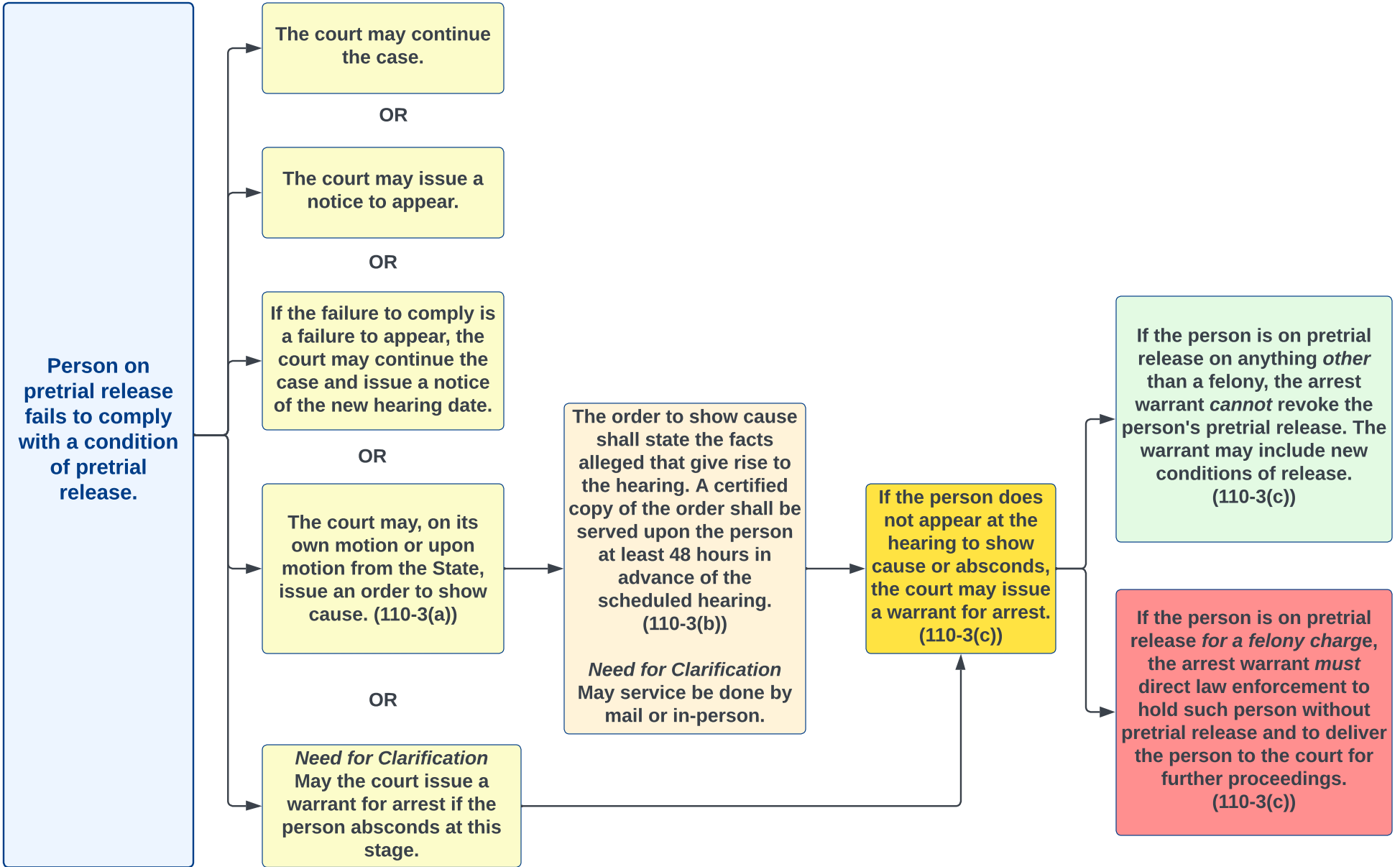


Issuing Warrants and Orders to Show Cause



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

This document is a product of the Illinois Supreme Court Implementation Task Force. The Task Force is working on additional flowcharts and resources, which will be shared with stakeholders and counties in the future. This is not an official resource from the Supreme Court.

Revised August 12, 2022. Subject to Change.

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

Issuing Arrest Warrants and Orders to Show Cause

HB 3653 Reference	Description	Considerations
Options for Warrant Alternatives		
110-3(a)	“Upon failure to comply with any condition of pretrial release or recognizance the court having jurisdiction at the time of such failure may, on its own motion or upon motion from the State, issue an order to show cause as to why he or she shall not be subject to revocation of pretrial release, or for sanctions, as provided in Section 110-6. Nothing in this Section prohibits the court from issuing a warrant under subsection (c) upon failure to comply with any condition of pretrial release or recognizance.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none">● This subsection provides the court with the option of issuing an order to show cause if the person fails to comply with any condition of pretrial release, including failure to appear.<ul style="list-style-type: none">○ Note that the court has other options when a person fails to comply. For instance, the court may issue a notice to appear. If the person’s failure is a failure to appear, the court could decide to continue the case and provide the person with notice of the new court date.● Concerns have also been raised about the requirement for the defendant to show why they should not be subject to revocation; that may be an improper shift of the burden of proof (see 110-6(b)(4), which requires the court to find by clear and convincing evidence certain factors before revoking pretrial release).● The significant question of interpretation about this subsection is whether a court has discretion to issue an arrest warrant in the first instance of non-compliance, or whether a court must first issue an order to show cause and then can only issue an arrest warrant if the person fails to appear at that show cause hearing.

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HB 3653 Reference	Description	Considerations
		<ul style="list-style-type: none"> ○ There is ambiguity about the second sentence of this subsection (“Nothing in this Section prohibits the court from issuing a warrant under subsection (c) upon failure to comply with any condition of pretrial release or recognizance.”). ○ The problem is that subsection (c) (reprinted in a row below) begins with this: “If the person does not appear at the hearing to show cause or absconds ...” As such, one reading of this is that it limits the circumstances when a court can issue a warrant to when the person does not appear at the hearing to show cause or absconds. ● (See further considerations about this in the row below.) ● Each county or circuit will need to meet and discuss how they will operationalize this section.
110-3(c)	<p>“If the person does not appear at the hearing to show cause or absconds, the court may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on pretrial release.”</p> <p>“The contents of such a warrant shall be the same as required for an arrest warrant issued upon complaint and may modify any previously imposed conditions placed upon the person, rather than revoking pretrial release or issuing a warrant for the person in accordance with the requirements in subsections (d) and (e) of Section 110-5.”</p> <p>“When a defendant is at liberty on pretrial release or his own recognizance on a felony</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● This subsection provides the court with an option to issue an arrest warrant when a person “does not appear at the hearing to show cause or absconds.” <ul style="list-style-type: none"> ○ The Conference for Chief Judges (CCJ) does not read 110-3 and any of its subsections as giving the judge an option to issue an arrest warrant in the first instance. CCJ interprets 110-3 and its subsections to mean that an arrest warrant can only be issued after a person fails to appear at the show cause hearing, or absconds (as that term is traditionally defined, i.e., leaving a jurisdiction secretly or suddenly). ○ Justice stakeholders in Cook County seem to interpret subsection (c) and “absconds” more broadly as referring to any violation of pretrial release. Therefore, Cook County courts may permit judges to issue arrest warrants in the first instance of a violation of pretrial release, under this subsection. ○ Each county or circuit will need to meet and discuss how they will operationalize this section.

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HB 3653 Reference	Description	Considerations
	<p>charge and fails to appear in court as directed, the court may issue a warrant for the arrest of such person after his or her failure to appear at the show for cause hearing as provided in this Section. Such warrant shall be noted with a directive to peace officers to arrest the person and hold such person without pretrial release and to deliver such person before the court for further proceedings.”</p>	<ul style="list-style-type: none"> ○ The Implementation Task Force recommends that legislators clarify their intention and revise the text of this subsection to make clear whether a court can issue an arrest warrant in the first instance, or whether a court must (in all circumstances) first issue an order to show cause. ● The second sentence of this subsection explains what the contents of a warrant issued under this subsection must and can contain. <ul style="list-style-type: none"> ○ Reading this in conjunction with the third and fourth sentences, if a person is on pretrial release on anything other than a felony, the arrest warrant cannot revoke the person’s pretrial release. The court may modify any previously imposed conditions of release, and the warrant serves as a notice of these new conditions to the person released. <ul style="list-style-type: none"> ■ There are issues related to how to transmit the information about the new conditions to the defendant. There is no readily identifiable conduit to transmit this information to the defendant. LEADS is not the preferred option. Therefore, one interpretation of this section is that when a court issues an arrest warrant with modified release conditions, law enforcement can arrest the person, bring them to jail and process them, and then release them from custody with notice of the new conditions. ■ Note, however, that this is just one interpretation of the section. Another interpretation is that the warrant does not allow for any custodial hold and only serves to modify the initial release conditions. ■ Each county or circuit will need to meet and discuss how to operationalize this subsection.

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		<ul style="list-style-type: none"> ● The third and fourth sentences of this subsection provide the court with an option to issue an arrest warrant when a person is on pretrial release on a felony charge and fails to appear in court for the show cause hearing. If the court issues an arrest warrant in this situation, it allows for a custodial hold, because the warrant must direct law enforcement to “hold such person without pretrial release and to deliver such person before the court for further proceedings.” <ul style="list-style-type: none"> ○ Operationally, what agency is responsible for delivering the person to court? For example, what if the warrant is from Cook County and the person is arrested in another county? ○ Additionally, when can the person be released? After the court proceeding or something else?
110-3(b)	<p>“The order issued by the court shall state the facts alleged to constitute the hearing to show cause or otherwise why the person is subject to revocation of pretrial release. A certified copy of the order shall be served upon the person at least 48 hours in advance of the scheduled hearing.”</p>	<p><u>Interpretation and Operational Considerations</u></p> <ul style="list-style-type: none"> ● This subsection requires the court to state the facts alleged that prompt the order to show cause. For example, what pretrial condition has the person allegedly failed to comply with. ● The significant question of interpretation about this subsection is whether the order to show cause must be served in person or whether service by certified mail suffices. <ul style="list-style-type: none"> ○ Stakeholders raise significant concern about requiring personal service, because personal service may be impossible or require law enforcement to travel long distances. ○ Stakeholders also note that the section should provide them with maximum flexibility, and allow for service either in-person or by certified mail. They note that certified mail can be very challenging if the person is unhoused or transient. ○ Justice stakeholders in Cook County interpret this subsection to allow for service by certified mail.

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		<ul style="list-style-type: none"> ○ Each county or circuit will need to meet and discuss how to operationalize this subsection. ○ The Implementation Task Force recommends that legislators clarify their intention and revise the text of this subsection to make clear whether service by certified mail is sufficient. ● There are also operational issues with service of the order, whether in person or by mail. <ul style="list-style-type: none"> ○ Which agency is responsible for serving the order? ○ How does that agency know if the address is valid?
110-3(d)	<p>“If the order as described in Subsection B is issued, a failure to appear shall not be recorded until the Defendant fails to appear at the hearing to show cause. For the purpose of any risk assessment or future evaluation of risk of willful flight or risk of failure to appear, a non-appearance in court cured by an appearance at the hearing to show cause shall not be considered as evidence of future likelihood of appearance in court.</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● This subsection provides instructions about when a failure to appear may be recorded for purposes of scoring a risk assessment tool or future evaluations. ● A failure to appear that is cured by an appearance at the hearing to show cause shall not be counted as a failure to appear when scoring a risk assessment tool or evaluating the risk of non-appearance.