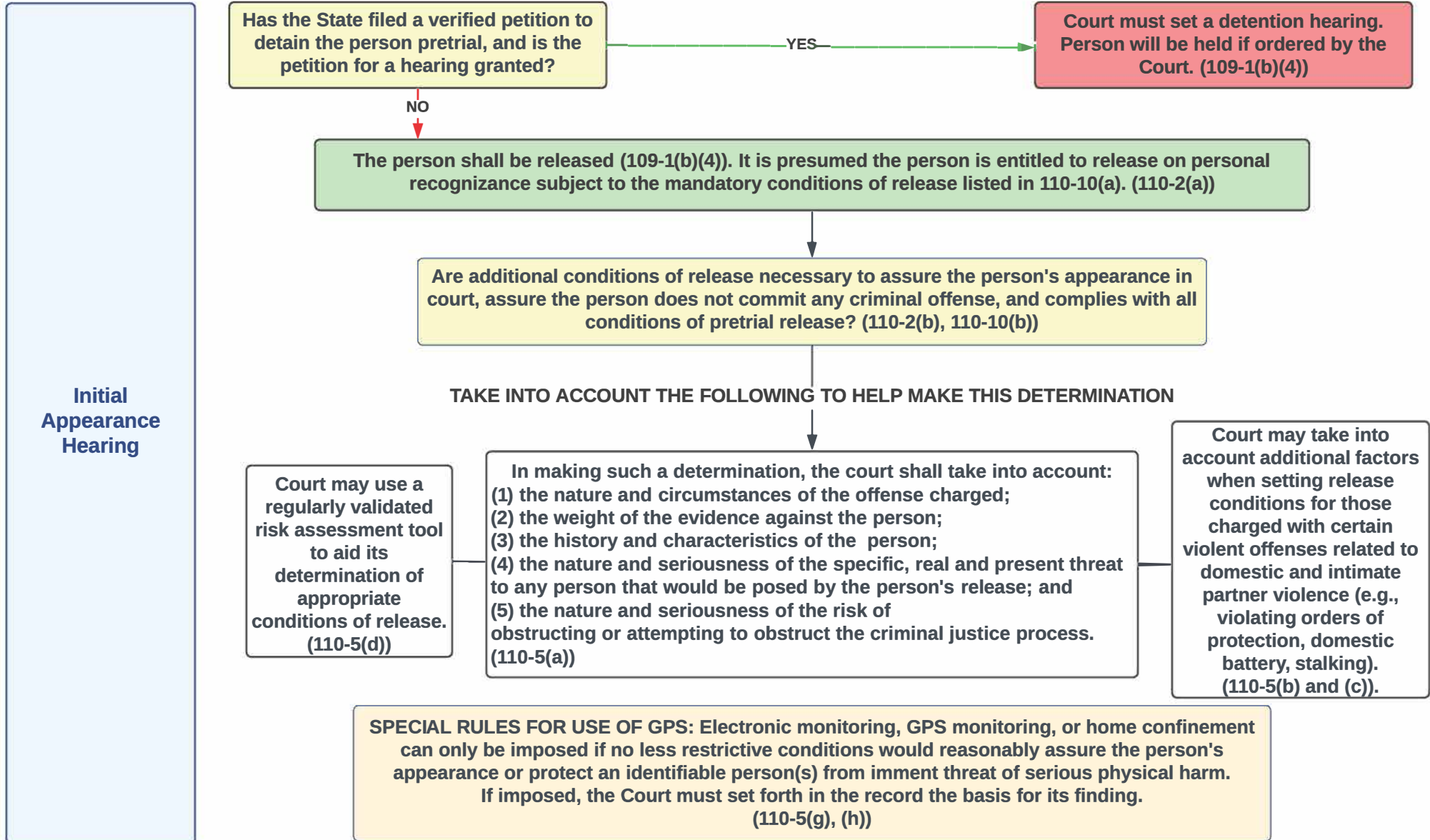


Setting Release Conditions



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

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

Setting Conditions of Pretrial Release

HB 3653 Reference	Description	Considerations
Abolishment of Monetary Bail		
110-1.5	"Abolition of monetary bail. On and after January 1, 2023, the requirement of posting monetary bail is abolished, except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact which are compacts that have been entered into between this State and its sister states."	<u>Interpretation Considerations</u> <ul style="list-style-type: none">• This section abolishes the use of money as a condition of release.• Money can no longer be used as a condition of release or a method to detain. Other conditions of release are available, and detention is permitted only for certain offenses and only after a due process detention hearing. <u>Operational Considerations</u> <ul style="list-style-type: none">• Change language in forms, policies, and procedures to remove reference to the use or collection of monetary bail• Change references to monetary bail in any electronic case management and data collection systems and reports, etc.
102-6	""Pretrial release" has the meaning ascribed to bail in Section 9 of Article I of the Illinois Constitution that is non-monetary."	<u>Interpretation Considerations</u> <ul style="list-style-type: none">• This section deletes the definition of "bail" and replaces it with this definition of "pretrial release." <u>Operational Considerations</u> <ul style="list-style-type: none">• Change language in forms, policies, and procedures to remove reference to the use or collection of bail.

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HB 3653 Reference	Description	Considerations
		<ul style="list-style-type: none"> Change references to bail in any electronic case management and data collection systems and reports, etc.
102-7	<p>“Conditions of pretrial release” means the conditions established by the court entered into by a person in custody by which he binds himself to comply with such conditions as are set forth therein.”</p>	<p>Interpretation Considerations</p> <ul style="list-style-type: none"> This section deletes the definition of “bail bond” and replaces it with this definition of “conditions of release.” <p>Operational Considerations</p> <ul style="list-style-type: none"> Change language in forms, policies, and procedures to remove reference to “bail bond.” Change references in any electronic case management and data collection systems and reports, etc. to remove reference to “bail bond.”
Presumption of Personal Recognizance		
110-2(a) + (b)	<p>“(a)It is presumed that a defendant is entitled to 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, including, but not limited to, orders of protection under both Section 112A-4 of this Code and Section 214 of the Illinois Domestic Violence Act of 1986, all civil no contact orders, and all stalking no contact orders.</p> <p>(b)Additional conditions of release, including those highlighted above, shall be set only when</p>	<p>Interpretation Considerations</p> <ul style="list-style-type: none"> Subsection (a) makes clear that a person is entitled to release on recognizance, subject to appearing in court and not committing a criminal offense.. Subsection (b) limits the circumstances of when additional conditions of release can be set to when necessary to assure the person appears in court, does not commit any criminal offense, and complies with all conditions. <p>Operational Considerations</p> <ul style="list-style-type: none"> The standards set out in these sections should be used in the new pretrial release forms that are developed by the counties.

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HB 3653 Reference	Description	Considerations
	it is determined that they are necessary to assure the defendant's appearance in court, assure the defendant does not commit any criminal offense, and complies with all conditions of pretrial release.”	
Release Unless Petition Filed		
109-1(b)(4)	“Upon initial appearance of a person before the court, the judge shall: admit the defendant to pretrial release in accordance with the provisions of Article 110/5 of this Code, or upon verified petition of the State, proceed with the setting of a detention hearing as provided in Section 110-6.1.”	<u>Operational Considerations</u> <ul style="list-style-type: none"> This subsection makes clear that unless the State files a petition to detain, the judge must release the person, subject to conditions the judge determines as per Section 110-5 (Determining conditions of release)
Individualized Decisions		
110-6.1(f)	(7) Decisions regarding release, conditions of release and detention prior trial should be individualized, and no single factor or standard should be used exclusively to make a condition or detention decision.	<u>Operational Considerations</u> <ul style="list-style-type: none"> Justice partners must ensure that their policies and procedures honor the requirement that all decisions regarding conditions must be individualized.
Setting Conditions		
110-5(a), (b)	(a) In determining which conditions of pretrial release, if any, which will reasonably assure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release bail, the court shall, on the basis of available information, take into account such matters as:	<u>Operational Considerations</u> <ul style="list-style-type: none"> The PFA did not make any substantive changes to this section. It was mostly updated to eliminate mention of “bail.”

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HB 3653 Reference	Description	Considerations
	<p>(1) the nature and circumstances of the offense charged;</p> <p>(2) the weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded;</p> <p>(3) the history and characteristics of the eligible defendant, including:</p> <p>(A) the eligible defendant's 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, history criminal history, and record concerning appearance at court proceedings; and</p> <p>(B) whether, at the time of the current offense or arrest, the eligible defendant 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;</p> <p>(4) the nature and seriousness of the specific, real and present threat to any person that would be posed by the eligible defendant's release, if applicable; as required under paragraph (7.5) of Section 4 of the Rights of Crime Victims and Witnesses Act; and</p> <p>(5) the nature and seriousness of the risk of</p>	

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HB 3653 Reference	Description	Considerations
	<p>obstructing or attempting to obstruct the criminal justice process that would be posed by the eligible defendant's release, if applicable.</p> <p>(b) The court shall impose any conditions that are mandatory under Section 110-10. The court may impose any conditions that are permissible under Section 110-10.”</p>	
110-10(a)	Subsection (a) lists the mandatory conditions of release.	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● The PFA did not make any substantive changes to this section. ● The Court may want to consider creating standard forms to provide to people so that the mandatory conditions of release are known and are clear to people and their loved ones.
110-10(b)	Subsection (b) lists the permissible conditions, which can only be ordered if the court finds that such conditions are reasonably necessary to assure the defendant's appearance in court, protect the public from the defendant, or prevent the defendant's unlawful interference with the orderly administration of justice.	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● The PFA did not make many substantive changes to this section. <ul style="list-style-type: none"> ○ Note, however, that the condition to not leave the state is now permissible, and it is not mandatory. ● The Court may want to consider creating standard forms to provide to people so that the mandatory conditions of release are known and are clear to people and their loved ones. ● The agency providing pretrial supervision may wish to complete a <u>pretrial services inventory</u>, so that the court and all justice stakeholders are aware of the services available in the area. ● The conditions must be reasonably necessary to assure appearance and keep the community safe. Justice partners should receive education on what the empirical research says about which conditions are effective in addressing these outcomes. For example:

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HB 3653 Reference	Description	Considerations
		<ul style="list-style-type: none"> ○ There is no clear association between <u>drug testing</u> and improving either public safety or rates of appearance. ○ There is no clear association between <u>electronic monitoring</u> and improving either public safety or rates of appearance.
Domestic Violence Offenses		
110-5(b)	When setting conditions for someone charged with violating orders of protection or other violent offenses, in addition to what the court was previously able to consider, the court may also consider: “(11.5) any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● Note that there seems to be a typo in the act and there are two subsections (b). This one related to DV offenses and the one in the row above (under Setting Conditions). <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● Other than the addition of subsection 11.5, the PFA did not make any substantive changes to this section.
110-5(c)	In cases of stalking or aggravated stalking under Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the court may consider the following additional factors: (1) Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of that behavior. The evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations or other proceedings; (2) Any evidence of the defendant's psychological, psychiatric or other similar social history that tends to indicate a violent, abusive,	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● The PFA did not make any substantive changes to this section.

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HB 3653 Reference	Description	Considerations
	<p>or assaultive nature, or lack of any such history.</p> <p>(3) The nature of the threat which is the basis of the charge against the defendant;</p> <p>(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;</p> <p>(5) The age and physical condition of any person allegedly assaulted by the defendant;</p> <p>(6) Whether the defendant is known to possess or have access to any weapon or weapons;</p> <p>(7) Any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior.</p>	
Use of Risk Assessment		
110-5(d)	<p>“The Court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release as provided for in Section 110-6.4. Risk assessment tools may not be used as the sole basis to deny pretrial release. If a risk assessment tool is used, the defendant's counsel shall be provided with the information and scoring system of the risk assessment tool used to arrive at the determination. The defendant retains the right to challenge the validity of a risk assessment tool used by the court and to present evidence relevant to the defendant's challenge.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> • The pretrial services agency conducting the assessment must make sure that the relevant information is provided to defense counsel. • Justice partners should collaborate on the policies and processes to use and report on the results of a risk assessment tool. • Note, also, that the AOIC has contracted with Justice System Partners to develop a statewide risk assessment tool. Updates on the development of the tool are available here: https://justicesystempartners.org/developing-an-illinois-pretrial-tool/.

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HB 3653 Reference	Description	Considerations
Use of Electronic Monitoring		
110-5(g), (h), + (i)	<p>(g) Electronic monitoring, GPS monitoring, or home confinement can only be imposed condition of pretrial release if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.</p> <p>(h) If the court imposes electronic monitoring, GPS monitoring, or home confinement the court shall set forth in the record the basis for its finding. A defendant shall be given custodial credit for each day he or she was subjected to that program, at the same rate described in subsection (b) of Section 5-4.5-100 of the unified code of correction.</p> <p>(i) If electronic monitoring, GPS monitoring, or home confinement is imposed, the court shall determine every 60 days if no less restrictive condition of release or combination of less restrictive conditions of release would reasonably ensure the appearance, or continued appearance, of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm. If the court finds that there are less restrictive conditions of release, the court shall order that the condition be removed.</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● All forms of location monitoring and home confinement are considered very restrictive conditions of release and impinge on a person’s liberty. The statute makes clear that such conditions can only be imposed if no other condition or set of conditions would reasonably assure the person’s appearance or protect an identifiable person or persons from imminent threat of serious physical harm. <ul style="list-style-type: none"> ○ Justice partners should receive education on what the empirical research says about location monitoring. There is no clear association between <u>location monitoring</u> and improving either public safety or rates of appearance. ● Justice partners need to collaborate so that a person’s time spent on electronic monitoring is properly calculated for purposes of the custodial credit. ● Justice partners must communicate and discuss the budgetary implications for using and monitoring location monitoring and home confinement. If OSPS will be providing pretrial services in the county, OSPS must be consulted about the availability and funding for location monitoring. <ul style="list-style-type: none"> ○ Given the cost of location monitoring and its limited effectiveness, it is a condition that should be reserved only for those who are most likely to fail on pretrial supervision.

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HB 3653 Reference	Description	Considerations
Person Detained When Ordered Released		
110-5(e)	(e) If a person remains in pretrial detention after his or her pretrial conditions hearing after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably assure the appearance of a defendant as required or the safety of any other person and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of 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.	<u>Operational Considerations</u> <ul style="list-style-type: none"> • This section requires the court to review the cases after the release decision is made to ensure that the person was in fact released and is not detained because of the unavailability of a condition or the person ineligibility for a condition. A person cannot be detained because of their inability to pay for a condition of release. • Justice partners should collaborate on creating a process for the automatic review of cases to ensure that people are not detained for these reasons.
Person with Warrant in Another County		

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HB 3653 Reference	Description	Considerations
109-2(a)	(a) Any person arrested in a county other than the one in which a warrant for his arrest was issued shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or, if no additional delay is created, before the nearest and most accessible judge in the county from which the warrant was issued. Upon arrival in the county in which the warrant was issued, the status of the arrested person's release status shall be determined by the release revocation process described in Section 110-6.	<u>Operational Considerations</u> <ul style="list-style-type: none">● Counties are concerned about transportation requirements under this section.
109-2(c)	(c) If a defendant is charged with a felony offense, but has a warrant in another county, the defendant shall be taken to the county that issued the warrant within 72 hours of the completion of condition or detention hearing, so that release or detention status can be resolved. This provision shall not apply to warrants issued outside of Illinois.	Operational Considerations <ul style="list-style-type: none">● Counties are concerned about transportation requirements under this section.