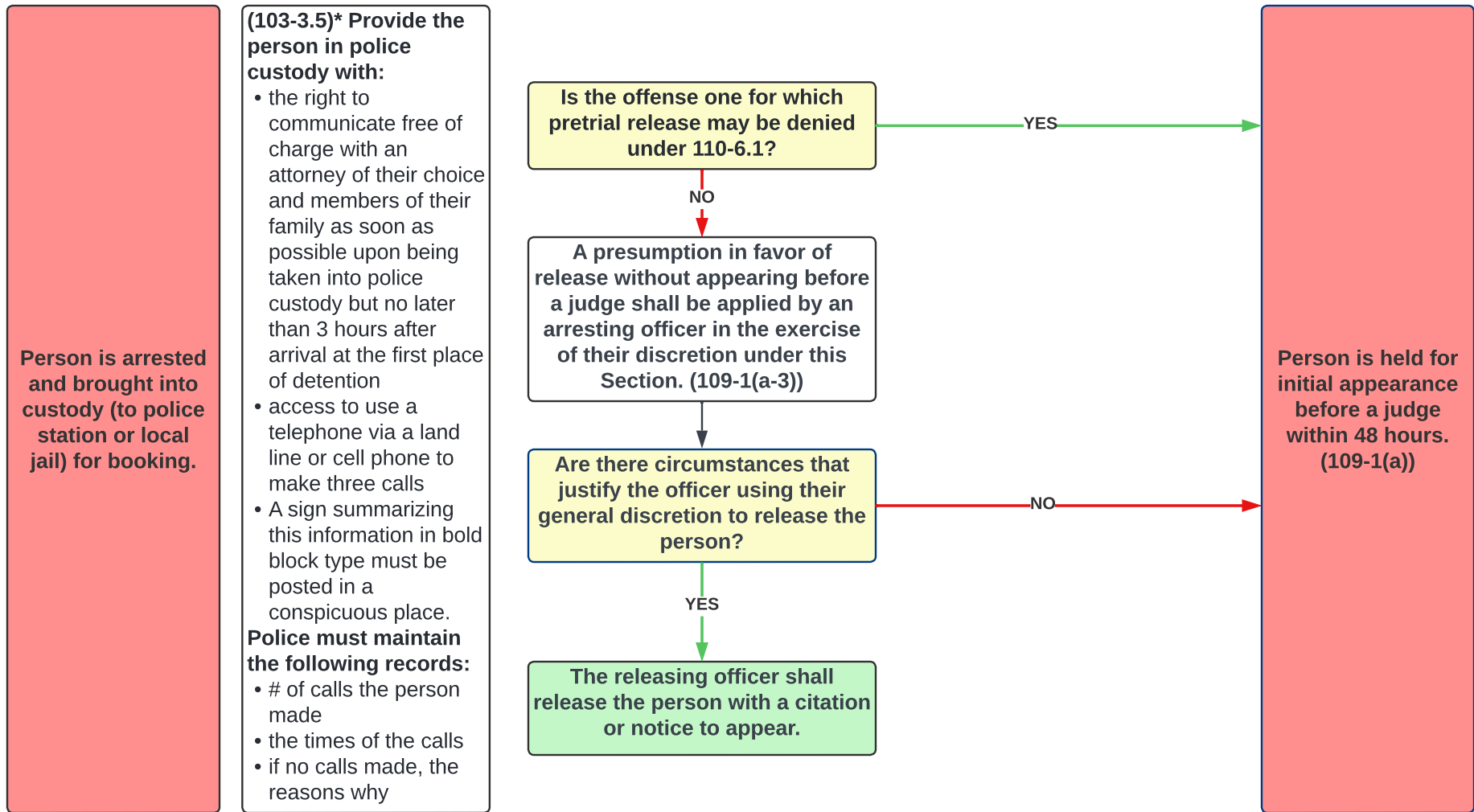


Current as of December 12, 2022 (post-PFA Trailer Bill)

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The text in the flowchart is taken directly from the law with slight editing for brevity. Please see the accompanying considerations document for exact statute language and descriptions of nuances in the law.

Release from Custody



*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.
This is not an official resource from the Supreme Court.

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

Release from Custody

725 ILCS 5 Reference	Description	Considerations
Release from Custody		
109-1(a)	“A person arrested with or without a warrant for an offense for which pretrial release may be denied under paragraphs (1) through (6) of Section 110-6.1 shall be taken without unnecessary delay before the nearest and most accessible judge in that county, except when such county is a participant in a regional jail authority, in which event such person may be taken to the nearest and most accessible judge, irrespective of the county where such judge presides, <u>within 48 hours</u> , and a charge shall be filed.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none">Some stakeholders question the meaning of 48 hours and have pointed to the Statute on Statutes to argue that Saturdays, Sundays, and legal holidays do not count in the calculation of 48 hours. <u>Operational Considerations</u> <ul style="list-style-type: none">This will be a significant hardship for smaller counties that do not have court staff available even 5 days per week currently.
109-1(a-3)	“A person arrested with or without a warrant for an offense for which pretrial release may not be denied may, except as otherwise provided in this Code, be released by a law enforcement officer without appearing before a judge. A presumption in favor of pretrial release shall be	<u>Interpretation Considerations</u> <ul style="list-style-type: none">A person brought into custody may still be released by a law enforcement officer without seeing a judge, so long as the person is not eligible for pretrial detention.Note that section 109-1(a) requires that a person who is eligible for pretrial detention cannot be released before seeing a judge.

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725 ILCS 5 Reference	Description	Considerations
	<p>applied by an arresting officer in the exercise of his or her discretion under this Section.”</p>	<p><u>Operational Considerations</u> <u>For Law Enforcement Organizations</u></p> <ul style="list-style-type: none"> ● The statute does not specify a method of release from custody. However, law enforcement can use a notice to appear or citation when releasing someone from custody. ● Each law enforcement organization should provide operational guidance to their officers to ensure consistent application of this statute. ● When deciding whether to release someone from custody, should law enforcement organizations use the same standard used in 109-1(a-1) (e.g., does law enforcement officer reasonably believe the accused poses a threat to the community or any person; or does the accused have an obvious medical or mental health issue that poses a risk to the accused's own safety)? <ul style="list-style-type: none"> ○ If so, law enforcement organizations should provide guidance on what rises to the level of a “threat to the community or any person”, and what qualifies as “obvious medical or mental health issues that pose a risk to their own safety.” ● Law enforcement organizations will need new forms for issuing the notice to appear. These forms should be clear about the conditions of release (i.e., return to court and no illegal behavior) <ul style="list-style-type: none"> ○ Note that Supreme Court Rule 552 gives the Conference of Chief Judge’s the authority to govern the uniform citation forms. They are REQUIRED to be used by law enforcement when issuing citations for any non-felony offense. Law enforcement agencies are not authorized to generate their own citation forms for non-felony offenses for local use.

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725 ILCS 5 Reference	Description	Considerations
		<ul style="list-style-type: none"> ● As with releasing someone by citation, law enforcement organizations should consider developing a process and resources for officers to refer people to treatment opportunities, even if they are given a notice to appear. ● Will law enforcement organizations have access to a person’s criminal records in the field or when brought into custody? That information may be relevant in their exercise of discretion to release. <ul style="list-style-type: none"> ○ For example, a person arrested on an otherwise probationable felony may actually be eligible for pretrial detention because the felony is non-probationable, based on the person’s criminal history. ○ For example, if someone is already on pretrial release and they are arrested for a felony or class A misdemeanor, they may be eligible for pretrial detention. Whether someone is already on pretrial release is relevant towards whether law enforcement should hold them for the initial appearance. ● Law enforcement should train their officers in a consistent and comprehensive way on the statute, the new operational guidance, and any new forms or procedures. <p><i>For Courts and Clerk’s Offices</i></p> <ul style="list-style-type: none"> ● If the county has a court reminder system, consider developing a process to enroll people who are given a notice to appear into that system. ● Courts will need to consider how to respond to an increased volume of people appearing at first appearance who will not have been fingerprinted or photographed when cited <p><i>Coordination between Law Enforcement and Clerk’s Office</i></p>

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725 ILCS 5 Reference	Description	Considerations
		<ul style="list-style-type: none"> • Law enforcement and the Clerk’s Office will need to communicate about the setting of court dates. • Law enforcement and the Clerk’s Office must coordinate regarding any changes to technology or forms.
Rights in Custody		
HB 3512 103-3.5(h)	“For purposes of this Section, "place of detention" means a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency, other than a courthouse, that is owned or operated by a law enforcement agency, or other building, such as a school or hospital, where persons are held in detention in connection with criminal charges against those persons.”	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> • The PFA was amended by HB 3512 in early 2022 to provide a definition of “place of detention” and clarify the time requirements of providing phone calls.
HB 3512 103-3.5	<p>“(a) Persons who are in police custody shall have the right to communicate free of charge with an attorney of his or her choice and members of his or her family as soon as possible upon being taken into police custody, but no later than 3 hours of arrival at the first place of detention. Persons in police custody must be given access to use a telephone via a landline or cellular phone to make 3 telephone calls.”</p> <p>“(d) If a person who is in police custody is transferred to a new place of detention, that</p>	<u>Interpretation Considerations</u> <ul style="list-style-type: none"> • The PFA was amended by HB 3512 in early 2022 to provide a definition of “place of detention” and clarify the time requirements of providing phone calls. • If the person makes three calls and receives no answers, do they have a right to three more calls? • Note that the 3-hour requirement does not apply while the person is asleep, unconscious, or otherwise incapacitated or an exigent circumstance prevents the officers from timely complying. (103-3.5(f)) • If this happens, the details of the exigent circumstances must be documented in the police report.

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725 ILCS 5 Reference	Description	Considerations
	<p>person's right to make 3 telephone calls under this Section within 3 hours of arrival is renewed."</p>	<ul style="list-style-type: none"> ● Subsection (d) suggests that if the person makes three calls and is then transferred to another location, they have a right to three more calls within 3 hours of arriving in the new location. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> ● The rights under this section apply to all people in police custody. Not just people who will be interrogated. ● Law enforcement organizations should provide operational guidance to officers to ensure that the person's rights are honored and the records are completed in a consistent way. ● Police may wish to consider how to handle the situation when the person proceeds to call the victim of the crime, especially in domestic violence situations. ● Who will be keeping track of the three hour time period? Will those in custody have a way to track the time? ● Under subsection (g), police must maintain the following records: the number of calls the person made; the times of the calls; and if no calls are made, the reasons why. <ul style="list-style-type: none"> ○ How long do these records need to be kept, in what matter(digital or paper), and who may have access to them? ● It is suggested that the Illinois Chiefs of Police or Sheriff's Association create a standard template for law enforcement organizations to use to comply with this new law.
103-3.5 (b)	<p>" In accordance with Section 103-7, at every police facility where a person is in police custody, a sign containing at minimum, the</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> ● Police must post a sign summarizing custodial rights and information in bold block type in a conspicuous place.

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725 ILCS 5 Reference	Description	Considerations
	<p>following information in bold block type must be posted in a conspicuous place:</p> <p>(1) a short statement notifying persons who are in police custody of their right to have access to a phone within 3 hours of being taken into police custody; and</p> <p>(2) that persons who are in police custody have the right to make 3 phone calls within 3 hours of being taken into custody, at no charge.”</p>	<p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> It is suggested that the Illinois Chiefs of Police or Sheriff’s Association create a standard template for law enforcement organizations to use to comply with this new law.
103-3.5 (c)	<p>“In addition to the information listed in subsection (b), if the place of detention is located in a jurisdiction where the court has appointed the public defender or other attorney to represent persons who are in police custody, the telephone number to the public defender or other attorney’s office must also be displayed. The telephone call to the public defender or other attorney must not be monitored, eavesdropped upon, or recorded.”</p>	<p><u>Interpretation Considerations</u></p> <ul style="list-style-type: none"> If the court in the local jurisdiction has appointed the public defender or other attorney to represent people in police custody, their telephone number must also be displayed. [Note: Cook County is the only county where the PD is appointed to represent people in police custody. <p><u>Operational Considerations</u></p> <ul style="list-style-type: none"> Law enforcement organizations will need to ensure there are spaces in the area of custody that will allow for privacy for attorney phone calls, which includes preventing them from recording such conversations.