's verified petition to deny him pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023) and Public Act 102-1104, § 70 (eff. Jan. 1, 2023) (we will refer to these public acts collectively as the Acts) and denying his motion to strike the State's petition.[1] On appeal, defendant argues that the State's petition was untimely and thus should be stricken. Additionally, defendant argues that even if the State's petition is not stricken, the State failed to meet its burden of proving by clear and convincing evidence that (1) he 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 (2) no condition or combination of conditions 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. We affirm.

¶ 2 I. STATEMENT OF FACTS

¶ 3 A. Background

¶ 4 On December 18, 2024, defendant was charged by indictment with nine counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2022)), a Class X felony, and four counts of aggravated criminal sexual abuse (victim under 13 years old) (***id.*** § 11-1.60(c)(1)(i)), a Class 2 felony. These charges stemmed from defendant's sexual conduct with A.M., who was under the age of 13, from January 1, 2023, through May 12, 2024.

¶ 5 On January 3, 2025, the State filed a petition for writ of ***habeas corpus*** to prosecute. An order issuing the writ was entered the same day. On January 16, 2025, defendant appeared before the trial court in the custody of the Illinois Department of Corrections (IDOC). At this appearance, defendant was removed from the courtroom due to an outburst.

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[1]Public Act 101-652 (eff. Jan. 1, 2023), which amended article 110 of the Code, has been referred to as the "Pretrial Fairness Act" and the "Safety, Accountability, Fairness, and Equity-Today (SAFE-T) Act." However, neither title is official. ***Rowe v. Raoul***, 2023 IL 129248, ¶ 4 n.1.

¶ 6 On January 23, 2025, defendant again appeared before the trial court in IDOC custody. Defendant was arraigned on this date. Further, defendant elected to represent himself *pro se* and demanded trial. A jury trial was set for April 24, 2025.

¶ 7 On February 27, 2025, defendant again appeared before the trial court in IDOC custody. Defendant requested and was appointed a public defender. Defense counsel requested that the matter be removed from the trial call, and the court struck the April 24 trial date. The case was continued until May 22, 2025, by agreement for "Completion of Discovery." On April 9, 2025, the attorney representing defendant filed a "Demand For Speedy Trial By Defendant Incarcerated In the Illinois Department Of Corrections On Unrelated Charges," which demanded a speedy trial in the matter and indicated defendant was "incarcerated in IDOC since May 14, 2024, with a projected parole date of August 1, 2025."

¶ 8 On May 22, 2025, defendant was present in the custody of IDOC. The State filed a verified petition to deny defendant pretrial release. In its petition, the State alleged that defendant was charged with detention-eligible offenses and he posed a real and present threat to the safety of any person or persons or the community. See 725 ILCS 5/110-6.1(a)(1.5), (5) (West 2022) (certain felonies and sex offenses). As additional grounds upon which defendant should be denied release, the State noted that defendant was currently in IDOC custody "for violating his mandatory supervised release after serving a 9[-]year sentence for drug induced homicide (Cl. X) and a 12[-]year sentence for delivery of a controlled substance." Defendant also had convictions of unlawful possession of a controlled substance, felony retail theft, felon in possession of a weapon, and murder.

¶ 9 On July 23, 2025, defendant moved to strike the State's petition to deny him pretrial release. In support of his motion, defendant stated that he first appeared before the court on these charges on January 16, 2025. Defendant noted that pursuant to the Code, the State may file a petition to detain "without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days *** after arrest and release of the defendant upon reasonable notice to defendant." ***Id.*** § 110-6.1(c)(1). Defendant argued that the State was required to file its petition within 21 days of January 16, 2025. Because the State did not file its petition to detain until May 22, 2025, more than 21 days after January 16, 2025, defendant contended that its petition should be stricken.

¶ 10 The State filed its response on July 23, 2025. The State asserted that defendant was in IDOC custody due to a parole violation at the time he was charged with the instant offenses and "he remains in custody there as of this filing." Because defendant was in custody at the time these charges were filed, he had never been arrested or released on these charges. Further, the State analogized the timing requirement to file a petition to detain to the 48-hour requirement for the trial court to hold a detention hearing and noted that in ***People v. Cooper***, 2025 IL 130946, ¶¶ 40-41, the supreme court held that the 48-hour hearing requirement was directory and thus automatic dismissal was not the appropriate consequence for failure to abide by the rule. Accordingly, the State argued that if the petition was not timely filed, the timing issue should also be considered directory, and the petition should not be dismissed.

¶ 11 B. Detention Hearing

¶ 12 A hearing on the motion to strike and the petition to detain was held on July 25, 2025. Defendant was present in the custody of IDOC. The matter first proceeded to a hearing on the motion to strike. In support of his motion, defendant argued that because he was in IDOC custody and the State was aware of his location, the State was required to file a petition to detain within 21 days of defendant's first appearance in the trial court, January 16, 2021. Defendant asserted that "the spirit of this law is not to allow the State infinite time to file these [p]etitions." Rather, the 21-day time frame should be based upon when a defendant is "made aware of the charges and told to come to court." Defendant further noted that while there had not yet been a formal arrest in the matter, he had appeared in the trial court on these charges since January.

¶ 13 In response, the State asserted that there was no timing violation in filing its petition. In support, the State cited ***People v. McClure***, 2024 IL App (5th) 240027, ¶ 23, for the proposition that the Code contemplates two scenarios where the State will file a petition to detain. First, if a defendant is arrested and held in jail pending his or her first appearance, the State must file its petition to detain the defendant at the time of the first appearance or before. ***Id.*** Second, if the defendant is arrested and released, the State has 21 days to file a petition to detain. ***Id.*** Based on its reading of ***McClure***, the State asserted that the Code does not contemplate a situation like defendant's, where he appeared in court while in IDOC custody; therefore, the State's petition was not untimely. Further, the State disagreed with defendant's assertion that this reading of the Code created an "infinite time" for it to file a petition. Rather, it considered the Code's purpose was to "grant to every [d]efendant a [h]earing," and "for the Court to make this determination," in order to balance the rights of a defendant with the safety concerns of the community. The State asserted that the motion to strike should be denied because defendant was never arrested on these charges and was never released, so there was no issue of timeliness. In the alternative, the State argued that under ***Cooper***, 2025 IL 130946, the timeliness requirement was directory and thus automatic dismissal is not appropriate.

¶ 14 The trial court denied defendant's motion to strike. In issuing its oral ruling, the trial court noted that it had not been cited any "specific law about this particular situation" and that it would follow ***Cooper***, finding the timing requirement in the Code to be directory, not mandatory.

Accordingly, the trial court denied defendant's motion to strike and proceeded to a hearing on the State's detention petition.

¶ 15 In support of its petition to detain, the State proffered a transcript of the grand jury proceedings in this matter. The transcript stated as follows. Beth Mullarkey testified that she is an investigator for the Child Advocacy Center (CAC) in Kane County. As part of her employment, she was assigned to investigate a matter involving defendant. Mullarkey spoke to A.M. A.M. was 10 years old at the time the investigation began. A.M. told Mullarkey that defendant dated A.M.'s great-grandmother. When defendant was released on parole for an unrelated case, he moved in with A.M.'s family. A.M. disclosed to Mullarkey that defendant touched her vagina, which she called her "crystal," and her breasts, which she called her "gems." She stated that defendant touched her with his fingers, mouth, and penis. A.M. described that defendant would have her on top of him and "move her back and forth." She also stated that she touched his penis with both her hands and her mouth. This occurred more than once. A.M. further told Mullarkey that defendant threatened A.M. that "she would be taken away if she told" anyone about the abuse. Mullarkey stated that A.M.'s mother was also interviewed as part of the investigation. A.M.'s mother recalled that after defendant moved in with the family, A.M. began "act[ing] up" and began urinating on the floor. Eventually, A.M. needed to live separately with her grandmother, and that is when she came forward about the abuse. Mullarkey additionally testified regarding an incident that occurred at the family's home on Mother's Day in 2024. On that day, there was a fight within the family, and police were called to the residence. During the fight, a relative of A.M. called defendant "a pedophile." This led other family members to question why defendant would be referred to as a pedophile and a discussion in which A.M. came forward with her allegations.

¶ 16 Additionally, the State proffered defendant's criminal history, noting that defendant was presently in IDOC custody for a parole violation after serving a 9-year sentence for drug-induced homicide and a 12-year sentence for delivery of a controlled substance. Defendant also had convictions of unlawful possession of a controlled substance, felony retail theft, felony possession of a weapon, and murder. The State then proceeded to argument.

¶ 17 The State argued that defendant posed a real and present threat to the safety of any person or persons of the community, specifically A.M. It asserted that defendant had a lengthy criminal history and, in the instant matter, threatened A.M. that she would be taken away if she told anyone about the abuse. Thus, the State contended that defendant posed a threat to A.M. and the community based on his criminal history and his current threats.

¶ 18 Finally, the State argued that there was no condition or combination of conditions that could mitigate the real and present threat to A.M. or the community. The State contended that electronic home monitoring (EHM) would not solve the issue of whether defendant has access to minor children. The State noted that prior to being released on parole, defendant had no connection to A.M. and thus there were no less restrictive conditions than detention to ensure that defendant would not have access to new potential victims.

¶ 19 In response, defense counsel argued that the State failed to meet its burden by clear and convincing evidence that defendant committed the crimes with which he was charged. Defense counsel argued that the grand jury proceedings were based upon probable cause, not clear and convincing evidence, and were therefore not sufficient to meet the State's burden. Defense counsel also argued that the State failed to meet its burden by clear and convincing evidence that defendant posed a real and present threat to any person or persons based on specific articulable facts. Defense counsel noted that while defendant had a lengthy criminal history, the State did not provide time periods for his convictions and some of his convictions were nonviolent offenses. Defense counsel noted that defendant, if released, had a friend's home to stay at and a job ready for him. Finally, defense counsel asserted that there were conditions that could mitigate any threat posed by defendant's release. Defense counsel noted that defendant did not have a "pattern of behavior consistent with the allegations in this case or prior sex offenses." Further, defense counsel contended that the State did not sufficiently prove that if defendant was placed on EHM, he would leave his home or have access to A.M. or any other individuals.

¶ 20 The trial court denied defendant pretrial release. In its oral findings, the court concluded that the State proved by clear and convincing evidence that the proof was evident or the presumption great that defendant committed the offenses charged. The court also found that defendant posed a real and present threat as defendant's criminal history showed that he was capable of violence. Finally, the trial court found that no condition or combination of conditions could mitigate the threat posed by defendant. The trial court emphasized that A.M. was a stranger to defendant prior to his release and defendant "demonstrated the ability to find the situations which would allow him to endanger other victims if he's not incarcerated."

¶ 21 C. Motion for Relief and Notice of Appeal

¶ 22 On August 18, 2025, defendant filed a "Motion for Relief Under the Pretrial Fairness Act." See Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). In the motion, defendant disputed the court's ruling that the Code's filing requirements for a detention petition are directory. Further, defendant argued that the trial court erred in granting the State's petition to detain, contending that the State failed to prove by clear and convincing evidence that he committed the charged offenses, that he posed a real and present threat to the safety of any person, persons, or the community, and that no condition or combination of conditions could mitigate the risk of threat he posed if granted pretrial release.

¶ 23 A hearing on defendant's motion for relief was held on August 21, 2025. In support of the motion, defense counsel argued that defendant had never been formally arrested in this case, but the date of his first appearance should have started a 21-day period for the State to file its detention petition. Because the State did not file the petition within 21 days after defendant's first appearance, the petition should have been stricken. Defense counsel further argued that the State had not proven that measures such as EHM or GPS monitoring would not eliminate the risk of harm posed by defendant if he were released pending trial.

¶ 24 In response, the State asserted that under ***Cooper***, the filing requirement for the State's petition was directory, and thus it was proper for the trial court to deny defendant's motion to strike. Additionally, the State argued that it had proven by clear and convincing evidence that defendant posed a real and present threat to the community and no condition or combination of conditions could mitigate the threat posed.

¶ 25 The trial court denied the motion for relief, citing the reasons stated when he denied defendant's motion to strike and granted the State's petition to detain. On August 25, 2025, defendant filed a notice of appeal. The court appointed the Office of the State Appellate Defender (OSAD) to represent defendant. See Ill. S. Ct. R. 604(h)(3) (eff. Apr. 15, 2024) (providing that a party may initiate an appeal by filing a notice of appeal in the circuit court at any time prior to conviction). OSAD elected to file a memorandum under Illinois Supreme Court Rule 604(h)(7) (eff. Apr. 15, 2024). The State filed a response in opposition to the appeal.

¶ 26 II. ANALYSIS

¶ 27 Article 110 of the Code, as amended by the Acts, abolished traditional monetary bail in favor of pretrial release on personal recognizance or with conditions of release. 725 ILCS 5/110-1.5, 110-2(a) (West 2022). In Illinois, all persons charged with an offense are eligible for pretrial release irrespective of the seriousness or the nature of the offense. ***Id.*** §§ 110-2(a), 110-6.1(e); ***People v. Grayson***, 2024 IL App (4th) 241100-U, ¶ 7. To detain a defendant, the State has the burden to prove by clear and convincing evidence that the proof is evident or the presumption great that the defendant has committed a detainable offense (725 ILCS 5/110-6.1(e)(1) (West 2022)), 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 (***id.*** § 110-6.1(a)(1)-(7), (e)(2)) or a high likelihood of willful flight to avoid prosecution (***id.*** § 110-6.1(a)(8), (e)(3)), and that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or the community or the risk of the defendant's willful flight (***id.*** § 110-6.1(e)(3)). "Evidence is clear and convincing if it leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question ***." ***Chaudhary v. Department of Human Services***, 2023 IL 127712, ¶ 74. The Code further requires that "[d]ecisions 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." 725 ILCS 5/110-6.1(f)(7) (West 2022).

¶ 28 A. Whether the State's Petition to Detain Was Untimely

¶ 29 We turn first to the issue of whether there was a violation of the Code's timing provisions. Defendant argues in his memorandum that the State's petition was untimely because section 110-6.1(c)(1) of the Code requires a petition to detain be brought within 21 days of a defendant's first appearance, and thus the trial court erred in denying his motion to strike. Defendant contends that, under the plain language of the Code, the writ for his appearance constituted an arrest.

Accordingly, the State was required to file a petition to detain him at his first appearance on January 16, 2025, or within 21 days thereafter, because his first appearance in this case constituted a "release" and thus began the 21-day period in which the State could file a petition. In short, he asserts the May 22, 2025, filing was too late. In response, the State contends there was no violation of the Code's timing provision because section 110-6.1(c)(1) "does not contemplate the situation here where defendant was indicted on these current charges while in the custody of IDOC on a parole violation in a separate case." See ***id.*** § 110-6.1(c)(1). The State further argues that because defendant was never arrested on these charges, the 21-day clock never started and the petition was therefore timely.

¶ 30 This is a question of statutory construction that is reviewed ***de novo***. ***People v. Taylor***, 2023 IL 128316, ¶ 45. When interpreting a statute, the "primary goal is to ascertain and give effect to the intent of the legislature." ***People v. Grant***, 2022 IL 126824, ¶ 24. The best indication of that intent "is the language of the statute itself, which must be given its plain and ordinary meaning." ***Id.*** "The statute should be evaluated as a whole, with each provision construed in connection with every other section. When the statutory language is clear, we must apply the statute as written without resort to other tools of construction." ***Jackson v. Board of Election Commissioners of Chicago***, 2012 IL 111928, ¶ 48.

¶ 31 Section 110-6.1(c)(1) of the Code provides, in pertinent part, that

> "A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within 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." 725 ILCS 5/110-6.1(c)(1) (West 2022).

¶ 32 Three cases are helpful here as we decide whether this provision was contravened. First, in ***People v. Clark***, 2024 IL 130364, our supreme court narrowly interpreted section 110-6.1(c)(1) of the Act, concerning the time to file a petition to detain, to mean that the "first appearance is limited to the first time a defendant is brought before a judge" (***id.*** ¶ 23), "because this is the only interpretation that is consistent with the other relevant provisions governing pretrial release." ***Id.*** ¶ 24. Therefore, the term "first appearance" refers to a ***defendant's*** "first appearance" in the matter (***id.*** ¶ 26), and not any hearing where a party is present, such as the court's ***ex parte*** issuance of a warrant, as the defendant urged (***id.*** ¶ 8).

¶ 33 Second, in ***People v. Bradford***, 2023 IL App (1st) 231785, ¶ 3, the defendant was charged, brought before a judge, and ordered released with EHM. He was not actually released, however, because his living situation made EHM impossible. ***Id.*** ¶ 4. When he was brought back before the court, the State filed its petition to detain. ***Id.*** The defendant argued that section 110-6.1(c)(1) of the Code required the petition to detain to be filed " 'at the first appearance before a judge, ***or within the 21 calendar days***[ ] *** ***after arrest and release of the defendant***.' " (Emphasis in original.) ***Id.*** ¶ 19 (quoting 725 ILCS 5/110-6.1(c)(1) (West 2022)). Because the petition was filed after the defendant's first appearance but ***before*** his release, the defense argued it was untimely. ***Id.*** ¶ 16. The ***Bradford*** court disagreed, held the petition was timely, and found the notion that the statute required "the State to wait to file a petition to detain a defendant until he has already been released would be, in a word, absurd." ***Id.*** ¶ 25.

¶ 34 Finally, ***People v. Schwedler***, 2025 IL App (1st) 242157, ¶¶ 3, 5, grappled with the circumstance of a defendant who was released after his arrest for reckless conduct, but held in custody on unrelated probation violations, and then later indicted for involuntary manslaughter and mob action after the victim died of his injuries. The State filed its petition to detain within 21 days of the arraignment on the new indictment, but more than 21 days after his release on the reckless conduct. ***Id.*** ¶ 6. The ***Schwedler*** court interpreted section 110-6.1(c)(1) of the Code to allow timely filing of the State's petition, "because the superseding indictment constituted a new case" that reset the 21-day clock. ***Id.*** ¶ 25. Acknowledging that the Code's plain terms did not address this situation, the court looked at other provisions of the Code and the Criminal Code of 2012 (720 ILCS 5/1-1 ***et seq.*** (West 2022)). ***Schwedler***, 2025 IL App (1st) 242157, ¶ 25. ***Schwedler*** held that the legislature intended to allow the State to reconsider detention after the victim's death predicated new charges with which the defendant "could not have been charged with at the time of the initial appearance on his first case, [and] based on information learned by the State only after the initial charging and pretrial detention decisions." ***Id.*** ¶ 28. Consistent with that reading, the court deemed the defendant's arraignment on the indictment his " 'release' for purposes of [a] new case" and therefore, the State's filing of the detention petition nine days later was "well within the *** timeframe." ***Id.*** ¶ 25.

¶ 35 Here, defendant was in IDOC serving an unrelated sentence, and so was never formally arrested, but he was writted back from prison into the trial court, appeared before the court on the current charges, and was arraigned on the charges in this matter. Based on ***Clark***, 2024 IL 130364, ¶ 26, the term "first appearance" refers to a ***defendant's*** "first appearance" in the matter, and so the arraignment constituted defendant's first appearance under the Code. When defendant appeared before the trial court on January 16, 2025, for arraignment, the State made the decision not to file a petition to detain him pending trial. Applying the logic of ***Schwedler*** and ***Bradford***, this constituted his release. ***Schwedler***, 2025 IL App (1st) 242157, ¶ 25 ("While a new 'arrest' may not have occurred because Schwedler was already detained per his probation matters, a new arraignment did [and restarted the 21-day clock]."); ***Bradford***, 2023 IL App (1st) 231785, ¶¶ 24-

25 (holding that the phrase "release" does not necessitate a "physical release" from custody). Although defendant was released back into IDOC custody, he was in that custody based on an unrelated parole violation, not the charges in the instant matter. ***Cf. Schwedler***, 2025 IL App (1st) 242157, ¶ 25 (arraignment on a new case started the clock). Accordingly, we agree with defendant's contention that his first appearance on January 16, 2025, and his subsequent release back into IDOC custody began the 21-day clock for the State to file a petition. Therefore the State's petition, filed on May 22, 2025, was untimely.

¶ 36 B. Whether the Section 110-6.1(c)(1) Timing Provisions Are Directory or Mandatory

¶ 37 Having determined that the State's petition was untimely, we must next consider whether the trial court erred in denying defendant's motion to strike. See ***People v. Ziobro***, 242 Ill. 2d 34, 43 (2011) ("Once a violation [of a timing requirement] has been established, the court must determine the consequence of such violation."). The State, citing ***Cooper***, 2025 IL 130946, contends that the timing requirement is directory, not mandatory, and the trial court did not err in denying the motion to strike. Defendant, arguing the provision is mandatory, contends that the proper remedy is dismissal of the petition and a remand for a hearing on conditions of release.

¶ 38 ***Cooper*** interpreted the other subsection of section 110-6.1(c), which deals with the timing of the detention hearing, as opposed to the subsection at issue here concerning the timing of the filing of the petition. See ***id.*** ¶ 1. In ***Cooper***, our supreme court considered whether the failure to comply with the timing requirement in section 110-6.1(c)(2) of the Code (725 ILCS 5/110-6.1(c)(2) (West 2022)) was directory or mandatory. Section 110-6.1(c)(2) provides, in pertinent part, that upon the filing of a petition to detain, the trial court must, upon granting a continuance of a detention hearing, hold a pretrial detention hearing within 48 hours of the defendant's first appearance if the defendant is charged with certain serious offenses, as was the case in ***Cooper***. ***Cooper***, 2025 IL 130946, ¶ 28. The trial court in ***Cooper*** held the detention hearing some hours after the 48-hour deadline passed.

¶ 39 ***Cooper*** noted that "[t]he law presumes that statutory language issuing a procedural command to a government official is directory, rather than mandatory, meaning that the failure to comply with a particular procedural step does not invalidate the governmental action to which the procedural requirement relates." ***Id.*** ¶ 33. The court explained that the presumption is overcome and a provision is mandatory ***only if*** " '(1) negative language in the statute or rule prohibits further action in the case of noncompliance or (2) the right the statute or rule is designed to protect would generally be injured under a directory reading.' " ***Id.*** (quoting ***People v. Geiler***, 2016 IL 119095, ¶ 18). With respect to the first exception to the presumption, the legislature likely intended a consequence to be mandatory when "a statute expressly prescribes a consequence for failure to obey its command or it uses negative language such as 'no such ordinance shall take effect until,' importing that the command shall not be executed in any other manner or time." ***Id.*** With respect to the second exception, "a statute may be construed as mandatory 'when the right the provision is designed to protect would generally be injured under a directory reading.' " ***Id.*** (quoting ***People v. Delvillar***, 235 Ill. 2d 507, 517 (2009)). ***Cooper*** noted that "[i]f the requirement does not meet either of the two criteria, it is considered directory, and there is no particular consequence for noncompliance." ***Id.***

¶ 40 Applying these criteria to section 110-6.1(c)(2) of the Code, the court in ***Cooper*** held that the first exception did not apply, noting that the section did not specify a consequence for noncompliance with the timing requirement nor did it contain negative language prohibiting detention or further action in the case of noncompliance. ***Id.*** ¶ 34; 725 ILCS 5/110-6.1(c)(2) (West

2022). Regarding the second exception, the court took issue with arguments by the defendant that the procedure was designed to protect his liberty interest and "his liberty interest would generally be injured under a directory reading." ***Cooper***, 2025 IL 130946, ¶ 36. Rather, the court held the Code's purpose was to reform pretrial practices, while "balanc[ing] the interests of defendants and the safety of the community." ***Id.*** ¶ 37.

¶ 41 ***Cooper*** rejected the defendant's argument that the only consequence for a violation of a timely hearing that would vindicate a defendant's rights is release from custody. The court reasoned that strict mandatory construction of section 110-6.1(c)(2) would not achieve the purpose of the statute. ***Id.*** ¶¶ 37, 39. Instead, it held that reading the section as "directory properly balances the dual purposes of the statute, encouraging prompt hearings while protecting victims and the community from the release of defendants whom the State can prove should be subject to detention." ***Id.*** ¶ 39. Finding that section 110-6.1(c)(2) is directory, and no specific consequence flows from noncompliance, the court held that a trial court's failure to hold a timely hearing in violation of the section does not result in automatic dismissal of the petition to detain. ***Id.*** ¶ 40.

¶ 42 This same logic applies to our reading of section 110-6.1(c)(1). Section 110-6.1(c)(1) provides a procedural timing requirement within which the State must file a petition to detain. 725 ILCS 5/110-6.1(c)(1) (West 2022). We begin with a presumption that the statute's language is directory. ***Cooper***, 2025 IL 130946, ¶ 33. Regarding the first exception, section 110-6.1(c)(1) does not specify a consequence for noncompliance with the timing requirement. As the State points out, within the Code, the legislature has demonstrated its ability to provide a negative consequence when it wants to. See 725 ILCS 5/110-6.1(i) (West 2022) (requiring defendant's release if a detained defendant is not brought to trial within the 90-day period required by the Code). In this subsection, the statute does not specify that a petition filed beyond the deadline should be dismissed or stricken, or the defendant automatically released, or any other consequence. The absence of a consequence for the violation demonstrates that the legislature intended the provision to be directory. See ***Cooper***, 2025 IL 130946, ¶ 34.

¶ 43 Regarding the second exception to the directory presumption, we must consider the purpose of the statute and whether the statutory provision is " ' "intended for the protection of the citizen, *** and by a disregard of which his rights might be and generally would be injuriously affected." ' " ***People v. Robinson***, 217 Ill. 2d 43, 56 (2005) (quoting ***People v. Jennings***, 3 Ill. 2d 125, 127 (1954), quoting ***French v. Edwards***, 80 U.S. (13 Wall.) 506, 511 (1871)). Section 110-6.1(c)(1), the section at issue here, has the same purpose as section 110-6.1(c)(2), which was construed in ***Cooper***. See ***Cooper***, 2025 IL 130946, ¶ 39. ***Cooper*** put it this way:

> "The Pretrial Fairness Act aims to reform pretrial practices by eliminating cash bail and focusing on individualized assessments to ensure both public safety and fair outcomes, while ensuring that defendants are released pretrial unless there is clear and convincing evidence that they pose a risk of flight or a threat to others." (Emphasis omitted.) ***Id.*** ¶ 37.

¶ 44 A directory reading of section 110-6.1(c)(1) would not defeat defendant's right to a prompt and orderly detention procedure with individualized assessment of dangerousness without "the practice of detaining those charged with a crime who did not pose a threat to their community or a risk of flight but could not afford to pay a money bail." ***Id.*** But if we were to read section 110-6.1(c)(1) as mandatory, we would certainly "defeat the community's expectation that public safety will be considered." ***People v. Cooper***, 2024 IL App (4th) 240589-U, ¶ 29 (Doherty, J., dissenting). This we will not do. "[C]ourts ***always*** have the obligation to consider the danger that a defendant poses to others and the community when deciding whether pretrial release is appropriate." (Emphasis in original.) ***Cooper***, 2025 IL 130946, ¶ 38.

¶ 45 C. Whether Defendant Established Prejudice

¶ 46 Finally, as the court in ***Cooper*** observed, "[i]f the timing requirement is directory and no remedy is automatic, a defendant must show that its violation resulted in prejudice." ***Id.*** ¶ 32 (citing ***Ziobro***, 242 Ill. 2d at 45-46). Here defendant was in IDOC custody for parole violations during the period of the State's delay and at the time of the filing of its petition. He argues he was prejudiced because, had he been promptly detained he would have been able to accrue credit for time served toward any sentence on the instant charges. Defendant cites no authority for this proposition. Presumably he was properly credited for the time he served in prison; that he did not get credit for a sentence not yet imposed for crimes not yet proven or admitted does not seem to have prejudiced him. As the State points out, his original trial date was April 24. Had he not removed the matter from the trial call, his trial would have been concluded before the petition to detain was filed on May 22, 2025. It is difficult to see how the State's timing violation caused any detriment to defendant's legal rights or claims. Having said that, we do not condone the state's violation of this provision, which was included in the Acts by the legislature "to secure order, system, and dispatch" (***French***, 80 U.S. at 511).

¶ 47 We hold the State's failure to file a timely petition should not result in the striking of its petition, and the trial court here did not err in denying defendant's motion to strike.

¶ 48 D. The State's Petition to Detain

¶ 49 We next turn to defendant's final argument, that the trial court erred in granting the State's petition to detain. Defendant contends that the State failed to prove by clear and convincing evidence that (1) his pretrial release poses a real and present threat to the safety of any person, persons, or the community that (2) cannot be mitigated by conditions less restrictive than detention.

¶ 50 In this case, no live testimony was presented. The parties proceeded solely by proffer. Accordingly, our review of the trial court's factual findings and its detention orders is ***de novo***. ***People v. Morgan***, 2025 IL 130626, ¶ 54. Under ***de novo*** review, a reviewing court "perform[s] the same analysis that the trial [court] would perform using the proper standards." ***People v. Ruhl***, 2021 IL App (2d) 200402, ¶ 69.

¶ 51 Under the Code, factors that the trial court may consider in making a determination of dangerousness, ***i.e.***, that a defendant poses a real and present threat to any person or the community, include, but are not limited to, (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; (2) the history and characteristics of the defendant, including whether he or she has a prior criminal history indicative of violent, abusive, or assaultive behavior; (3) the identity of any person to whom the defendant is believed to pose a threat and the nature of the threat; (4) any statements made by or attributed to the defendant, together with the circumstances surrounding the statements; (5) the age and physical condition of the defendant; (6) the age and physical condition of the victim or complaining witness; (7) whether the defendant is known to possess or have access to any weapons; (8) whether, at the time of the current offense or any other offense, the defendant was on probation, parole, or any other form of supervised release from custody; and (9) any other factors, including those in section 110-5 of the Code (725 ILCS 5/110-5 (West 2022)), the court deems to have a reasonable bearing on the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of such behavior. ***Id.*** § 110-6.1(g).

¶ 52 Defendant argues that the State improperly relied on the nature of the offenses charged, as the facts were insufficient to deny release, and there was no evidence indicating that defendant "is unlikely to comply with court ordered conditions." We disagree.

¶ 53 Here, the transcript from the grand jury proceedings indicates that the nature and circumstances of the instant matter included multiple sex offenses against a minor, who was ten years old. ***Id.*** § 110-6.1(g)(1), (6). Defendant threatened A.M. that she would be sent away if she reported the abuse. ***Id.*** § 110-6.1(g)(4). At the time the sexual abuse was first reported, defendant was in his 60s, and unlikely to change as a result of a court order. ***Id.*** § 110-6.1(g)(5). Defendant's criminal history included felony weapons charges (establishing that he was known to possess or have access to weapons) (***id.*** § 110-6.1(g)(7)), drug-induced homicide, and murder (tending to indicate an assaultive nature) (***id.*** § 110-6.1(g)(2)). Finally, at the time the abuse occurred, defendant was on parole, which was later revoked (***id.*** § 110-6.1(g)(8)). The State clearly and convincingly proved dangerousness. Defendant's criminal history and the fact that he had his parole revoked for reasons unrelated to the instant offense suggests that defendant is unlikely to comply with court-ordered conditions of release.

¶ 54 Next, defendant argued in his motion for relief that the State failed to meet its burden of proving by clear and convincing evidence that there are no conditions that could mitigate the real and present threat to A.M. or the community based on the specific, articulable facts of the case. Again, we disagree.

¶ 55 In determining which conditions of pretrial release, if any, will ensure the safety of any person or persons or the community, the trial court may consider: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; (4) the nature and seriousness of the real and present threat that would be posed by the defendant's release; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release. ***Id.*** § 110-5(a)(1)-(5). The history and characteristics of the defendant include his or her "character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, *** criminal history, and record concerning appearance at court proceedings" as well as "whether, at the time of the current offense or arrest, [he or she] was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state." ***Id.*** § 110-5(a)(3)(A)-(B).

¶ 56 Here, the nature and circumstances of the charged offenses included sexual abuse to a 10-year-old minor. Defendant has a significant criminal history, including murder. Additionally, defendant threatened A.M. if she told an adult about the abuse. Finally, at the time of the current offense, defendant was on parole and had that parole revoked.

¶ 57 In support of his contention that there are less restrictive conditions available than detention to mitigate the risk posed by his release, defendant cites ***People v. Martinez-Ortiz***, 2024 IL App (2d) 240102-U. We find ***Martinez-Ortiz*** readily distinguishable. In ***Martinez-Ortiz***, the defendant was accused of multiple sex offenses involving his 13-year-old granddaughter. ***Id.*** ¶ 4. The defendant had no criminal history and was living in California at the time of his arrest. ***Id.*** ¶¶ 4, 12. On appeal, we reversed the decision of the trial court ordering the defendant to be detained pending trial, finding, in pertinent part, that because the defendant had no criminal history, there was no evidence of the defendant's failure to comply with court-imposed conditions. ***Id.*** ¶¶ 29, 35. Further, the State made no proffer of evidence that the defendant would have access to children outside his family, and there was no evidence that the defendant had reoffended in the three years between the offenses occurring and his arrest. ***Id.*** ¶ 29. In this case, there is evidence that defendant cannot comply with court-ordered conditions, given his significant criminal history and the fact that his parole was revoked. Additionally, defendant proffered that he would be living with a friend if released. The State proffered that defendant could potentially come into contact with other children and reoffend if released, as A.M. was a relative stranger to defendant before he dated her great-grandmother and moved in with her family.

¶ 58 We acknowledge that, under the Code, all persons are presumed eligible for pretrial release (725 ILCS 5/110-2 (West 2022)) and that "the bare allegations that defendant has committed a violent offense are not sufficient to establish" the conditions prong of the State's burden of proof for detention. ***People v. Stock***, 2023 IL App (1st) 231753, ¶ 18. But applying the factors listed in the Code to the facts at hand, we find that defendant poses a threat to A.M. and the community and there are no less restrictive conditions to mitigate this threat. Hence, we conclude that the State met its burden of proving by clear and convincing evidence that no condition or combination of conditions would mitigate the real and present threat defendant poses to A.M. and the community.

¶ 59 III. CONCLUSION

¶ 60 In conclusion, we hold that section 110-6.1(c)(1), the timing provision for the filing of a detention petition, was violated in this matter. But we interpret the provision as directory, starting with the presumption that it is so and finding neither exception to the presumption applicable, and therefore no particular consequence is automatic. Because defendant established no prejudice, given that he was already imprisoned on an unrelated matter, the trial court did not err in denying the motion to strike. The petition to detain was properly granted. For the reasons set forth above, we affirm the judgment of the circuit court of Kane County.

¶ 61 Affirmed.

***People v. Williams*, 2025 IL App (2d) 250370**

Decision Under Review:	Appeal from the Circuit Court of Kane County, No. 24-CF-2627; the Hon. John A. Barsanti, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Carolyn R. Klarquist, and Elizabeth M. Crotty, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Patrick Delfino and David J. Robinson, of State's Attorneys Appellate Prosecutor's Office, of Springfield, for the People.

No. 132652

IN THE

SUPREME COURT OF ILLINOIS

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

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 March 12, 2026, the Brief and Argument 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 Brief and Argument for Defendant-Appellant in Support of Rule 604(h) Appeal to the Clerk of the above Court.

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