



Pretrial release

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Bail abolished 725 ILCS 110-1.5

- January 1, 2023
- Posting monetary bail will be abolished
- Except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact
- Public Act 101-652



No custodial arrest 725 ILCS 5/109-1(a-1)

- Law enforcement officers must issue a citation
- Traffic and Class B and C criminal misdemeanor offenses, or of petty and business offenses, upon their showing proper identification
- If no obvious threat to community or any person, or no obvious medical or mental health issues that pose a risk to their own safety.
- Schedule defendant for court within 21 days.



Pretrial release

- Person arrested with or without a warrant for offense for which pretrial release may **not** be denied may be released by the officer without appearing before a judge, except as otherwise provided.
- Releasing officer must issue **summons** to appear within 21 days to person released



Presumptions - 725 ILCS 5/109-1(a-3)

- In favor of pretrial release applied by an arresting officer in the exercise of his or her discretion
- That defendant is entitled to release on **personal recognizance** on the condition that defendant
 1. attend all the required court proceedings,
 2. does not commit any criminal offense, and
 3. complies with all the terms of pretrial release, including, but not limited to, orders of protection all civil no contact orders, and all stalking no contact orders.
- 725 ILCS 5/110-2(b)



Detention - 725 ILCS 5/110-2(c)

- Court may only **detain** a defendant when there is a finding that he or she poses a **specific, real and present threat** to a person, or has a high likelihood of willful flight.
- What if the victim is dead and the defendant isn't likely to kill anyone else?



Release on recognizance - 725 ILCS 5/110-2(c)

- Court may require defendant sign **written admonishment** requiring compliance with the provisions regarding any change in his or her address.
- Defendant may be released on his or her own recognizance upon signature.
- Defendant's address of public record with the clerk of the court.



Failure to appear - 725 ILCS 5/110-2(c)

- Criminal offense - violation of the conditions of pretrial release
- 720 ILCS 5/32-10 .



Detention after hearing 725 ILCS 5/110-2(d)

- Requires written finding as to why less restrictive conditions would **not** assure safety to the community and assure the defendant's appearance in court.
- Every time defendant appears in court, judge must find that continued detention or the current set of conditions imposed are necessary
- But, the court not required to be presented with new information or a change



Intent of law

- Rely on **contempt of court** proceedings or criminal sanctions instead of financial loss to assure defendant appears, that defendant will not pose a danger to any person or the community, and that defendant will comply with all conditions of pretrial release
- All persons charged with an offense shall be eligible for **pretrial release** before conviction



Who's eligible? 725 ILCS 5/110-4(a)

- All persons
- May only be denied when a person is charged with an offense listed in 725 ILCS/110-6.1 or when the defendant has a high likelihood of willful flight, and after the court has held a hearing under 725 ILCS 5/110-6.1.



Even life imprisonment?

- Yes,
- Person charged with a capital offense or an offense for which a sentence of **life imprisonment** may be imposed shall not be eligible for release pretrial **until** a hearing is held. Burden of is on the defendant
- **725 ILCS 5/110-4(b)**



State's petition*

- State may file petition to deny release without notice to the defendant at the first appearance or within 21 days after arrest and release of the defendant
- Hearing within 48 hours if Class X, 1, 2 or 3
- Hearing within 24 hours if charged with Class 4 or misdemeanor
- 725 ILCS 5/110-6.1(c)(2)



State's petition*

- State must show proof of guilt is evident, defendant poses real and present threat to the safety of a **specific identifiable person** or persons, no condition(s) will prevent real and present threat to safety of any person or willful flight
- 725 ILCS 5/110-6.1



Felony procedure*

- Court must hold a preliminary hearing unless the grand jury has indicted the defendant 725 ILCS 5/110-6.1(b)



Burden of proof - 725 ILCS 5/110-4(d)

- When the person presents a real and present threat to the physical safety of any person or persons, including stalking and aggravated stalking
- On the State



Prerelease hearing*

- State may offer evidence via proffer
- Defendant can call witnesses
- Defendant can ask judge to compel appearance of complaining witness if materially prejudiced by his or her absence
- But, impeachment not a good reason
- Not to be used for discovery
- 725 ILCS 5/110-6.1(f)



Factors to consider - 725 ILCS 5/110-5(a)

- (1) nature and circumstances of the offense charged;
- (2) weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded;
- (3) history and characteristics of the eligible defendant, including:



Factors to consider

- (4) 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
- (5) whether, at the time of the current offense or arrest, the eligible defendant was on probation, or on other release pending trial, sentencing, or completion of sentence for an offense under law, or the law of this or any other state;



Factors to consider

- (6) 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 and
- (7) nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the eligible defendant's release, if applicable.



Mandatory conditions 725 ILCS 5/110-10

- Appear to answer the charge in the court having jurisdiction on a specific day and thereafter as ordered by the court until discharged or final order of the court.
- Submit himself or herself to all orders and process of court.
- Not violate the criminal statutes of any jurisdiction.



Permitted conditions 725 ILCS 5/110-10

- Surrender firearms for certain offenses
- Submit to psychological evaluation where charged with UUW and a school is involved
- Not depart the State without leave of court;
- Report to or appear in person before such person, or agency as the court may direct;
- Refrain from possessing a firearm or other dangerous weapon;



Permitted conditions 725 ILCS 5/110-10

- (1) Not depart the State without leave of court;
- (2) Report to or appear in person before such person, or agency as the court may direct;
- (3) Refrain from possessing a firearm or other dangerous weapon;
- (4) Refrain from approaching or communicating with particular persons or classes of persons;
- (5) Refrain from going to certain described geographical areas or premises;
- (6) Refrain from engaging in certain activities or indulging in intoxicating liquor or certain drugs



Permitted conditions 725 ILCS 5/110-10

- (7) Undergo treatment for drug addiction or alcoholism;
- (8) Undergo medical or psychiatric treatment;
- (9) Work or pursue a course of study or vocational training;
- (10) Attend or reside in a court designated facility;
- (11) Support his or her dependents;
- (12) If a minor resides with his or her parents or in a foster home attend school, attend a non-residential program for youths and contribute to his support at home or in a foster home;

Permitted conditions 725 ILCS 5/110-10

(13) Observe any curfew ordered by the court.

(14) Remain in the custody of a designated person or organization supervising the defendant's release.

(15) Be placed under the direct supervision of the "Pretrial Services Agency, Probation Department;" or Court Services Department in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device subject to the Electronic Home Detention Act.

Electronic monitoring*

- Can only be imposed if no less restrictive condition of release or combination would reasonably ensure the appearance of the defendant at hearings or protect an identifiable person or persons from imminent threat of serious physical harm
- 725 ILCS 5/110-5(g)
- What if it's just a threat to the public?

Permitted conditions 725 ILCS 5/110-10

(16) Unless unable, pay a fee for the costs of electronic monitoring if charged with any alcohol, cannabis, methamphetamine, or controlled substance violation while placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial bond home supervision capacity with the use of an approved monitoring device

(17) Unless unable, pay a fee for the costs of electronic monitoring, while placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial bond home supervision capacity with the use of an approved monitoring device, as a condition of such release

Permitted conditions 725 ILCS 5/110-10

(18) For persons charged with violating 625 ILCS 5/11-501 of the Illinois Vehicle Code, refrain from operating a motor vehicle not equipped with an ignition interlock device.

(19) Comply with the terms and conditions of an order of protection.

(20) Such other reasonable conditions as the court may impose.

Special crimes

When a person is charged with violating an order of protection or domestic battery, aggravated domestic battery, kidnapping, aggravated kidnapping, unlawful restraint, aggravated unlawful restraint, stalking, aggravated stalking, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against an intimate partner regardless whether an order of protection has been issued against the person, The court may consider:

Special considerations - 725 ILCS 5/110-5(b-5)

(1) whether the alleged incident involved harassment or abuse, as defined in the Illinois Domestic Violence Act;

(2) whether the person has a history of domestic violence, as defined in the Illinois Domestic Violence Act, or a history of other criminal acts;

(3) the mental health of the person;

**Special considerations**

- (4) whether the person has a history of violating the orders of any court or governmental entity;
- (5) whether the person has been, or is, potentially a threat to any other person;
- (6) whether the person has access to deadly weapons or a history of using deadly weapons;

**Special considerations**

- (7) whether the person has a history of abusing alcohol or any controlled substance;
- (8) based on the severity of the alleged incident that is the basis of the alleged offense, including, but not limited to, the duration of the current incident, and whether the alleged incident involved the use of a weapon, physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;

**Special considerations**

- (9) whether separation of the person from the victim of abuse or a termination of the relationship between the person and the victim of abuse has recently occurred or is pending;
- (10) whether the person has exhibited obsessive or controlling behaviors toward the victim of abuse alleged victim, including, but not limited to, stalking, surveillance, or isolation of the victim of abuse alleged victim or victim's family member or members;

**Special considerations**
(11) whether the person has expressed suicidal or homicidal ideations;
(12) any other factors deemed by the court to have a reasonable bearing upon defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of that behavior

**Special considerations – stalking or aggravated stalking 725 ILCS 5/110-5(c):**
(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, or assaultive nature, or lack of any such history.

**Special considerations – stalking or aggravated stalking**
(3) The nature of the threat which is the basis of the charge against the defendant;
(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;
(5) The age and physical condition of any person allegedly assaulted by the defendant;

Special considerations – stalking or aggravated stalking

(6) Whether the defendant is known to possess or have access to any weapon or weapons;

(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.

Failure to comply

- Court on its own motion or upon motion from the State, may issue an order to show cause as to why he or she shall not be subject to revocation of pretrial release, or for sanctions
- Court can issue warrant pursuant to 725 ILCS 5/110-3(c) upon failure to comply with any condition of pretrial release or recognizance.

Court order - 725 ILCS 5/110-3(b)

- Must state the facts alleged to constitute the hearing to show cause or why the person is subject to revocation of pretrial release
- Certified copy of the order shall be served upon the person at least 48 hours in advance of the scheduled hearing



Failure to appear - 725 ILCS 5/110-3(c)

- May issue arrest warrant
- Warrant contents are 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



Failure to appear - felony

- May issue a **warrant** for the arrest of defendant after failure to appear at the show for cause hearing
- Directive to peace officers to arrest the person and hold him or her without pretrial release and to deliver him or her before the court for further proceedings
- 725 ILCS 5/110-3(c)



Failure to appear

- If the order is issued, **failure to appear** shall not be recorded until the defendant fails to appear at the hearing to show cause
- Cured non-appearance cannot be used to determine future likelihood of appearance in court
- 725 ILCS 5/110-3(d)



Violation of conditions of pretrial release - 720 ILCS 5/32-10

- Is a criminal offense if defendant does not surrender within 30 days
- If conditions for felony – Class A
- If conditions for misdemeanor –Class C
- If condition was to not possess a firearm – Class 4 for the first time and Class 3 for second or subsequent violation



Violation of conditions of pretrial release - 720 ILCS 5/32-10

- If family or household member was victim of initial crime – Class A
- If felony, Class A or criminal offense where family or household member was victim of crime and charged with another felony, Class A or criminal offense where family or household member was victim of crime – defendant must appear in court



Violation of conditions of pretrial release - 720 ILCS 5/32-10

- Court can still use its contempt power
- Any sentence imposed may be served consecutive to the sentence imposed for the charge for which pretrial release had been granted and with respect to which the defendant has been convicted. **720 ILCS 5/32-10(d)**



Rights of the accused upon arrest - 725 ILCS 5/103-3.5(a)

- 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 cell phone to make calls
- Effective 1/7/22



Sign in police facility

- Bold block type must be posted in a conspicuous place
- (1) short statement notifying persons in police custody of right to have access to a phone within 3 hours of being taken into police custody; and
- (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.
- 725 ILCS 5/103-3.5(c).



Sign in police facility

- If the place of detention is located in jurisdiction where court has appointed the public defender or other attorney to represent persons who are in police custody, telephone number to the public defender or other attorney's office must be displayed.
- The telephone call to the public defender or other attorney must not be monitored, eavesdropped upon, or recorded.
- 725 ILCS 5/103-3.5(c)

Detention

- If a person in police custody is transferred to a new place of detention, that person's right to make 3 telephone calls within 3 hours of arrival is renewed
- 725 ILCS 5/103-3.5(d)

Violation of rights - 725 ILCS 5/103-3.5(e).

- Statements made by person who is detained in police custody in violation of provisions are **presumed inadmissible** in court as evidence. But, may be overcome by preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances which includes, but is not limited to, evidence that law enforcement knowingly prevented or delayed a person's right to communicate or failed to comply with the requirements of the statute.

3 hour requirement - 725 ILCS 5/103-3.5(f)

- 3-hour requirement does not apply while person is asleep, unconscious, or otherwise incapacitated or an exigent circumstance prevents the officers from timely complying with this statute.
- If this occurs must be documented within the police report detailing the exigent circumstance. Once the exigent circumstance ends, the right to make 3 phone calls within 3 hours resumes.

Records that must be maintained

- Number of phone calls the person made while in custody,
- Time or times the person made phone calls, and,
- If the person did not make any phone calls, a statement of the reason or reasons why no calls were made
- 725 ILCS 5/103-3.5(g).

"Place of detention" - 725 ILCS 5/103-3.5(h).

- 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

Senate Bill 4228

- Amends the Code of Criminal Procedure of 1963 concerning pretrial detention.
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- 1. Definition of "willful flight": past non-appearance in court is conclusive evidence of future intent to evade prosecution (rather than simple past non-appearance in court alone is not evidence of future intent to evade prosecution).
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- 2. Monetary bail is abolished for all petty, traffic, and criminal offenses committed on or after January 1, 2023.
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- 3. Court may deny defendant pretrial release if defendant is charged with a forcible felony offense for which a sentence of imprisonment, based on the charge or the defendant's criminal history, without probation, periodic imprisonment, or conditional discharge, is required by law upon conviction.
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Senate Bill 4228

- 4. Eliminates requirement for pretrial detention that it be alleged that defendant's pretrial release poses a specific, real and present threat to any person or the community.
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- 5. Court may deny defendant pretrial release if the defendant is charged with any other crime for which the court believes there is a serious risk that: (1) the defendant will not appear in court as required; (2) the defendant will pose a danger to any other person or the community; or (3) the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror.
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- 6. If court enters order for detention of the defendant, the defendant shall be brought to trial on the offense for which he is detained within 120 (rather than 90) days after entry of the order of detention.



New Jersey Model

- 2017 NJ enacted risk-based system
 - Combines data, risk measurement, and risk assessment.
 - Upon arrest court staff conducts public safety assessment (PSA) that considers
 - Type of offense,
 - Prior convictions (including violent convictions),
 - Whether person missed court before, and more.

Judges are empowered to tailor their decisions to release, detain, or impose conditions on a specific case.



New Jersey Model

- 2022 - report from the Administrative Office of the Courts reported that:
- “[d]efendants charged with [firearms] offenses have been detained at more than twice the rate of other defendants.”
- By January 2022, just 5.7% - 7.1% of people released for crimes that did not involve firearms were rearrested for more serious offenses.
- 93% that were not rearrested for more serious crimes – roughly 9 out of 10 people. Other jurisdictions, including New Mexico and Kentucky, saw crime rates decline or remain stable when they implemented similar bail reforms.
