

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

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

#### Application of the PFA to People Arrested Before January 1, 2023

725 ILCS 5 Reference	Description	Considerations
<b>Person Released on Money Bond Before January 1, 2023</b>		
110-7.5(a)	“On or after January 1, 2023, any person having been previously released pretrial on the condition of the deposit of security shall be allowed to remain on pretrial release under the terms of their original bail bond. This Section shall not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1 or a petition for revocation or sanctions under Section 110-6.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"><li>• This section clarifies that anyone on pretrial release based on a condition of a monetary bond shall remain on release under the terms of that original bond.</li><li>• Nevertheless, the State has the discretion to file a petition to detain that person, if eligible for pretrial detention. The State also has the right to file a petition for revocation or sanctions, if appropriate.<ul style="list-style-type: none"><li>○ <i>Note:</i> The 21-day timing requirement for filing petitions to detain is not changed (see Section 110-6.1(c); thus, the state’s attorneys’ ability to file such a petition appears very limited.</li></ul></li></ul> <u>Operational Considerations</u> <ul style="list-style-type: none"><li>• After January 1, 2023, the State’s Attorney will have to review people currently on pretrial release to determine whether they wish to seek detention, revocation, or sanctions for any of them.</li></ul>
<b>Person Detained Before January 1, 2023</b>		
110-7.5(b)	“On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security,	<u>Interpretation Considerations</u> <ul style="list-style-type: none"><li>• This first paragraph of subsection (b) appears to apply to anyone for whom release conditions were previously set, but the person remains in</li></ul>

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	<p>shall be entitled to a hearing under subsection (e) of Section 110-5.”</p>	<p>pretrial detention. Presumably, this is mainly people who did not (were unable to, etc.) meet a financial condition of release.</p> <ul style="list-style-type: none"> <li>• This first paragraph would <i>not</i> seem to apply in cases where the judge ordered a “no bond” detention.</li> <li>• The person is entitled to a hearing under subsection (e) of 110-5, which calls for the court to reopen the conditions of release hearing for anyone who was ordered released but remains in detention 48 hours after their original pretrial conditions hearing. The hearing must be reopened if the detention is caused by the unavailability or ineligibility for one or more conditions. Further, the section states: “The inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant.”</li> <li>• It is unclear if the court must initiate this hearing within 48 hours (as it states in (e)) or whether the rehearing must be requested by the defendant.</li> <li>• It is also unclear, since the court could initiate this hearing, whether the defendant retains the option of doing nothing and staying in jail or paying their bond and getting released after January 1, 2023.</li> <li>• It also does not seem to allow for the filing of a petition to detain, since the State has a 21-day timing requirement for filing petitions to detain under Section 110-6.1(c) (as noted above); thus, the state’s attorneys’ ability to file such a petition appears very limited.</li> </ul>
110-7.5(b)	<p>“On or after January 1, 2023, any person, not subject to subsection (b), who remains in pretrial detention and is eligible for detention under Section 110-6.1 shall be entitled to a hearing according to the following schedule:</p> <p>(1) For persons charged with offenses under paragraphs (1) through (7) of subsection (a) of</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>• This second paragraph is part of subsection (b) because no additional subsection is marked here. We read this as applying to people who are not subject to the first paragraph of subsection (b). As such, this would seem to apply to people on “no bond” and who <i>are</i> eligible for pretrial detention.</li> <li>• It allows for “a hearing” but does not specify what kind of hearing. Since it is part of subsection (b) which just mentioned a hearing under</li> </ul>

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Application of PFA to Cases Before January 1, 2023-2

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	<p>Section 110-6.1, the hearing shall be held within 90 days of the person's motion for reconsideration of pretrial release conditions.</p> <p>(2) For persons charged with offenses under paragraph (8) of subsection (a) of Section 110-6.1, the hearing shall be held within 60 days of the person's motion for reconsideration of pretrial release conditions.</p> <p>(3) For persons charged with all other offenses not listed in subsection (a) of Section 110-6.1, the hearing shall be held within 7 days of the person's motion for reconsideration of pretrial release conditions.”</p>	<p>subsection (e) of Section 110.5, it would seem to refer to that kind of hearing. Further, the schedule listed in (1) through (3) refers to the hearing being held after the “person’s motion for reconsideration of pretrial release conditions.”</p> <ul style="list-style-type: none"> <li>Note that a hearing to reopen conditions of release is not a hearing for detention. And, again, since the State has a 21-day timing requirement for filing petitions to detain under 110-6.1(c), the state attorney’s ability to file such a petition appears limited.</li> <li>Note also that this second paragraph is meant to be for people eligible for pretrial detention, but subsection (3) refers to people charged with offenses that are not included in 110-6.1(a) and are therefore <i>not</i> eligible for pretrial detention.</li> </ul> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>Defense counsel must review their cases and file motions for reconsideration of pretrial release conditions for appropriate cases. Motions can be prepared to be filed on or after January 1, 2023.</li> </ul>
<p><b>Previously Deposited Bail Security</b></p>		
<p>110-7.5(c)(1), (2), (3)</p>	<p>“Processing of previously deposited bail security. The provisions of this Section shall apply to all monetary bonds, regardless of whether they were previously posted in cash or in the form of stocks, bonds, or real estate.</p> <p>(1) Once security has been deposited and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction, the latter court may continue the original security in that court or modify the conditions of pretrial release subject to the provisions of Section 110-6.</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>This subsection simply reinstates the current law about the processing of bail security.</li> </ul>

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Application of PFA to Cases Before January 1, 2023-3

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	<p>(2) After conviction, the court may order that a previously deposited security stand pending appeal, reconsider conditions of release, or deny release subject to the provisions of Section 110-6.2.</p> <p>(3) After the entry of an order by the trial court granting or denying pretrial release pending appeal, either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order modifying the conditions of pretrial release or denying pretrial release subject to the provisions of Section 110-6.2.”</p>	
110-7.5(c)(4)	<p>“When the conditions of the previously posted bail bond have been performed and the accused has been discharged from all obligations in the cause, the clerk of the court shall return to the accused or to the defendant's designee by an assignment executed at the time the bail amount is deposited, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. However, in no event shall the amount retained by the clerk as bail bond costs be less than \$5.</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"><li>• Court clerks should maintain their processes to process bail security.</li></ul>

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	<p>Notwithstanding the foregoing, in counties with a population of 3,000,000 or more, in no event shall the amount retained by the clerk as bail bond costs exceed \$100. Bail bond deposited by or on behalf of a defendant in one case may be used, in the court's discretion, to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, restitution or fees of the defendant's attorney of record.</p> <p>In counties with a population of 3,000,000 or more, the court shall not order bail bond deposited by or on behalf of a defendant in one case to be used to satisfy financial obligations of that same defendant in a different case until the bail bond is first used to satisfy court costs and attorney's fees in the case in which the bail bond has been deposited and any other unpaid child support obligations are satisfied.</p> <p>In counties with a population of less than 3,000,000, the court shall not order bail bond deposited by or on behalf of a defendant in one case to be used to satisfy financial obligations of that same defendant in a different case until the bail bond is first used to satisfy court costs in the case in which the bail bond has been deposited. At the request of the defendant, the court may order such 90% of the defendant's bail deposit, or whatever amount is repayable to the</p>	
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	defendant from such deposit, to be paid to defendant's attorney of record.”	
110-7.5(c)(5)	“If there is an alleged violation of the conditions of pretrial release in a matter in which the defendant has previously deposited security, the court having jurisdiction shall follow the procedures for revocation of pretrial release or sanctions set forth in Section 110-6. The previously deposited security shall be returned to the defendant following the procedures of paragraph (4) of subsection (a) of this Section once the defendant has been discharged from all obligations in the cause.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> <li>● Bail security cannot be forfeited after January 1. The person can be revoked or sanctioned, and then the bond is disposed of consistent with the above sections. But bond can no longer be forfeited.</li> </ul>
110-7.5(c)(6)	“If security was previously deposited for failure to appear in a matter involving enforcement of child support or maintenance, the amount of the cash deposit on the bond, less outstanding costs, may be awarded to the person or entity to whom the child support or maintenance is due.”	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>● Court clerks may have to develop some policies and practices to operationalize this subsection.</li> </ul>
110-7.5(c)(7)	“After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit of security was previously made, the balance of such deposit shall be applied to the payment of the judgment.”	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> <li>● Court clerks may have to develop some policies and practices to operationalize this subsection.</li> </ul>