

# **SIMPLIFIED GUIDE TO FIRST APPEARANCE COURT**



**By Judge Bob Miller  
Revised 4.14.24**

# INDEX

<b><u>TOPIC</u></b>	<b><u>PAGE</u></b>
Initial Admonishments.....	1
Detention Hearing.....	2
Decision to Detain.....	3-5
Willful Flight Detention.....	6-8
Decision <b>NOT</b> to Detain.....	9-13
Agreed Dispositions.....	14
Out-Of-County Warrants.....	15
Continuances.....	16
Other Warrants.....	17-19
Case Law.....	20-22

## **STEP 1 - ADMONISH THE DEFENDANT**

**What is your name?**

**You are charged with the offense of\_\_\_\_\_.**

**Have you received a copy of the charges?**

**You are advised that you have the right to remain silent. Anything you say at this hearing can and will be used against you.**

**You have the right to an attorney. Public Defender, does the Defendant financially qualify for your services?**

**I have appointed the Public Defender to represent you for this hearing.**

**Be advised that any foreign national who is arrested or detained has the right, upon request, to have notice of the arrest or detention given to his or her country's consular representatives and the right to communicate with those consular representatives.**

**If you have any children under 18 years old living with you who may be neglected as a result of the arrest, incarceration or otherwise, you need to inform the Court.**

## **STEP 2 - THE DETENTION HEARING**

**State, are you seeking to detain the defendant?**

**(If “YES”) Has Discovery been provided?**

**Is the State ready for the detention hearing? (If the parties have reached an agreement, proceed down to “AGREEMENTS”)**

**Is the Defense ready for the detention hearing?**

**State’s Attorney, you may proceed.**

The State will then provide information about the pending offense as well as relevant information regarding a need to detain. The State may present evidence at the hearing by way of proffer based upon reliable information.

**Defense, you may proceed.**

The Defense will then provide information about the pending offense as well as relevant information regarding why the Defendant should NOT be detained. The Defense may present evidence at the hearing by way of proffer based upon reliable information.

**STEP 3 - IF THE COURT  
DECIDES TO DETAIN**

**(IF THE COURT DECIDES NOT TO DETAIN -  
SEE THE SECTION BELOW)**

- **The Court has considered the evidence and arguments of counsel, the State's Petition, the presumption of Pretrial Release, the Risk Assessment, and the available conditions of Pretrial Release.**
- **The Court finds by clear and convincing evidence that the proof is evident and the presumption great that the defendant has committed a qualifying offense.**
- **That based upon the nature and circumstances of the offense as well as the defendant's history, character and condition, the defendant 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.**

- **This Court specifically adopts and incorporates the State’s reasoning, and therefore, based upon the evidence produced and enunciated by the State, no condition or combination of conditions set forth in the Safe-T Act can mitigate 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. *(110-6.1(h) states that the court should summarize the court’s reasons for concluding that the defendant should be denied pretrial release. Adopting the evidence adduced by the State should suffice, but the Court may add more to this.)***
- **Therefore, the State’s petition to detain is granted.**

---

**The defendant shall be committed to the custody of the sheriff for confinement in the county jail pending trial.**

**The defendant shall be given a reasonable opportunity for private consultation with counsel, and for communication with others of his or her choice by visitation, mail and telephone.**

**The sheriff is directed to deliver the defendant as required for appearances in connection with court proceedings.**

## **STEP 4 - APPEAL RIGHTS**

**You have the right to file a motion for relief from the court's order under Supreme Court Rule 604(h).**

**The court will revisit the order of detention or the condition of pretrial release at each subsequent court appearance, regardless of whether a motion for relief is filed.**

**Upon a subsequent appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.**

## **DETENTION BASED ON WILLFUL FLIGHT**

**(IF THE COURT DECIDES NOT TO DETAIN -  
SEE THE SECTION BELOW)**

- **The Court has considered the evidence and arguments of counsel, the State's Petition, the presumption of Pretrial Release, the Risk Assessment, and the available conditions of Pretrial Release.**
- **The Court finds by clear and convincing evidence that the proof is evident and the presumption great that the defendant has committed a qualifying offense.**
- **Additionally, the Court finds that the Defendant has engaged in intentional conduct with a purpose to thwart the judicial process to avoid prosecution and that the Defendant has a high likelihood of willful flight to avoid prosecution.**

***( Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution. )***



- **The Court further finds that, based upon the evidence produced and enunciated by the State, no condition or combination of conditions set forth in the Safe-T Act can mitigate 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. *(110-6.1(h) states that the court should summarize the court's reasons for concluding that the defendant should be denied pretrial release. Adopting the evidence adduced by the State should suffice, but the Court may add more to this.)***
- **Therefore, the State's petition to detain is granted**

---

**The defendant shall be committed to the custody of the sheriff for confinement in the county jail pending trial.**

**The defendant shall be given a reasonable opportunity for private consultation with counsel, and for communication with others of his or her choice by visitation, mail and telephone.**

**The sheriff is directed to deliver the defendant as required for appearances in connection with court proceedings.**

## **STEP 4 - APPEAL RIGHTS**

**You have the right to file a motion for relief from the court's order under Supreme Court Rule 604(h).**

**The court will revisit the order of detention or the condition of pretrial release at each subsequent court appearance, regardless of whether a motion for relief is filed.**

**Upon a subsequent appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.**

### **STEP 3 - IF THE COURT DECIDES NOT TO DETAIN**

- **The Court has considered the evidence and arguments of counsel, the State's Petition, the presumption of Pre-trial Release, the Risk Assessment, and the available conditions of Pretrial Release.**
- **The Court finds by clear and convincing evidence that the proof is evident and the presumption great that the defendant has committed a qualifying offense.**
- **That based upon the nature and circumstances of the offense as well as the defendant's history, character and condition, the defendant 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.**

- **However, the Court further finds that, based upon the evidence produced and enunciated by the State and Defense, that there are conditions set forth in the Safe-T Act that can mitigate 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.**
- **The Court denies the State's Petition to detain and the Court will order the Defendant released on Pre-trial Release.**

**The Court may ask both the State and the Defense for any requests or recommendations.**

- **As a condition of Pre-trial Release the Court orders:**

**STANDARD PRE-TRIAL CONDITIONS  
ARE ON THE SAMPLE ORDER BELOW**

**NOTE: The oral pronouncement of sentence and the written sentence order are considered one transaction when occurring on the same day.  
People v. Tackett (1985), 130 Ill.App.3d 347.**

**When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls.  
People v. Carlisle (2015), 35 N.E.3d 649.**

**It is hereby ordered that the Defendant shall** (Check all boxes that apply)

- Appear on \_\_\_\_\_ (date) at \_\_\_\_\_ (time), in Courtroom \_\_\_\_\_ and thereafter as ordered by the court until discharged or final order of the court.
- Submit to the orders and process of the Court.
- Not violate any criminal statute of any jurisdiction.
- Comply with all terms of pre-trial release, including, but not limited to, orders of protection under 725 ILCS 5/112A-4 and 750 ILCS 60/214, all civil no contact orders, and all stalking no contact orders in this state or any other state, tribe or United States territory.
- File written notice with the Clerk of the Court of the 18th Judicial Circuit of any change of your address within 24 hours after such change. You may update your address via the web at <https://epay.18thJudicial.org> or in person at the Circuit Clerk's Office, 505 N. County Farm Road, Wheaton, Illinois.

**The following additional conditions are necessary to ensure the defendant's appearance in court, ensure the defendant does not commit any criminal offense, ensure the defendant complies 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.**

- Not leave the State of Illinois without permission of the Court.
- Report immediately upon release to the Pre-Trial Services Unit of the DuPage County Department of Probation and Court Services, 503 N. County Farm Road, Wheaton, IL (630) 407-8317; and continue to report as directed by Pre-trial Services.
- Refrain from having in Defendant's custody or control, purchasing, possessing, or receiving firearms, firearm ammunition, FOID card, Concealed Carry License, or other dangerous weapons.
- Physically surrender any and all firearms, firearm ammunition, or other dangerous weapons owned by the Defendant or in the Defendant's custody, control, or possession immediately, but in no circumstance later than 48 hours from this order. If Defendant is in custody, said surrender shall occur within 48 hours from release from custody. Said items shall be surrendered to the \_\_\_\_\_ Police Department.
- Physically surrender the Defendant's Firearm Owner's Identification Card and/or Concealed Carry License to the DuPage County Circuit Clerk's Office within 48 hours from this order. If Defendant is in custody, said surrender shall occur within 48 hours from release from custody.
- Have no contact directly or indirectly with the following individuals and/or refrain from going to certain described geographic areas or premises:  
NO ENTRY TO ANY HOME DEPOT  
\_\_\_\_\_  
 Until further order of the court  
 For the first 72 hours following release. Thereafter, contact shall not be harmful or offensive.
- Refrain from operating a motor vehicle without an ignition interlock device.
- Electronic Monitoring Ordered (See accompanying orders)
- Other Conditions:  
By agreement  
\_\_\_\_\_

## **STEP 4 - APPEAL RIGHTS**

**You have the right to file a motion for relief from the court's order under Supreme Court Rule 604(h).**

**The court will revisit the order of detention or the condition of pretrial release at each subsequent court appearance, regardless of whether a motion for relief is filed.**

**Upon a subsequent appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.**

# AGREEMENTS

State, what are the terms of the agreement regarding the conditions of Pre-Trial Release?

**The State's Attorney should state ALL of the agreed conditions on the record.**

Defense, is that your understanding of the agreement?

(To the Defendant) - Mr/Ms \_\_\_\_\_ do you understand the agreement?

(To the Defendant) - Mr/Ms \_\_\_\_\_ do you agree to follow all of the stated requirements as a condition of your release?

The Court will order the Defendant to be released on Pre-trial Release with the conditions agreed upon by the parties.

The next court date is \_\_\_\_\_ at \_\_\_\_\_ in Courtroom\_\_\_\_\_.



## OUT OF COUNTY WARRANT

### 725 ILCS 5/109-2

The Statute does NOT initially require a Hearing.

The court shall order the sheriff to immediately contact the sheriff in any county where any warrant is outstanding and notify them of the arrest of the individual.

The Court should set a 5 calendar day status, since the statute requires the Defendant to be transported to the other county no later than 5 calendar days **after the end of any detention issued on any pending charge in the arresting county.** Hence, If the Defendant is detained in our county for a charge allegedly committed here, then the 5 day status date isn't required.

If the Defendant is in court for outstanding warrants from multiple counties, the judge should select one of the counties to be notified.

If the issuing county fails to take any action (transport the Defendant or quash the warrant) within 5 calendar days, the defendant shall be released from custody on the warrant, and the judge in the county of arrest shall set conditions of release under Section 110-5 and shall admit the defendant to pretrial release for his or her appearance before the court named in the warrant.

The Defendant should then be ordered to appear in the county in which the warrant was originated. Apparently a random date is chosen with a courtroom to be determined by the Circuit Clerk.

# CONTINUANCES

If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant's first appearance if the defendant is charged with first degree murder or a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny or grant the request for continuance. If the court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing.

If the Court grants a continuance of the detention hearing AND the defendant is held in custody, the Court should conduct a "Gerstein Hearing." A Gerstein Hearing is a simple procedure.

**Court: "State's Attorney, per the requirements of Gerstein versus Pugh, briefly describe the basis for detention."**

**The State need only give a very basic outline of facts supporting probable cause that the Defendant should be detained as a result of criminal activity. Hearsay is permitted, and the accused has no right to counsel or cross examination at such stage.**  
***Gerstein v. Pugh, 420 U.S. 103 (1975).***

**Court: "The Court finds that there is probable cause for detaining the arrested person pending further proceedings."**

# OTHER WARRANTS

**PETITION TO REVOKE PRE-TRIAL RELEASE** - If the warrant states that it was issued due to the State's Petition to Revoke Pre-Trial Release, the applicable statute states:

**"The defendant shall be transferred to the court before which the previous matter is pending without unnecessary delay, and the revocation hearing shall occur within 72 hours of the filing of the State's petition or the court's motion for revocation."**

*725 ILCS 5/110-6*

Therefore, set the matter as soon as possible before the issuing judge.

**HOLD FOR SANCTIONS** - If the warrant contains language that states that the Defendant is to be held for sanctions, then set the matter for the next available court date before the issuing judge. It was the intention of the issuing judge NOT to allow the defendant to be released until the Defendant is brought before the issuing judge for a hearing. (*725 ILCS 5/110-6*) Although the statute does not specify a time limit for the Sanctions hearing, try to set the matter as soon as practicable.

**PETITION TO REVOKE SENTENCE** - If the warrant states that it was issued due to the State's Petition to Revoke a previously ordered sentence, the applicable statute states:

In any case where an offender remains incarcerated only as a result of his alleged violation of the court's earlier order of probation, supervision, conditional discharge, or county impact incarceration such hearing shall be held within **14 days** of the onset of said incarceration, unless the alleged violation is the commission of another offense by the offender... in which case such hearing shall be held within the time limits described in 725 ILCS 5/103-5. *730 ILCS 5/5-6-4*

Therefore, the Defendant may either be released in Bond Court or detained. If the Petition doesn't allege that the Defendant committed a new offense, but instead only a status offense (such as not performing Public Service Work, or attending Probation meetings), the hearing must be held within 14 days. If the defendant is detained, try to set the matter as soon as possible on the issuing judge's call (or the courtroom of origin) so that a hearing can be scheduled.

**PRE SAFE-T ACT ARREST WARRANTS** - If the Defendant has been arrested on an old arrest warrant that has a monetary bail set, then the Defendant can either choose to post the money, or ask that the case be treated under the SAFE-T ACT provisions. In People v. Gray, 2023 IL APP (3d) 230435 the Appellate Court stated that if the Defendant elects to seek release under the SAFE-T Act, then the State may file a corresponding Petition to Detain. Therefore, if the Defendant chooses to keep the option to post bond, the Court should just provide the Defendant with the next court date. (Probable Cause has already been found as part of the initial issuing of the warrant.) If the Defendant asks to be treated per the SAFE-T Act, then hold a detention hearing (assuming that there isn't an agreement between the parties).

**IDOC WARRANTS (MX WARRANT)** The Court may encounter an MX/“warrant hold” complaint alleging the defendant has an outstanding warrant from the Illinois Department of Corrections for a parole/mandatory supervised release violation. The Illinois Department of Corrections is not a “county”. As such, it seems the procedures listed in 725 ILCS 5/109-2 for out of county warrants would not apply. Moreover, subsection (i) of that same statute states “This Section applies only to warrants issued by Illinois state, county, or municipal courts.”

In light of this, consider entering an order stating “The defendant, having been identified in open court, shall be held for transport by the Illinois Department of Corrections. Case closed”, enter a remand, do not issue a future date, and close the case.

# CASE LAW

## DETENTION HEARING TO BE HELD WITHIN 48 HOUR

When a defendant is brought to a courthouse within 48 hours of his arrest to appear before a judge the requirement that he “shall be taken without unnecessary delay to the nearest and most accessible judge \*\*\* within 48 hours” is met. The focus of the statute is on the term “shall be taken,” which obligates the State to take the defendant to “the nearest and most accessible judge” within 48 hours and file “a charge.” The State fulfills this duty by taking the defendant to the nearest courthouse within 48 hours. At that point, the circuit court’s docket controls in which order the defendant shall be heard. Nothing in section 109-1 mandates that the judge hears the defendant’s case prior to any other one. Neither subsection (a) nor (b) of section 109-1 imposes a time-restriction on the circuit court’s docket. Instead, subsection (b) delineates only those judicial duties that are triggered once a defendant appears before a judge. People v. Williams, 2024 IL App (1st) 232219-U

\*\*\*\*\*

## DEFENDANT’S WAIVER OF THE 48 HOUR HEARING RULE

Section 110-6.1(c)(2) of the Code states that “[i]f a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant’s first appearance if the defendant is charged with a Class X, Class 1, Class 2, or Class 3 felony.” (within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense).

In his notice of appeal, defendant suggested that he was entitled to waive his right to a hearing within 48 hours. However, the defendant did not cite any supporting authority and offered no legal argument. As a result, the Appellate Court did not even consider the argument. People v. Romero, 2024 IL App (1st) 232023-U

\*\*\*\*\*

## **FITNESS MOTION MADE IN FIRST APPEARANCE COURT**

Nothing in the Code indicates that a detention hearing must be delayed when a bona fide doubt exists regarding the defendant's fitness.

Instead, section 110-6.1(e)(2)(B) allows a court to consider " [a]ny evidence of the defendant's psychological, psychiatric or other similar social history" when making its detention determination.

The issue at a detention hearing is not whether defendant is fit to stand trial, but whether, taking into consideration all the information provided by the State and defense counsel, defendant constituted a real and present threat to persons or the community or was a flight risk, Since the statute expressly provides for evidence of a defendant's "psychological, psychiatric, or other similar social history," defendant's mental condition and previous behavior were all relevant to the court's consideration and included in the detention order. People v. Harris, 2024 IL App (4th) 231123-U

\*\*\*\*\*

## **DETENTION HEARING VIA ZOOM VIDEO CONFERENCE**

A hearing at which pretrial release may be denied must be conducted in person (and not by way of two-way audio visual communication) unless the court determines that the physical health and safety of any person necessary to the proceedings would be endangered.” 725 ILCS 5/110-6.1(f)(3.5) (West 2022).

Before proceeding with the hearing, the court found that defendant’s remote attendance was necessary for the health and safety of those present based on defendant’s mental state and his prior conduct. The record supported this finding—during a previous hearing, security officers needed to remove defendant from the courtroom after he ignored multiple orders from the court to refrain from interrupting the proceedings. The court did not abuse its discretion when it conducted the detention hearing via Zoom, despite defendant’s pending fitness evaluation and his remote attendance. People v. Harris, 2024 IL App (4th) 231123-U

**ORAL FINDINGS SUPPLEMENT WRITTEN FINDINGS**

Section 110-6.1(h)(1) of the SAFE-T Act requires a written detention order “summarizing the court’s reasons for concluding that the defendant should be denied pretrial release....” Although the trial court used a pre-printed form for its written order, the appellate court held that remand was unnecessary because the oral findings adequately supplemented the written order. People v. Andino-Acosta, 2024 IL App (2d) 230463 (1/25/24)

\*\*\*\*\*