



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB3390

Introduced 2/8/2024, by Sen. John F. Curran

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 2012. Deletes a provision that a person shall not be subject to arrest for resisting arrest unless there is an underlying offense for which the person was initially subject to arrest. Amends the Pretrial Release Article of the Code of Criminal Procedure of 1963. In provisions concerning denial of pretrial release, provides that, upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release if (instead of only if) specified conditions are met. In provisions concerning the specified conditions to deny pretrial release to a defendant, provides that one of the conditions is if the defendant is charged with a felony offense and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case (instead of specifying that the defendant is charged with a felony offense other than a forcible felony for which, based on the charge or the defendant's criminal history, a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction). Makes other changes concerning detainable offenses. Amends the Unified Code of Corrections. Deletes a provision that at a minimum, any person ordered to pretrial home confinement with or without electronic monitoring must be provided with movement spread out over no fewer than 2 days per week, to participate in basic activities. Provides that a participant in electronic monitoring for home detention may have approved absences from home detention to purchase groceries, food, or other basic necessities with the prior approval of the supervising authority. Effective immediately.

LRB103 34144 RLC 69497 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by  
5 changing Section 31-1 as follows:

6 (720 ILCS 5/31-1) (from Ch. 38, par. 31-1)

7 Sec. 31-1. Resisting or obstructing a peace officer,  
8 firefighter, or correctional institution employee.

9 (a) A person who knowingly:

10 (1) resists arrest, or

11 (2) obstructs the performance by one known to the  
12 person to be a peace officer, firefighter, or correctional  
13 institution employee of any authorized act within his or  
14 her official capacity commits a Class A misdemeanor.

15 (a-5) In addition to any other sentence that may be  
16 imposed, a court shall order any person convicted of resisting  
17 or obstructing a peace officer, firefighter, or correctional  
18 institution employee to be sentenced to a minimum of 48  
19 consecutive hours of imprisonment or ordered to perform  
20 community service for not less than 100 hours as may be  
21 determined by the court. The person shall not be eligible for  
22 probation in order to reduce the sentence of imprisonment or  
23 community service.

1           (a-7) A person convicted for a violation of this Section  
2 whose violation was the proximate cause of an injury to a peace  
3 officer, firefighter, or correctional institution employee is  
4 guilty of a Class 4 felony.

5           (b) For purposes of this Section, "correctional  
6 institution employee" means any person employed to supervise  
7 and control inmates incarcerated in a penitentiary, State  
8 farm, reformatory, prison, jail, house of correction, police  
9 detention area, half-way house, or other institution or place  
10 for the incarceration or custody of persons under sentence for  
11 offenses or awaiting trial or sentence for offenses, under  
12 arrest for an offense, a violation of probation, a violation  
13 of parole, a violation of aftercare release, a violation of  
14 mandatory supervised release, or awaiting a hearing or  
15 preliminary hearing on setting the conditions of pretrial  
16 release, or who are sexually dangerous persons or who are  
17 sexually violent persons; and "firefighter" means any  
18 individual, either as an employee or volunteer, of a regularly  
19 constituted fire department of a municipality or fire  
20 protection district who performs fire fighting duties,  
21 including, but not limited to, the fire chief, assistant fire  
22 chief, captain, engineer, driver, ladder person, hose person,  
23 pipe person, and any other member of a regularly constituted  
24 fire department. "Firefighter" also means a person employed by  
25 the Office of the State Fire Marshal to conduct arson  
26 investigations.

1 (c) It is an affirmative defense to a violation of this  
2 Section if a person resists or obstructs the performance of  
3 one known by the person to be a firefighter by returning to or  
4 remaining in a dwelling, residence, building, or other  
5 structure to rescue or to attempt to rescue any person.

6 (d) (Blank). ~~A person shall not be subject to arrest for~~  
7 ~~resisting arrest under this Section unless there is an~~  
8 ~~underlying offense for which the person was initially subject~~  
9 ~~to arrest.~~

10 (Source: P.A. 101-652, eff. 1-1-23; 102-28, eff. 6-25-21.)

11 Section 10. The Code of Criminal Procedure of 1963 is  
12 amended by changing Sections 109-1, 110-6.1, and 110-7.5 as  
13 follows:

14 (725 ILCS 5/109-1) (from Ch. 38, par. 109-1)

15 Sec. 109-1. Person arrested; release from law enforcement  
16 custody and court appearance; geographic constraints prevent  
17 in-person appearances.

18 (a) A person arrested with or without a warrant for an  
19 offense for which pretrial release may be denied under  
20 paragraphs (1) through (5) ~~(6)~~ of Section 110-6.1 shall be  
21 taken without unnecessary delay before the nearest and most  
22 accessible judge in that county, except when such county is a  
23 participant in a regional jail authority, in which event such  
24 person may be taken to the nearest and most accessible judge,

1       irrespective of the county where such judge presides, within  
2       48 hours, and a charge shall be filed. Whenever a person  
3       arrested either with or without a warrant is required to be  
4       taken before a judge, a charge may be filed against such person  
5       by way of a two-way audio-visual communication system, except  
6       that a hearing to deny pretrial release to the defendant may  
7       not be conducted by two-way audio-visual communication system  
8       unless the accused waives the right to be present physically  
9       in court, the court determines that the physical health and  
10      safety of any person necessary to the proceedings would be  
11      endangered by appearing in court, or the chief judge of the  
12      circuit orders use of that system due to operational  
13      challenges in conducting the hearing in person. Such  
14      operational challenges must be documented and approved by the  
15      chief judge of the circuit, and a plan to address the  
16      challenges through reasonable efforts must be presented and  
17      approved by the Administrative Office of the Illinois Courts  
18      every 6 months.

19           (a-1) Law enforcement shall issue a citation in lieu of  
20      custodial arrest, upon proper identification, for those  
21      accused of any offense that is not a felony or Class A  
22      misdemeanor unless (i) a law enforcement officer reasonably  
23      believes the accused poses a threat to the community or any  
24      person, (ii) a custodial arrest is necessary because the  
25      criminal activity persists after the issuance of a citation,  
26      or (iii) the accused has an obvious medical or mental health

1 issue that poses a risk to the accused's own safety. Nothing in  
2 this Section requires arrest in the case of Class A  
3 misdemeanor and felony offenses, or otherwise limits existing  
4 law enforcement discretion to decline to effect a custodial  
5 arrest.

6 (a-3) A person arrested with or without a warrant for an  
7 offense for which pretrial release may not be denied may,  
8 except as otherwise provided in this Code, be released by a law  
9 enforcement officer without appearing before a judge. A  
10 presumption in favor of pretrial release shall be applied by  
11 an arresting officer in the exercise of his or her discretion  
12 under this Section.

13 (a-5) A person charged with an offense shall be allowed  
14 counsel at the hearing at which pretrial release is determined  
15 under Article 110 of this Code. If the defendant desires  
16 counsel for his or her initial appearance but is unable to  
17 obtain counsel, the court shall appoint a public defender or  
18 licensed attorney at law of this State to represent him or her.

19 (b) Upon initial appearance of a person before the court,  
20 the judge shall:

21 (1) inform the defendant of the charge against him and  
22 shall provide him with a copy of the charge;

23 (2) advise the defendant of his right to counsel and  
24 if indigent shall appoint a public defender or licensed  
25 attorney at law of this State to represent him in  
26 accordance with the provisions of Section 113-3 of this

1 Code;

2 (3) schedule a preliminary hearing in appropriate  
3 cases;

4 (4) admit the defendant to pretrial release in  
5 accordance with the provisions of Article 110 of this  
6 Code, or upon verified petition of the State, proceed with  
7 the setting of a detention hearing as provided in Section  
8 110-6.1; and

9 (5) order the confiscation of the person's passport or  
10 impose travel restrictions on a defendant arrested for  
11 first degree murder or other violent crime as defined in  
12 Section 3 of the Rights of Crime Victims and Witnesses  
13 Act, if the judge determines, based on the factors in  
14 Section 110-5 of this Code, that this will reasonably  
15 ensure the appearance of the defendant and compliance by  
16 the defendant with all conditions of release.

17 (c) The court may issue an order of protection in  
18 accordance with the provisions of Article 112A of this Code.  
19 Crime victims shall be given notice by the State's Attorney's  
20 office of this hearing as required in paragraph (2) of  
21 subsection (b) of Section 4.5 of the Rights of Crime Victims  
22 and Witnesses Act and shall be informed of their opportunity  
23 at this hearing to obtain an order of protection under Article  
24 112A of this Code.

25 (d) At the initial appearance of a defendant in any  
26 criminal proceeding, the court must advise the defendant in

1 open court that any foreign national who is arrested or  
2 detained has the right to have notice of the arrest or  
3 detention given to his or her country's consular  
4 representatives and the right to communicate with those  
5 consular representatives if the notice has not already been  
6 provided. The court must make a written record of so advising  
7 the defendant.

8 (e) If consular notification is not provided to a  
9 defendant before his or her first appearance in court, the  
10 court shall grant any reasonable request for a continuance of  
11 the proceedings to allow contact with the defendant's  
12 consulate. Any delay caused by the granting of the request by a  
13 defendant shall temporarily suspend for the time of the delay  
14 the period within which a person shall be tried as prescribed  
15 by subsection (a), (b), or (e) of Section 103-5 of this Code  
16 and on the day of the expiration of delay the period shall  
17 continue at the point at which it was suspended.

18 (f) At the hearing at which conditions of pretrial release  
19 are determined, the person charged shall be present in person  
20 rather than by two-way audio-video communication system unless  
21 the accused waives the right to be present physically in  
22 court, the court determines that the physical health and  
23 safety of any person necessary to the proceedings would be  
24 endangered by appearing in court, or the chief judge of the  
25 circuit orders use of that system due to operational  
26 challenges in conducting the hearing in person. Such



1 operational challenges must be documented and approved by the  
2 chief judge of the circuit, and a plan to address the  
3 challenges through reasonable efforts must be presented and  
4 approved by the Administrative Office of the Illinois Courts  
5 every 6 months.

6 (g) Defense counsel shall be given adequate opportunity to  
7 confer with the defendant prior to any hearing in which  
8 conditions of release or the detention of the defendant is to  
9 be considered, with a physical accommodation made to  
10 facilitate attorney/client consultation. If defense counsel  
11 needs to confer or consult with the defendant during any  
12 hearing conducted via a two-way audio-visual communication  
13 system, such consultation shall not be recorded and shall be  
14 undertaken consistent with constitutional protections.

15 (Source: P.A. 101-652, eff. 1-1-23; 102-813, eff. 5-13-22;  
16 102-1104, eff. 1-1-23.)

17 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

18 Sec. 110-6.1. Denial of pretrial release.

19 (a) Upon verified petition by the State, the court shall  
20 hold a hearing and may deny a defendant pretrial release ~~only~~  
21 if:

22 (1) the defendant is charged with a felony offense  
23 ~~other than a forcible felony for which, based on the~~  
24 ~~charge or the defendant's criminal history, a sentence of~~  
25 ~~imprisonment, without probation, periodic imprisonment or~~

1 ~~conditional discharge, is required by law upon conviction,~~  
2 and it is alleged that the defendant's pretrial release  
3 poses a real and present threat to the safety of any person  
4 or persons or the community, based on the specific  
5 articulable facts of the case;

6 (1.5) (blank); ~~the defendant's pretrial release poses~~  
7 ~~a real and present threat to the safety of any person or~~  
8 ~~persons or the community, based on the specific~~  
9 ~~articulable facts of the case, and the defendant is~~  
10 ~~charged with a forcible felony, which as used in this~~  
11 ~~Section, means treason, first degree murder, second degree~~  
12 ~~murder, predatory criminal sexual assault of a child,~~  
13 ~~aggravated criminal sexual assault, criminal sexual~~  
14 ~~assault, armed robbery, aggravated robbery, robbery,~~  
15 ~~burglary where there is use of force against another~~  
16 ~~person, residential burglary, home invasion, vehicular~~  
17 ~~invasion, aggravated arson, arson, aggravated kidnaping,~~  
18 ~~kidnaping, aggravated battery resulting in great bodily~~  
19 ~~harm or permanent disability or disfigurement or any other~~  
20 ~~felony which involves the threat of or infliction of great~~  
21 ~~bodily harm or permanent disability or disfigurement;~~

22 (2) the defendant is charged with stalking or  
23 aggravated stalking, and it is alleged that the  
24 defendant's pre-trial release poses a real and present  
25 threat to the safety of a victim of the alleged offense,  
26 and denial of release is necessary to prevent fulfillment

1 of the threat upon which the charge is based;

2 (3) the defendant is charged with a violation of an  
3 order of protection issued under Section 112A-14 of this  
4 Code or Section 214 of the Illinois Domestic Violence Act  
5 of 1986, a stalking no contact order under Section 80 of  
6 the Stalking No Contact Order Act, or of a civil no contact  
7 order under Section 213 of the Civil No Contact Order Act,  
8 and it is alleged that the defendant's pretrial release  
9 poses a real and present threat to the safety of any person  
10 or persons or the community, based on the specific  
11 articulable facts of the case;

12 (4) the defendant is charged with domestic battery ~~or~~  
13 ~~aggravated domestic battery~~ under Section 12-3.2 ~~or 12-3.3~~  
14 of the Criminal Code of 2012 and it is alleged that the  
15 defendant's pretrial release poses a real and present  
16 threat to the safety of any person or persons or the  
17 community, based on the specific articulable facts of the  
18 case;

19 (4.5) the defendant is charged with a misdemeanor  
20 violation of Article 11 of the Criminal Code of 2012,  
21 except for Sections 11-14, 11-14.1, 11-18, 11-20, 11-30,  
22 11-35, 11-40, and 11-45 of the Criminal Code of 2012, or  
23 similar provisions of the Criminal Code of 1961 and it is  
24 alleged that the defendant's pretrial release poses a real  
25 and present threat to the safety of any person or persons  
26 or the community, based on the specific articulable facts

1 of the case;

2 (5) the defendant is charged with an attempt to commit  
3 any charge listed in paragraphs (1) through (4.5) any  
4 offense under Article 11 of the Criminal Code of 2012,  
5 except for Sections 11 14, 11 14.1, 11 18, 11 20, 11 30,  
6 11 35, 11 40, and 11 45 of the Criminal Code of 2012, or  
7 similar provisions of the Criminal Code of 1961 and it is  
8 alleged that the defendant's pretrial release poses a real  
9 and present threat to the safety of any person or persons  
10 or the community, based on the specific articulable facts  
11 of the case;

12 (6) (blank); ~~the defendant is charged with any of the~~  
13 ~~following offenses under the Criminal Code of 2012, and it~~  
14 ~~is alleged that the defendant's pretrial release poses a~~  
15 ~~real and present threat to the safety of any person or~~  
16 ~~persons or the community, based on the specific~~  
17 ~~articulable facts of the case:~~

18 ~~(A) Section 24 1.2 (aggravated discharge of a~~  
19 ~~firearm);~~

20 ~~(B) Section 24 2.5 (aggravated discharge of a~~  
21 ~~machine gun or a firearm equipped with a device~~  
22 ~~designed or use for silencing the report of a~~  
23 ~~firearm);~~

24 ~~(C) Section 24 1.5 (reckless discharge of a~~  
25 ~~firearm);~~

26 ~~(D) Section 24 1.7 (armed habitual criminal);~~

1           ~~(E) Section 24-2.2 (manufacture, sale or transfer~~  
2 ~~of bullets or shells represented to be armor piercing~~  
3 ~~bullets, dragon's breath shotgun shells, bolo shells,~~  
4 ~~or flechette shells);~~

5           ~~(F) Section 24-3 (unlawful sale or delivery of~~  
6 ~~firearms);~~

7           ~~(G) Section 24-3.3 (unlawful sale or delivery of~~  
8 ~~firearms on the premises of any school);~~

9           ~~(H) Section 24-34 (unlawful sale of firearms by~~  
10 ~~liquor license);~~

11           ~~(I) Section 24-3.5 (unlawful purchase of a~~  
12 ~~firearm);~~

13           ~~(J) Section 24-3A (gunrunning);~~

14           ~~(K) Section 24-3B (firearms trafficking);~~

15           ~~(L) Section 10-9 (b) (involuntary servitude);~~

16           ~~(M) Section 10-9 (c) (involuntary sexual servitude~~  
17 ~~of a minor);~~

18           ~~(N) Section 10-9(d) (trafficking in persons);~~

19           ~~(O) Non probationable violations: (i) unlawful use~~  
20 ~~or possession of weapons by felons or persons in the~~  
21 ~~Custody of the Department of Corrections facilities~~  
22 ~~(Section 24-1.1), (ii) aggravated unlawful use of a~~  
23 ~~weapon (Section 24-1.6), or (iii) aggravated~~  
24 ~~possession of a stolen firearm (Section 24-3.9);~~

25           ~~(P) Section 9-3 (reckless homicide and involuntary~~  
26 ~~manslaughter);~~

1 ~~(Q) Section 19-3 (residential burglary);~~  
2 ~~(R) Section 10-5 (child abduction);~~  
3 ~~(S) Felony violations of Section 12C-5 (child~~  
4 ~~endangerment);~~

5 ~~(T) Section 12-7.1 (hate crime);~~

6 ~~(U) Section 10-3.1 (aggravated unlawful~~  
7 ~~restraint);~~

8 ~~(V) Section 12-9 (threatening a public official);~~

9 ~~(W) Subdivision (f)(1) of Section 12-3.05~~  
10 ~~(aggravated battery with a deadly weapon other than by~~  
11 ~~discharge of a firearm);~~

12 (6.5) (blank); ~~the defendant is charged with any of~~  
13 ~~the following offenses, and it is alleged that the~~  
14 ~~defendant's pretrial release poses a real and present~~  
15 ~~threat to the safety of any person or persons or the~~  
16 ~~community, based on the specific articulable facts of the~~  
17 ~~case;~~

18 ~~(A) Felony violations of Sections 3.01, 3.02, or~~  
19 ~~3.03 of the Humane Care for Animals Act (cruel~~  
20 ~~treatment, aggravated cruelty, and animal torture);~~

21 ~~(B) Subdivision (d)(1)(B) of Section 11-501 of the~~  
22 ~~Illinois Vehicle Code (aggravated driving under the~~  
23 ~~influence while operating a school bus with~~  
24 ~~passengers);~~

25 ~~(C) Subdivision (d)(1)(C) of Section 11-501 of the~~  
26 ~~Illinois Vehicle Code (aggravated driving under the~~

1 ~~influence causing great bodily harm);~~

2 ~~(D) Subdivision (d) (1) (D) of Section 11-501 of the~~  
3 ~~Illinois Vehicle Code (aggravated driving under the~~  
4 ~~influence after a previous reckless homicide~~  
5 ~~conviction);~~

6 ~~(E) Subdivision (d) (1) (F) of Section 11-501 of the~~  
7 ~~Illinois Vehicle Code (aggravated driving under the~~  
8 ~~influence leading to death); or~~

9 ~~(F) Subdivision (d) (1) (J) of Section 11-501 of the~~  
10 ~~Illinois Vehicle Code (aggravated driving under the~~  
11 ~~influence that resulted in bodily harm to a child~~  
12 ~~under the age of 16);~~

13 (7) the defendant is charged with any offense for  
14 which the State believes there is a serious risk that the  
15 defendant will not appear in court as required an attempt  
16 to commit any charge listed in paragraphs (1) through  
17 (6.5), and it is alleged that the defendant's pretrial  
18 release poses a real and present threat to the safety of  
19 any person or persons or the community, based on the  
20 specific articulable facts of the case; or

21 (8) the State believes the defendant will obstruct or  
22 attempt to obstruct justice, or threaten, injure, or  
23 intimidate, or attempt to threaten, injure or intimidate,  
24 a prospective witness or juror. the person has a high  
25 likelihood of willful flight to avoid prosecution and is  
26 charged with:

1 ~~(A) Any felony described in subdivisions (a) (1)~~  
2 ~~through (a) (7) of this Section; or~~

3 ~~(B) A felony offense other than a Class 4 offense.~~

4 (a-5) If the court finds probable cause that an eligible  
5 defendant committed first degree murder or committed any  
6 offense under Article 11 of the Criminal Code of 2012 for which  
7 the defendant would be subject to natural life imprisonment,  
8 when a motion for pretrial detention is filed pursuant to  
9 subsection (a) of this Section, there is a rebuttable  
10 presumption that the eligible defendant should be detained  
11 pending trial because no condition of pretrial release would  
12 reasonably assure the eligible defendant's appearance in court  
13 when required, the defendant's pretrial release poses a real  
14 and present threat to the safety of any person or persons or  
15 the community, based on the specific articulable facts of the  
16 case, and the eligible defendant will not obstruct or attempt  
17 to obstruct the criminal justice process.

18 (b) (Blank). ~~If the charged offense is a felony, as part of~~  
19 ~~the detention hearing, the court shall determine whether there~~  
20 ~~is probable cause the defendant has committed an offense,~~  
21 ~~unless a hearing pursuant to Section 109-3 of this Code has~~  
22 ~~already been held or a grand jury has returned a true bill of~~  
23 ~~indictment against the defendant. If there is a finding of no~~  
24 ~~probable cause, the defendant shall be released. No such~~  
25 ~~finding is necessary if the defendant is charged with a~~  
26 ~~misdemeanor.~~



1 (c) Timing of petition.

2 (1) A petition may be filed without prior notice to  
3 the defendant at the first appearance before a judge, or  
4 within the 21 calendar days, except as provided in Section  
5 110-6, after arrest and release of the defendant upon  
6 reasonable notice to defendant; provided that while such  
7 petition is pending before the court, the defendant if  
8 previously released shall not be detained.

9 (2) Upon filing, the court shall immediately hold a  
10 hearing on the petition unless a continuance is requested.  
11 If a continuance is requested and granted, the hearing  
12 shall be held within 48 hours of the defendant's first  
13 appearance if the defendant is charged with first degree  
14 murder or a Class X, Class 1, Class 2, or Class 3 felony,  
15 and within 24 hours if the defendant is charged with a  
16 Class 4 or misdemeanor offense. The Court may deny or  
17 grant the request for continuance. If the court decides to  
18 grant the continuance, the Court retains the discretion to  
19 detain or release the defendant in the time between the  
20 filing of the petition and the hearing.

21 (d) Contents of petition.

22 (1) The petition shall be verified by the State and  
23 shall state the grounds upon which it contends the  
24 defendant should be denied pretrial release, including the  
25 real and present threat to the safety of any person or  
26 persons or the community, based on the specific

1           articulable facts or flight risk, as appropriate.

2           (2) If the State seeks to file a second or subsequent  
3           petition under this Section, the State shall be required  
4           to present a verified application setting forth in detail  
5           any new facts not known or obtainable at the time of the  
6           filing of the previous petition.

7           (e) Eligibility: All defendants shall be presumed eligible  
8           for pretrial release, and the State shall bear the burden of  
9           proving by clear and convincing evidence that:

10           (1) the proof is evident or the presumption great that  
11           the defendant has committed an offense listed in  
12           subsection (a), and

13           (2) for offenses listed in paragraphs (1) through (7)  
14           of subsection (a), the defendant poses a real and present  
15           threat to the safety of any person or persons or the  
16           community, based on the specific articulable facts of the  
17           case, by conduct which may include, but is not limited to,  
18           a forcible felony, the obstruction of justice,  
19           intimidation, injury, or abuse as defined by paragraph (1)  
20           of Section 103 of the Illinois Domestic Violence Act of  
21           1986, and

22           (3) no condition or combination of conditions set  
23           forth in subsection (b) of Section 110-10 of this Article  
24           can mitigate (i) the real and present threat to the safety  
25           of any person or persons or the community, based on the  
26           specific articulable facts of the case, for offenses

1 listed in paragraphs (1) through (7) of subsection (a), or  
2 (ii) the defendant's willful flight for offenses listed in  
3 paragraph (8) of subsection (a), and

4 (4) for offenses under subsection (b) of Section 407  
5 of the Illinois Controlled Substances Act that are subject  
6 to paragraph (1) of subsection (a), no condition or  
7 combination of conditions set forth in subsection (b) of  
8 Section 110-10 of this Article can mitigate the real and  
9 present threat to the safety of any person or persons or  
10 the community, based on the specific articulable facts of  
11 the case, and the defendant poses a serious risk to not  
12 appear in court as required.

13 (f) Conduct of the hearings.

14 (1) Prior to the hearing, the State shall tender to  
15 the defendant copies of the defendant's criminal history  
16 available, any written or recorded statements, and the  
17 substance of any oral statements made by any person, if  
18 relied upon by the State in its petition, and any police  
19 reports in the prosecutor's possession at the time of the  
20 hearing.

21 (2) The State or defendant may present evidence at the  
22 hearing by way of proffer based upon reliable information.

23 (3) The defendant has the right to be represented by  
24 counsel, and if he or she is indigent, to have counsel  
25 appointed for him or her. The defendant shall have the  
26 opportunity to testify, to present witnesses on his or her

1 own behalf, and to cross-examine any witnesses that are  
2 called by the State. Defense counsel shall be given  
3 adequate opportunity to confer with the defendant before  
4 any hearing at which conditions of release or the  
5 detention of the defendant are to be considered, with an  
6 accommodation for a physical condition made to facilitate  
7 attorney/client consultation. If defense counsel needs to  
8 confer or consult with the defendant during any hearing  
9 conducted via a two-way audio-visual communication system,  
10 such consultation shall not be recorded and shall be  
11 undertaken consistent with constitutional protections.

12 (3.5) A hearing at which pretrial release may be  
13 denied must be conducted in person (and not by way of  
14 two-way audio visual communication) unless the accused  
15 waives the right to be present physically in court, the  
16 court determines that the physical health and safety of  
17 any person necessary to the proceedings would be  
18 endangered by appearing in court, or the chief judge of  
19 the circuit orders use of that system due to operational  
20 challenges in conducting the hearing in person. Such  
21 operational challenges must be documented and approved by  
22 the chief judge of the circuit, and a plan to address the  
23 challenges through reasonable efforts must be presented  
24 and approved by the Administrative Office of the Illinois  
25 Courts every 6 months.

26 (4) If the defense seeks to compel the complaining

1 witness to testify as a witness in its favor, it shall  
2 petition the court for permission. When the ends of  
3 justice so require, the court may exercise its discretion  
4 and compel the appearance of a complaining witness. The  
5 court shall state on the record reasons for granting a  
6 defense request to compel the presence of a complaining  
7 witness only on the issue of the defendant's pretrial  
8 detention. In making a determination under this Section,  
9 the court shall state on the record the reason for  
10 granting a defense request to compel the presence of a  
11 complaining witness, and only grant the request if the  
12 court finds by clear and convincing evidence that the  
13 defendant will be materially prejudiced if the complaining  
14 witness does not appear. Cross-examination of a  
15 complaining witness at the pretrial detention hearing for  
16 the purpose of impeaching the witness' credibility is  
17 insufficient reason to compel the presence of the witness.  
18 In deciding whether to compel the appearance of a  
19 complaining witness, the court shall be considerate of the  
20 emotional and physical well-being of the witness. The  
21 pre-trial detention hearing is not to be used for purposes  
22 of discovery, and the post arraignment rules of discovery  
23 do not apply. The State shall tender to the defendant,  
24 prior to the hearing, copies, if any, of the defendant's  
25 criminal history, if available, and any written or  
26 recorded statements and the substance of any oral

1 statements made by any person, if in the State's  
2 Attorney's possession at the time of the hearing.

3 (5) The rules concerning the admissibility of evidence  
4 in criminal trials do not apply to the presentation and  
5 consideration of information at the hearing. At the trial  
6 concerning the offense for which the hearing was conducted  
7 neither the finding of the court nor any transcript or  
8 other record of the hearing shall be admissible in the  
9 State's case-in-chief, but shall be admissible for  
10 impeachment, or as provided in Section 115-10.1 of this  
11 Code, or in a perjury proceeding.

12 (6) The defendant may not move to suppress evidence or  
13 a confession, however, evidence that proof of the charged  
14 crime may have been the result of an unlawful search or  
15 seizure, or both, or through improper interrogation, is  
16 relevant in assessing the weight of the evidence against  
17 the defendant.

18 (7) Decisions regarding release, conditions of  
19 release, and detention prior to trial must be  
20 individualized, and no single factor or standard may be  
21 used exclusively to order detention. Risk assessment tools  
22 may not be used as the sole basis to deny pretrial release.

23 (g) Factors to be considered in making a determination of  
24 dangerousness. The court may, in determining whether the  
25 defendant poses a real and present threat to the safety of any  
26 person or persons or the community, based on the specific

1 articulable facts of the case, consider, but shall not be  
2 limited to, evidence or testimony concerning:

3 (1) The nature and circumstances of any offense  
4 charged, including whether the offense is a crime of  
5 violence, involving a weapon, or a sex offense.

6 (2) The history and characteristics of the defendant  
7 including:

8 (A) Any evidence of the defendant's prior criminal  
9 history indicative of violent, abusive or assaultive  
10 behavior, or lack of such behavior. Such evidence may  
11 include testimony or documents received in juvenile  
12 proceedings, criminal, quasi-criminal, civil  
13 commitment, domestic relations, or other proceedings.

14 (B) Any evidence of the defendant's psychological,  
15 psychiatric or other similar social history which  
16 tends to indicate a violent, abusive, or assaultive  
17 nature, or lack of any such history.

18 (3) The identity of any person or persons to whose  
19 safety the defendant is believed to pose a threat, and the  
20 nature of the threat.

21 (4) Any statements made by, or attributed to the  
22 defendant, together with the circumstances surrounding  
23 them.

24 (5) The age and physical condition of the defendant.

25 (6) The age and physical condition of any victim or  
26 complaining witness.

1           (7) Whether the defendant is known to possess or have  
2 access to any weapon or weapons.

3           (8) Whether, at the time of the current offense or any  
4 other offense or arrest, the defendant was on probation,  
5 parole, aftercare release, mandatory supervised release or  
6 other release from custody pending trial, sentencing,  
7 appeal or completion of sentence for an offense under  
8 federal or state law.

9           (9) Any other factors, including those listed in  
10 Section 110-5 of this Article deemed by the court to have a  
11 reasonable bearing upon the defendant's propensity or  
12 reputation for violent, abusive, or assaultive behavior,  
13 or lack of such behavior.

14           (h) Detention order. The court shall, in any order for  
15 detention:

16           (1) make a written finding summarizing the court's  
17 reasons for concluding that the defendant should be denied  
18 pretrial release, including why less restrictive  
19 conditions would not avoid a real and present threat to  
20 the safety of any person or persons or the community,  
21 based on the specific articulable facts of the case, or  
22 prevent the defendant's willful flight from prosecution;

23           (2) direct that the defendant be committed to the  
24 custody of the sheriff for confinement in the county jail  
25 pending trial;

26           (3) direct that the defendant be given a reasonable



1 opportunity for private consultation with counsel, and for  
2 communication with others of his or her choice by  
3 visitation, mail and telephone; and

4 (4) direct that the sheriff deliver the defendant as  
5 required for appearances in connection with court  
6 proceedings.

7 (i) Detention. If the court enters an order for the  
8 detention of the defendant pursuant to subsection (e) of this  
9 Section, the defendant shall be brought to trial on the  
10 offense for which he is detained within 90 days after the date  
11 on which the order for detention was entered. If the defendant  
12 is not brought to trial within the 90-day period required by  
13 the preceding sentence, he shall not be denied pretrial  
14 release. In computing the 90-day period, the court shall omit  
15 any period of delay resulting from a continuance granted at  
16 the request of the defendant and any period of delay resulting  
17 from a continuance granted at the request of the State with  
18 good cause shown pursuant to Section 103-5.

19 (i-5) At each subsequent appearance of the defendant  
20 before the court, the judge must find that continued detention  
21 is necessary to avoid a real and present threat to the safety  
22 of any person or persons or the community, based on the  
23 specific articulable facts of the case, or to prevent the  
24 defendant's willful flight from prosecution.

25 (j) Rights of the defendant. The defendant shall be  
26 entitled to appeal any order entered under this Section

1 denying his or her pretrial release.

2 (k) Appeal. The State may appeal any order entered under  
3 this Section denying any motion for denial of pretrial  
4 release.

5 (l) Presumption of innocence. Nothing in this Section  
6 shall be construed as modifying or limiting in any way the  
7 defendant's presumption of innocence in further criminal  
8 proceedings.

9 (m) Interest of victims.

10 (1) Crime victims shall be given notice by the State's  
11 Attorney's office of this hearing as required in paragraph (1)  
12 of subsection (b) of Section 4.5 of the Rights of Crime Victims  
13 and Witnesses Act and shall be informed of their opportunity  
14 at this hearing to obtain a protective order.

15 (2) If the defendant is denied pretrial release, the court  
16 may impose a no contact provision with the victim or other  
17 interested party that shall be enforced while the defendant  
18 remains in custody.

19 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)

20 (725 ILCS 5/110-7.5)

21 Sec. 110-7.5. Previously deposited bail security.

22 (a) On or after January 1, 2023, any person having been  
23 previously released pretrial on the condition of the deposit  
24 of security shall be allowed to remain on pretrial release  
25 under the terms of their original bail bond. This Section

1 shall not limit the State's Attorney's ability to file a  
2 verified petition for detention under Section 110-6.1 or a  
3 petition for revocation or sanctions under Section 110-6.

4 (b) On or after January 1, 2023, any person who remains in  
5 pretrial detention after having been ordered released with  
6 pretrial conditions, including the condition of depositing  
7 security, shall be entitled to a hearing under subsection (e)  
8 of Section 110-5.

9 On or after January 1, 2023, any person, not subject to  
10 subsection (b), who remains in pretrial detention and is  
11 eligible for detention under Section 110-6.1 shall be entitled  
12 to a hearing according to the following schedule:

13 (1) For persons charged with offenses under paragraphs  
14 (1) through (5) and paragraph (8) ~~(7)~~ of subsection (a) of  
15 Section 110-6.1, the hearing shall be held within 90 days  
16 of the person's motion for reconsideration of pretrial  
17 release conditions.

18 (2) For persons charged with offenses under paragraph  
19 (7) ~~(8)~~ of subsection (a) of Section 110-6.1, the hearing  
20 shall be held within 60 days of the person's motion for  
21 reconsideration of pretrial release conditions.

22 (3) For persons charged with all other offenses not  
23 listed in subsection (a) of Section 110-6.1, the hearing  
24 shall be held within 7 days of the person's motion for  
25 reconsideration of pretrial release conditions.

26 (c) Processing of previously deposited bail security. The

1 provisions of this Section shall apply to all monetary bonds,  
2 regardless of whether they were previously posted in cash or  
3 in the form of stocks, bonds, or real estate.

4 (1) Once security has been deposited and a charge is  
5 pending or is thereafter filed in or transferred to a  
6 court of competent jurisdiction, the latter court may  
7 continue the original security in that court or modify the  
8 conditions of pretrial release subject to the provisions  
9 of Section 110-6.

10 (2) After conviction, the court may order that a  
11 previously deposited security stand pending appeal,  
12 reconsider conditions of release, or deny release subject  
13 to the provisions of Section 110-6.2.

14 (3) After the entry of an order by the trial court  
15 granting or denying pretrial release pending appeal,  
16 either party may apply to the reviewing court having  
17 jurisdiction or to a justice thereof sitting in vacation  
18 for an order modifying the conditions of pretrial release  
19 or denying pretrial release subject to the provisions of  
20 Section 110-6.2.

21 (4) When the conditions of the previously posted bail  
22 bond have been performed and the accused has been  
23 discharged from all obligations in the cause, the clerk of  
24 the court shall return to the accused or to the  
25 defendant's designee by an assignment executed at the time  
26 the bail amount is deposited, unless the court orders

1 otherwise, 90% of the sum which had been deposited and  
2 shall retain as bail bond costs 10% of the amount  
3 deposited. However, in no event shall the amount retained  
4 by the clerk as bail bond costs be less than \$5.

5 Notwithstanding the foregoing, in counties with a  
6 population of 3,000,000 or more, in no event shall the  
7 amount retained by the clerk as bail bond costs exceed  
8 \$100. Bail bond deposited by or on behalf of a defendant in  
9 one case may be used, in the court's discretion, to  
10 satisfy financial obligations of that same defendant  
11 incurred in a different case due to a fine, court costs,  
12 restitution or fees of the defendant's attorney of record.  
13 In counties with a population of 3,000,000 or more, the  
14 court shall not order bail bond deposited by or on behalf  
15 of a defendant in one case to be used to satisfy financial  
16 obligations of that same defendant in a different case  
17 until the bail bond is first used to satisfy court costs  
18 and attorney's fees in the case in which the bail bond has  
19 been deposited and any other unpaid child support  
20 obligations are satisfied.

21 In counties with a population of less than 3,000,000,  
22 the court shall not order bail bond deposited by or on  
23 behalf of a defendant in one case to be used to satisfy  
24 financial obligations of that same defendant in a  
25 different case until the bail bond is first used to  
26 satisfy court costs in the case in which the bail bond has

1           been deposited.

2           At the request of the defendant, the court may order  
3           such 90% of the defendant's bail deposit, or whatever  
4           amount is repayable to the defendant from such deposit, to  
5           be paid to defendant's attorney of record.

6           (5) If there is an alleged violation of the conditions  
7           of pretrial release in a matter in which the defendant has  
8           previously deposited security, the court having  
9           jurisdiction shall follow the procedures for revocation of  
10          pretrial release or sanctions set forth in Section 110-6.  
11          The previously deposited security shall be returned to the  
12          defendant following the procedures of paragraph (4) of  
13          subsection (a) of this Section once the defendant has been  
14          discharged from all obligations in the cause.

15          (6) If security was previously deposited for failure  
16          to appear in a matter involving enforcement of child  
17          support or maintenance, the amount of the cash deposit on  
18          the bond, less outstanding costs, may be awarded to the  
19          person or entity to whom the child support or maintenance  
20          is due.

21          (7) After a judgment for a fine and court costs or  
22          either is entered in the prosecution of a cause in which a  
23          deposit of security was previously made, the balance of  
24          such deposit shall be applied to the payment of the  
25          judgment.

26          (Source: P.A. 102-1104, eff. 1-1-23.)

1 Section 15. The Unified Code of Corrections is amended by  
2 changing Section 5-8A-4 as follows:

3 (730 ILCS 5/5-8A-4) (from Ch. 38, par. 1005-8A-4)

4 Sec. 5-8A-4. Program description. The supervising  
5 authority may promulgate rules that prescribe reasonable  
6 guidelines under which an electronic monitoring and home  
7 detention program shall operate. When using electronic  
8 monitoring for home detention these rules may include, but not  
9 be limited to, the following:

10 (A) The participant may be instructed to remain within  
11 the interior premises or within the property boundaries of  
12 his or her residence at all times during the hours  
13 designated by the supervising authority. Such instances of  
14 approved absences from the home shall include, but are not  
15 limited to, the following:

16 (1) working or employment approved by the court or  
17 traveling to or from approved employment;

18 (2) unemployed and seeking employment approved for  
19 the participant by the court;

20 (3) undergoing medical, psychiatric, mental health  
21 treatment, counseling, or other treatment programs  
22 approved for the participant by the court;

23 (4) attending an educational institution or a  
24 program approved for the participant by the court;

1 (5) attending a regularly scheduled religious  
2 service at a place of worship;

3 (6) participating in community work release or  
4 community service programs approved for the  
5 participant by the supervising authority;

6 (7) for another compelling reason consistent with  
7 the public interest, as approved by the supervising  
8 authority; or

9 (8) purchasing groceries, food, or other basic  
10 necessities with the prior approval of the supervising  
11 authority.

12 (A-1) (Blank). ~~At a minimum, any person ordered to~~  
13 ~~pretrial home confinement with or without electronic~~  
14 ~~monitoring must be provided with movement spread out over~~  
15 ~~no fewer than two days per week, to participate in basic~~  
16 ~~activities such as those listed in paragraph (A). In this~~  
17 ~~subdivision (A 1), "days" means a reasonable time period~~  
18 ~~during a calendar day, as outlined by the court in the~~  
19 ~~order placing the person on home confinement.~~

20 (B) The participant shall admit any person or agent  
21 designated by the supervising authority into his or her  
22 residence at any time for purposes of verifying the  
23 participant's compliance with the conditions of his or her  
24 detention.

25 (C) The participant shall make the necessary  
26 arrangements to allow for any person or agent designated



1 by the supervising authority to visit the participant's  
2 place of education or employment at any time, based upon  
3 the approval of the educational institution employer or  
4 both, for the purpose of verifying the participant's  
5 compliance with the conditions of his or her detention.

6 (D) The participant shall acknowledge and participate  
7 with the approved electronic monitoring device as  
8 designated by the supervising authority at any time for  
9 the purpose of verifying the participant's compliance with  
10 the conditions of his or her detention.

11 (E) The participant shall maintain the following:

12 (1) access to a working telephone;

13 (2) a monitoring device in the participant's home,  
14 or on the participant's person, or both; and

15 (3) a monitoring device in the participant's home  
16 and on the participant's person in the absence of a  
17 telephone.

18 (F) The participant shall obtain approval from the  
19 supervising authority before the participant changes  
20 residence or the schedule described in subsection (A) of  
21 this Section. Such approval shall not be unreasonably  
22 withheld.

23 (G) The participant shall not commit another crime  
24 during the period of home detention ordered by the Court.

25 (H) Notice to the participant that violation of the  
26 order for home detention may subject the participant to

1 prosecution for the crime of escape as described in  
2 Section 5-8A-4.1.

3 (I) The participant shall abide by other conditions as  
4 set by the supervising authority.

5 (J) This Section takes effect January 1, 2022.

6 (Source: P.A. 101-652, eff. 7-1-21; 102-28, eff. 6-25-21;  
7 102-687, eff. 12-17-21; 102-1104, eff. 12-6-22.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3	720 ILCS 5/31-1	from Ch. 38, par. 31-1
4	725 ILCS 5/109-1	from Ch. 38, par. 109-1
5	725 ILCS 5/110-6.1	from Ch. 38, par. 110-6.1
6	725 ILCS 5/110-7.5	
7	730 ILCS 5/5-8A-4	from Ch. 38, par. 1005-8A-4