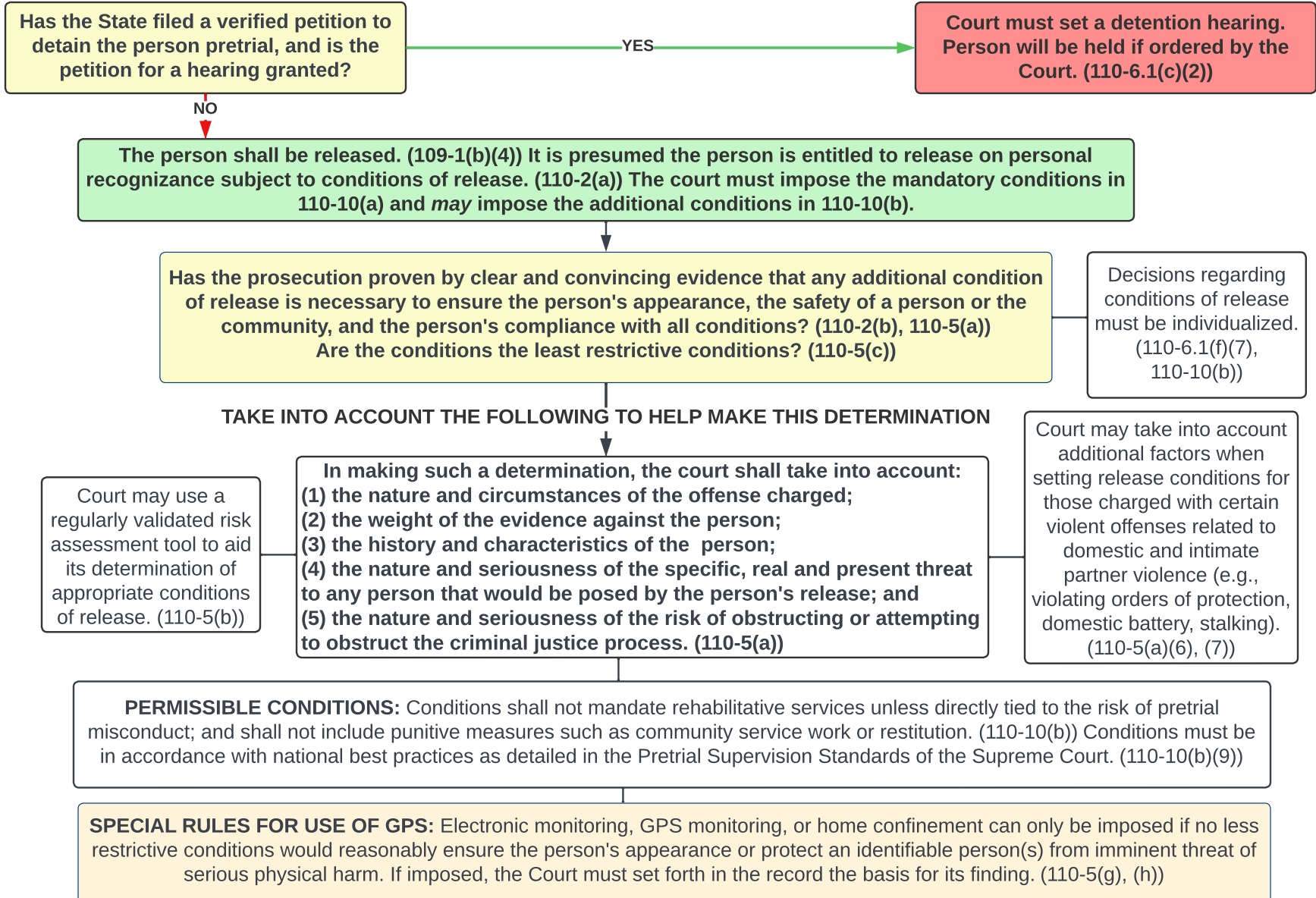


Setting Release Conditions

Initial Appearance Hearing



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

Setting Conditions of Pretrial Release

725 ILCS 5 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.”	<p><u>Interpretation Considerations</u></p> <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. <p><u>Operational Considerations</u></p> <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 where the sureties provided are nonmonetary in nature.”	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> • This section deletes the definition of “bail” and replaces it with this definition of “pretrial release.” <p><u>Operational Considerations</u></p> <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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725 ILCS 5 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 requirements imposed upon a criminal defendant by the court under Section 110-5.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> This section deletes the definition of “bail bond” and replaces it with a new definition of “conditions of release.” <p><u>Operational Considerations</u></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)	<p>“ All persons charged with an offense shall be eligible for pretrial release before conviction. 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. Pretrial release may be denied only if a person is charged with an offense listed</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> Subsection (a) creates a presumption of release on recognizance, subject to appearing in court and not committing a criminal offense. <p><u>Operational Considerations</u></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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725 ILCS 5 Reference	Description	Considerations
	in Section 110-6.1 and after the court has held a hearing under Section 110-6.1..."	
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>Interpretation Considerations</u> <ul style="list-style-type: none"> • 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.
Burden of Proof		
110-2(b)	"At all pretrial hearings, the prosecution shall have the burden to prove by clear and convincing evidence that any condition of release is necessary."	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> • The burden of proof is on the prosecutor at all pretrial hearings, including the first appearance, to demonstrate by "clear and convincing evidence" that a condition of release is necessary.
Individualized Decisions		
110-6.1(f)(7)	"Decisions regarding release, conditions of release and detention to prior trial must be individualized, and no single factor or standard may be used exclusively to order detention. Risk assessment tools may not be used as the sole basis to deny pretrial release."	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> • Decisions must be individualized and cannot be based on one single factor or standard, and must not be solely reliant on the results of a risk assessment tool. <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.

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725 ILCS 5 Reference	Description	Considerations
Protecting Victims		
110-5(j)	<p>“Crime Victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain a protective order.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> • The citation for the referenced provision of the Rights of Crime Victims and Witnesses Act appears to be incorrect; it should refer to paragraph (2) of subsection (b) (specifically, 725 ILCS 120/4.5 (b)(2)). • HB1095 amends this subsection to replace “orders of protection” with “protective order.” This change covers no contact orders for those not in a domestic relationship. • The State’s Attorney’s office must notify crime victims of any hearing at which release conditions will be set.
Setting Conditions		
110-5(a)	<p>“In determining which conditions of pretrial release, if any, which will reasonably ensure 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, the court shall, on the basis of available information, take into account such matters as:</p> <p>(1) the nature and circumstances of the offense charged;</p> <p>(2) the weight of the evidence against the defendant, except that the court may consider</p>	<p><u>Interpretation Consideration</u></p> <ul style="list-style-type: none"> • In addition to eliminating the mention of “bail” in this section, the PFA reformatted and clarified the factors that the court must take into consideration when determining conditions of pretrial release. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> • Circuits/counties may consider creating judicial bench cards that can easily reference factors associated with conditions of release.

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725 ILCS 5 Reference	Description	Considerations
	<p>the admissibility of any evidence sought to be excluded;</p> <p>(3) the history and characteristics of the defendant, including:</p> <ul style="list-style-type: none">(A) the 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(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>(4) the nature and seriousness of 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 that would be posed by the eligible defendant's release, if applicable; as required under paragraph (7.5) of Section 4 of</p>	

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725 ILCS 5 Reference	Description	Considerations
	<p>the Rights of Crime Victims and Witnesses Act; and</p> <p>(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, if applicable"</p>	
Setting Conditions for Domestic Violence Offenses		
110-5 (a)(6)(L)	<p>"when a person is charged with a violation of a protective order, domestic battery, aggravated domestic battery, kidnapping, aggravated kidnaping, unlawful restraint, aggravated unlawful restraint, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against a spouse or a current or former partner in a cohabitation or dating relationship, regardless of whether an order of protection has been issued against the person, the court may consider the following additional factors:...</p> <p>(L) 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>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● In domestic violence cases (and other specified offenses), the court may consider additional factors. ● Other than the addition of subsection L, which allows a court to consider the defendant's propensity or reputation for violent behavior or lack thereof, the PFA did not make any substantive changes to this section.
110-5(a)(7)	"In cases of stalking or aggravated stalking under	<u>Interpretation Considerations</u>

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Setting Conditions of Pretrial Release-6

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725 ILCS 5 Reference	Description	Considerations
	<p>Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the court may consider the following additional factors:</p> <p>(A) 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;</p> <p>(B) Any evidence of the defendant's psychological, psychiatric or other similar social history that tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.</p> <p>(C) The nature of the threat which is the basis of the charge against the defendant;</p> <p>(D) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;</p> <p>(E) The age and physical condition of any person allegedly assaulted by the defendant;</p> <p>(F) Whether the defendant is known to possess or have access to any weapon or weapons;</p>	<ul style="list-style-type: none">• In cases of stalking or aggravated stalking, the court may now consider additional factors as set out in (A) through (G).

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Setting Conditions of Pretrial Release-7

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725 ILCS 5 Reference	Description	Considerations
	(G) 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."	
Use of Risk Assessment		
110-5(b)	"The court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release as provided under Section 110-6.4. 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><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● Risk assessment tools may be used in determining conditions of release. <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 understand and use 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/.
Available Release Conditions		
110-5(c)	"The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10. The court may impose any conditions that are permissible under subsection (b) of Section 110-10. The conditions of release imposed shall be the least restrictive conditions or combination of conditions necessary to	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● This subsection specifies that there are both mandatory and permissive conditions of release as outlined in the statute. ● All permissive conditions of release must be the "least restrictive" to reasonably ensure court appearance and safety.

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725 ILCS 5 Reference	Description	Considerations
	reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community.”	
110-10(a)	<p>“If a person is released prior to conviction, the conditions of pretrial release shall be that he or she will:</p> <p>(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;</p> <p>(2) Submit himself or herself to the orders and process of the court;</p> <p>(3) (Blank);</p> <p>(4) Not violate any criminal statute of any jurisdiction;”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> Traveling out of state is no longer a mandatory condition. Subsections (5) and (6) outline mandatory conditions associated with specific offenses and are unchanged from the previous law. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> 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 Court may also consider creating a supplemental conditions of release form to use for offense-specific mandatory conditions of release.
110-10(b)	“Additional conditions of release shall be set only when it is determined that they are necessary to ensure the defendant's appearance in court, ensure the defendant does not commit any criminal offense, ensure the defendant complies	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> 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.

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725 ILCS 5 Reference	Description	Considerations
	<p>with all conditions of pretrial release, prevent the defendant's unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem solving courts. However, conditions shall include the least restrictive means and be individualized. Conditions shall not mandate rehabilitative services unless directly tied to the risk of pretrial misconduct. Conditions of supervision shall not include punitive measures such as community service work or restitution."</p>	<ul style="list-style-type: none"> ● This subsection prohibits mandated "rehabilitative services" as a condition of release absent a connection to risk of "pretrial misconduct." <ul style="list-style-type: none"> ○ This does not apply to people participating in treatment courts. ○ Justice partners should receive education on what the empirical research says about drug testing; there is no clear association between <u>drug testing</u> and improving either public safety or rates of appearance. <ul style="list-style-type: none"> ■ <i>Note: All referenced resources from outside organizations are provided for educational purposes.</i> ● Punitive conditions of release such as community service or restitution are also prohibited. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● The Court may want to consider creating standard forms to provide to people so that all conditions of release are known and are clear to people and their loved ones.
110-10(b)	<p>"Conditions may include the following:</p> <p>(0.05) Not depart this State without leave of the court;</p> <p>(1) Report to or appear in person before such person or agency as the court may direct;</p> <p>(2) Refrain from possessing a firearm or other dangerous weapon;</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● 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. <ul style="list-style-type: none"> ○ <i>Note: All referenced resources from outside organizations are provided for educational purposes.</i> ● Subsection (8) requires the defendant to sign a written admonishment outlining requirements in 110-12 to keep an updated address with the court. This will ensure that people are fully informed of their obligations to inform the court of their current address.

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	<p>(3) Refrain from approaching or communicating with particular persons or classes of persons;</p> <p>(4) Refrain from going to certain described geographic areas or premises;</p> <p>(5) [placed under supervision of the pretrial services agency]</p> <p>(6) [ignition interlock]</p> <p>(7) [comply with a protective order]</p> <p>(8) Sign a written admonishment requiring that he or she comply with the provisions of Section 110-12 regarding any change in his or her address. The defendant's address shall at all times remain a matter of record with the clerk of the court; and</p> <p>(9) Such other reasonable conditions as the court may impose, so long as these conditions are the least restrictive means to achieve the goals listed in subsection (b), are individualized, and are in accordance with national best practices as detailed in the Pretrial Supervision Standards of the Supreme Court. The defendant shall receive verbal and written notification of</p>	<ul style="list-style-type: none"> ● Subsection (9) mandates verbal and written notification of conditions of release and future court dates, which should also include the time and location of court <ul style="list-style-type: none"> ○ The court and the local pretrial services agency should coordinate to determine which agency is responsible for these notifications. ○ Courts may want to assess its current notification protocol and policies and update as necessary. ● Subsection (9) also allows for other reasonable conditions to be placed “so long as these conditions are the least restrictive means to achieve the goals listed in subsection (b), are individualized, and are in accordance with national best practices as detailed in the Pretrial Supervision Standards of the Supreme Court.” <ul style="list-style-type: none"> ○ This subsection underscores the need for conditions of supervision to be individualized and consistent with best practices. ○ 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: <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. ■ <i>Note: All referenced resources from outside organizations are provided for educational purposes.</i>

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725 ILCS 5 Reference	Description	Considerations
	conditions of pretrial release and future court dates, including the date, time, and location of court.”	
Location Monitoring and Home Confinement		
110-5(g)	“ Electronic monitoring, GPS monitoring, or home confinement can only be imposed as a condition of pretrial release if 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><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● Location monitoring can only be imposed if no other condition or set of conditions would reasonably ensure the person’s appearance or protect an identifiable person or persons from imminent threat of serious physical harm. ● All forms of location monitoring and home confinement are considered very restrictive conditions and impinge on a person’s liberty. <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. <ul style="list-style-type: none"> ■ <i>Note: All referenced resources from outside organizations are provided for educational purposes.</i> ● 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.
110-5(h)	“ If the court imposes electronic monitoring, GPS monitoring, or home confinement the court shall set forth in the record the basis for its	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● Custodial credit is required when the person is subject to home confinement.

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	<p>finding. A defendant shall be given custodial credit for each day he or she was subjected to home confinement, at the same rate described in subsection (b) of Section 5-4.5-100 of the unified code of correction. The court may give custodial credit to a defendant for each day the defendant was subjected to GPS monitoring without home confinement or electronic monitoring without home confinement.”</p>	<ul style="list-style-type: none"> • The court <i>may</i> give custodial credit to a person subject to GPS or electronic monitoring. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> • The Court may want to consider creating standard forms that include the ordering of location monitoring, since they must record the basis for their finding. • Justice partners need to collaborate so that a person’s time spent on home confinement (and GPS/electronic monitoring, if ordered) is properly calculated for purposes of the custodial credit. • Defense counsel may request custodial credit in all cases involving such monitoring.
110-5(d)	<p>“When a person is charged with a violation of a protective order, the court may order the defendant placed under electronic surveillance as a condition of pretrial release, as provided in the Section 5-8A-7 of the Unified Code of Corrections, based upon the information collected under paragraph (6) of subsection (a) of this Section, the results of any assessment conducted, or other circumstances of the violation.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> • Electronic surveillance may be used as a condition of release for someone charged with a violation of a protective order.
110-5(i)	<p>“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</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> • Additional hearings to reconsider this condition may need to be scheduled every 60 days. • The court will need to operationalize this review of this condition.

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	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.”	
Electronic Monitoring and Pregnant People		
110-5.2(c)	“Electronic Monitoring may be ordered by the court only 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. All pregnant people or those who have given birth within 6 weeks shall be granted ample movement to attend doctor’s appointments and for emergencies related to the health of the pregnancy, infant, or postpartum person.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> • This subsection outlines the standard to meet in order to place a person who is pregnant or 6 weeks postpartum on electronic monitoring. It includes the “no less restrictive condition” standard in addressing safety and ensuring court appearance. • Electronic monitoring as a condition of release for a person who is pregnant or 6 weeks postpartum must allow movement to attend medical appointments and emergencies associated with the pregnancy, infant or postpartum complications.
Person Detained When Ordered Released		
110-5(e)	“If a person remains in pretrial detention 48 hours 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	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> • This section specifies how quickly the court must 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

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	<p>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 ensure the appearance of a defendant as required 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.”</p>	<p>or the person ineligibility for a condition. A person cannot be detained because of their inability to pay for a condition of release.</p> <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> Justice partners should collaborate on creating a process for the automatic review of cases to ensure that people are not detained for these reasons.
After the Conditions Hearing		
110-5(k)	<p>“The State and defendants may appeal court orders imposing conditions of pretrial release.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> The order setting conditions of release may be appealed by either party. The Supreme Court will be issuing a new rule about the appeals process. This will likely create a new demand for the prompt appellate review of conditions of pretrial release. Section 110-6.6 states that the AV recording or other electronic recording system, or transcription by a court reporter, shall be entered into the record for purposes of appeals.
110-5(f-5)	<p>“At each subsequent appearance of the defendant before the court, the judge must find</p>	<p><u>Operational Considerations</u></p>

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

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Email pretrialtaskforce@illinoiscourts.gov with any questions or suggested additions to this list of implementation considerations.

725 ILCS 5 Reference	Description	Considerations
	that the current conditions imposed are necessary to reasonably assure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendants with all conditions of pretrial release. The court is not required to be presented with new information or a change in circumstances to remove pretrial conditions.”	<ul style="list-style-type: none">• Assures that the need for conditions of release will be reassessed by the court at each appearance.