

REVOCACTION OF PRETRIAL RELEASE

PROCEDURE FOR REVOKING PRE-TRIAL RELEASE

725 ILCS 5/110-6

By Judge Miller

CLASS A & FELONIES

When a defendant has previously been granted pretrial release for a felony or Class A misdemeanor, that pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release.

CLASS B, C, & PETTY OFFENSES

If a defendant previously has been granted pretrial release under this Section for a Class B or Class C misdemeanor offense, a petty or business offense, or an ordinance violation and if the defendant is subsequently charged with a felony that is alleged to have occurred during the defendant's pretrial release or a Class A misdemeanor offense that is alleged to have occurred during the defendant's pretrial release, such pretrial release may not be revoked, but the court may impose sanctions.

WHO MAKES THE MOTION TO REVOKE?

A Motion to revoke PreTrial Release may be on the Court's own motion or upon the filing of a verified petition by the State.

COURT'S OWN MOTION?

Although the Statute states “upon motion of the court” the Court cannot proceed unless the State concurs, since the State has the burden of proof. Upon the court’s motion, it appears that the defendant can be held for 72 hours, but then must be released if the State declines to proceed.

WHO HEARS THE PETITION?

Upon the filing of a petition or upon motion of the court seeking revocation, the court shall order the transfer of the defendant and the petition or motion to the court before which the previous felony or Class A misdemeanor is pending.

CAN THE DEFENDANT BE DETAINED

The defendant may be held in custody pending transfer to and a hearing before the court.

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.

IF THE HEARING IS AFTER 72 HOURS

In summary, we conclude that section 110-6(a) imposes an obligation on the circuit court to hold a hearing within 72 hours of the State's petition.

However, this obligation is not mandatory with respect to the mandatory-directory dichotomy. In so holding, we are not discouraging the timely disposition of hearings under section 110-6(a). We conclude, however, that the statute's command is directory only, and no consequence is warranted for the court's failure to hold a hearing within the 72-period under the particular facts of this case.

CAN THE HEARING BE HELD VIA ZOOM?

A hearing at which pretrial release may be revoked **must be conducted in person** (and not by way of two-way audio-visual communication) unless the accused waives the right to be present physically in court, the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court.

DEFENDANT'S RIGHT TO COUNSEL

During the hearing for revocation, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation.

WHAT DOES THE COURT CONSIDER?

The court shall consider all relevant circumstances, including, but not limited to, the nature and seriousness of the violation or criminal act alleged.

BURDEN OF PROOF

The State shall bear the burden of proving, by clear and convincing evidence, that no condition or combination of conditions of release would reasonably ensure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.

STATE'S BURDEN

The State's burden of proof does not require it to specifically address every conceivable condition or combination of conditions and argue why each condition does not apply.

Rather, the State must meet its burden and present sufficient evidence regarding the specific scenario presented by each case, such as the nature and circumstance of the offense, the defendant's criminal history, the defendant's risk assessment score, and other considerations known to the State at the time of the hearing.

PROOF OF THE NEW OFFENSE

The statute contains no requirement that the State show by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the newly-charged offense(s). Thus, the court did not err in revoking defendant's pretrial release based solely on evidence that defendant had been charged with a felony and multiple Class A misdemeanors alleged to have been committed while he was on pretrial release.

PROFFERED EVIDENCE?

The Statute does not specify that the parties may either call witnesses, or proceed by proffer. However, this hearing is similar in nature to the Safe-T Act Detention Hearing and the burden of proof is the same (clear and convincing). Arguably, then, proffered evidence is acceptable.

The evidentiary rule for a Detention Hearing is:

The State and the Defense may present evidence at the hearing by way of proffer based upon reliable information.

MUST THE COURT REVOKE PRE-TRIAL RELEASE?

In lieu of revocation, the court may release the defendant pre-trial, with or without modification of conditions of pretrial release.

IF THE NEW CASE IS DISMISSED

If the case that caused the revocation is dismissed, the defendant is found not guilty in the case causing the revocation, or the defendant completes a lawfully imposed sentence on the case causing the revocation, the court shall, without unnecessary delay, hold a hearing on conditions of pretrial release pursuant to Section 110-5 and release the defendant with or without modification of conditions of pretrial release.

IF THE COURT REVOKES PRE-TRIAL RELEASE

If the Court finds that the State has met their burden, the court may revoke Pre-Trial Release.

THE REASON FOR THE RULING

Nothing in the language of section 110-6 requires the court to articulate the specific reasoning behind its ruling. Rather, the text of the statute requires only that the trial court *consider* all relevant circumstances in making its decision.

There is a long-established principle that the trial court is presumed to know and apply the law absent an affirmative indication to the contrary. *People v. Martinez*, 2021 IL App (1st) 172097.

People v. Smith, No. 1-23-1756B, 2023 WL 8319136, (Ill. App. Ct. Dec. 1, 2023)

BUT...THE COURT SHOULD GIVE A REASON

Based on our review of the record, we find that the trial court's order failed to comply with section 110-6.1(h)(1). The trial court's failure to include the required summary of its reasons for denying pretrial release precludes this court (Appellate Court) from determining whether the court erred in denying defendant pretrial release.

The trial court failed to provide a written or verbal explanation as to why less restrictive conditions would not mitigate the threat posed by defendant. We therefore reverse and remand for compliance with section 110-6.1(h)(1) of the Code.

REVOCATION -THE COURT'S RULING - 1

The Court has considered the evidence and arguments of counsel, the State's Petition, the presumption of Pretrial Release, and the available conditions of Pretrial Release.

REVOCATION - THE COURT'S RULING - 2

This Court specifically adopts and incorporates the State's reasoning. Therefore, based on the specific articulable facts of the case and upon the evidence produced and enunciated by the State, the Court finds that the State has met its burden of proof by clear and convincing evidence.

REVOCATION - THE COURT'S RULING - 3

This Court finds that no condition or combination of conditions of release would reasonably ensure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.

Therefore, the State's Petition to Revoke Pre-Trial Release is granted.

IF THE COURT DOESN'T REVOKE

The court has considered all relevant circumstances, including, but not limited to, the nature and seriousness of the violation or criminal act alleged. The Court has also considered the arguments of counsel, the State's Petition, the presumption of Pre-trial Release, and the available conditions of Pretrial Release.

However, the Court finds that, based upon the evidence produced and enunciated by the State and Defense, that there are conditions of release that would reasonably ensure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.

Therefore, the Court denies the State's Petition to revoke the defendant's Pre-trial Release.

APPEAL

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.

NOTE

Both the State and the defendant may appeal an order revoking pretrial release or denying a petition for revocation of release.