

# INITIAL COURT APPEARANCE AND DETENTION / CONDITIONS OF RELEASE HEARINGS

Procedure - Guidelines - Practical Considerations  
Presentation to the Winnebago County Bar Association – Sept. 14, 2022

Hon. John T. Gibbons  
Chief Judge John S. Lowry  
17<sup>th</sup> Judicial Circuit  
Winnebago County

\*(This is not an official resource of the Illinois Supreme Court)

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## Leading up to the initial court appearance.

### Public defender appointment.

725 ILCS 110-5: (f) Prior to the defendant's first appearance, the Court shall appoint the public defender or a licensed attorney at law of this State to represent the Defendant for purposes of that hearing unless the defendant has obtained licensed counsel for themselves.

725 ILCS 5/109-1(g): Defense counsel shall be given adequate opportunity to confer with the defendant prior to any hearing in which the conditions of release or the detention of the defendant is to be considered, with a physical accommodation made to facilitate the attorney/client consultation.

Practice Tip /Note: Upon completion of the initial court appearance / detention hearing, the court may inquire as to indigence. (Note: The initial appointment of the Public Defender is for the purpose of the initial court appearance / detention hearing).

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## Leading up to the initial court appearance. ("Lodged" defendants)

### Pretrial Services:

-Interviews the defendant.

-Generates Pretrial Services report on all cases that are detention eligible

-Practice Note: See 725 ILCS 110-5 (d) regarding risk assessments: The defendant's counsel shall be provided with the scoring system of the risk assessment tool used to arrive at the determination.

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## Leading up to the initial court appearance. ("Lodged" defendants)

### Public defender/ Defense counsel:

- Receives reports from PTS.
- Interviews the defendant.
- Prepares for the ICA
- Defense counsel shall be given adequate opportunity to confer with the defendant prior to any hearing in which conditions of release or the detention for the defendant is considered, with a physical accommodation made to facilitate the attorney/client consultation. 725 ILCS 5/109-1(g)

### State's Attorney

- Screens cases
- Decision / preparation / filing of petition to detain
- Prepares for ICA

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## Leading up to the initial court appearance. ("Lodged" defendants)

The Quick release call (QRC) (Proposed):

Daily Time TBD: The PD (already appointed by order), or entered defense counsel, SAO, and Court meet informally without defendant for the sole purpose of possible quick release from custody. The state will identify non-detainable cases they are willing to agree to a quick release. If court acquiesces, defendant is released with mandatory pretrial release conditions (110-10(a)(1-4)) (and any conditions already entered on a warrant) and given a date within 7 days for an initial court appearance.

If additional conditions of release are necessary (e.g. no contact provisions, pretrial services reporting, etc.) the case will be set on 1:30pm ICA.

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## Initial Court Appearance

### When is the initial court appearance?

If Defendant arrested and is "lodged":

Initial Court appearance: Monday-Saturday 1:30pm

If defendant is given a notice to appear:

Initial Court appearance:

CF: the following Wednesday or Friday at 10:00am in Courtroom B.  
(Processing outside courtroom B)

CM: the following Monday or Friday at 1:30pm in Courtroom 315 (Processing on  
the 3<sup>rd</sup> floor near courtroom 315)

DUI: TBD – Courtroom 311 (processing on the 3<sup>rd</sup> floor near courtroom B)

\* ALL TIMES ARE SUBJECT TO REVISION

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## Initial Court Appearance

### Timeline (Monday-Friday)

"Lodged" defendants

\* SUBJECT TO REVISION

0530: Cut off for new arrestees.

0630: Public Defender appointed for lodged defendants (unless private counsel entered)

0700: PTS begins interviews / PTS files reports as completed

Throughout AM: Public defender / Defense Counsel interviews clients

0830-1130: Continued detention hearings from previous 48 hours / CF NTA Initial  
Appearance Call (Wed. and Fri.)

1000: PTS is completed with interviews and all reports are submitted.

Throughout AM: SAO files Petitions to detain

11:00: QRC

1:30pm-2:30pm Initial Court Appearance for "lodged" defendants who are non-detainable

2:30pm-End of last hearing: Detention hearings

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## Initial Court Appearance

### Timeline (Saturday)

#### “Lodged” defendants

\* SUBJECT TO REVISION

0530: Cut off for new arrestees.

0630: Public Defender appointed for lodged defendants (unless private counsel entered)

0700: PTS begins interviews / PTS files reports as completed

Throughout AM: Public defender / Defense Counsel interviews clients

1000: PTS is completed with interviews and all reports are submitted.

Throughout AM: SAO files Petitions to detain

11:00: QRC

1:30pm-2:30pm Initial Court Appearance for “lodged” defendants who are non-detainable

2:30pm-End of last hearing: Detention hearings (Including continued detention hearings from last 48 hours).

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## Initial Court Appearance

### Thresholds

- Monetary Bail is abolished, 725 ILCS 5/110-1.5  
Rare exceptions: Interstate Compact Situations
- It is PRESUMED that the defendant is entitled to a release on a personal recognizance... on the condition that the defendant:
  1. Attend all required court proceedings.
  2. Does not commit any criminal offense
  3. Complies with all terms of pretrial release including protection orders.

725 ILCS 5/110-2(a)

NOTE: See also 725 ILCS 5/110-2(c): If the court deems that the defendant is to be released on a personal recognizance, the court may require that a written admonishment be signed by the defendant requiring that he or she must comply with the provisions of Section 110-12 of this code regarding a change in his or her address.  
725 ILCS 5/110-12: The defendant shall file a written notice with the clerk of court of any change of address within 24 hours after such change.

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## Initial Court Appearance

The defendant must be present **IN PERSON**:

725 ILCS 5/109-1(f): At the hearing at which conditions of pretrial release are determined, the person charged shall be present in person rather than by video phone or any other form of electronic communication, unless the physical health and safety of the person would be endangered by appearing in court or the accused waives the right to be present in person.

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## Initial Court Appearance

At the beginning, the ICA is essentially the same as how "bond court" currently proceeds (reading of rights, charges, possible penalties, Gerstein PC consideration, advisement of foreign national rights, etc.)/ However, following the initial arraignment procedures the ICA will proceed differently and with new mandatory considerations and burdens at the detention hearing or conditions of release phases of the appearance.

### CROSSROADS:

Detention hearing or release conditions hearing:

Petition to detain filed? Move into detention hearing phase.

No petition to detain filed? Continue with ICA and proceed to conditions of pretrial release phase.

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## Initial Court Appearance (Conditions of pretrial release phase)

"Conditions of pretrial release" means the conditions established by the court entered into by a person in custody by which he binds himself to comply with such conditions as are set forth therein. 725 ILCS 5/102-7

### Thresholds concerning the setting of conditions of release: (725 ILCS 5/110-5)

In determining which conditions of pretrial release, if any, which will reasonably assure the appearance of the defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with the conditions of pretrial release, the court shall, on the basis of available information, take into account:

1. The nature and circumstances of the offense
2. The weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded.
3. The history and characteristics of the eligible defendant including (see list at 5/110-5 (a)(3)).
4. The nature and seriousness of the specific real and present threat to any person that would be posed by the defendant's release under the rights of crime victims and witnesses act.
5. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release.

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## Initial Court Appearance (Conditions of pretrial release phase)

Other considerations of note under 110/5:

- (b-5) Domestic Violence related considerations.
- (c) Stalking related considerations

Other new considerations of note:

(d): The court may use a regularly validated risk assessment as an aid in determining appropriate conditions of release. The risk assessment cannot be the **SOLE BASIS TO DETAIN** (remember this for the detention hearing). The defendant's attorney must be given the **SCORING** system of the risk assessment and can challenge it's validity. 725 ILCS 5/110-5(d).

Practice note: The scoring system materials should be attached to the pretrial services report.

(e) The inability of a defendant to pay for a condition of release or the ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant. 725 ILCS 5/110-5(e)

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## Initial Court Appearance (Conditions of pretrial release phase)

### Conditions of Pretrial Release:

725 ILCS 5/110-5(b):

The Court SHALL order any conditions that are mandatory under section 110-10 (a) (1-6).

The Court MAY Impose any conditions that are permissible under Section 110-10 (b) (1-17).

Mandatory conditions:

110-10 (a) (1-6):

- (1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;
- (2) Submit himself or herself to the orders and process of the court;
- ~~(3) Not leave this state without leave of the court;~~
- (4) Not violate any criminal statute of any jurisdiction
- (5) Surrender firearms if charged with certain offenses
- (6) Submit to a psychological evaluation ( if charged with UYW within a school)

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## Initial Court Appearance (Conditions of pretrial release phase)

Permissible (additional) conditions:

### THRESHOLDS

(New) 725 ILCS 5/110-2 (b) (1-17) Additional conditions of release...shall only be set when it is determined they are necessary to assure the defendant's appearance in court, assure the defendant does not commit any criminal offense, and complies with all conditions of pretrial release.

(Not stricken) 725 ILCS 5/110-10(b): The court may impose other conditions, such as the following if the court finds that such conditions are reasonably necessary to assure the defendant's appearance in court, protect the public from the defendant, or prevent the defendant's unlawful interference with the orderly administration of justice:...

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## Initial Court Appearance (Detention Hearing Phase)

Hearing on petition to detain:

### Thresholds (Initial):

725 ILCS 5/110-2(a): Presumed ROR

725 ILCS 5/110-2(c): Detention only shall be imposed when it is determined that the defendant poses a specific, real and present threat to a person, or has a high likelihood of willful flight.

In non-probationable forcible felony cases, the court can detain when it is determined that the defendant poses a risk of safety to the community. See 725 ILCS 5/110-6.1(a)(1)

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## Initial Court Appearance (Detention Hearing Phase)

- Initiation of detention (725 ILCS 5/110-6.1(a): Upon verified petition of the State, the Court shall hold a hearing and may deny a defendant pretrial release only if...
    - **THRESHOLD:** the defendant is charged with a qualifying offense or has a high probability of willful flight and is charged with a qualifying felony.
- AND
- **THRESHOLD:** it is alleged that the that the defendant's pretrial release poses a specific, real and present threat to the physical\* safety of \_\_\_\_\_) (It varies based on what the defendant is charged with.

\*(Inconsistent language elsewhere)

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## Initial Court Appearance (Detention Hearing Phase)

### Timing / logistics of petition to detain (725 ILCS 5/110-6.1(c) and (d)):

- Who can initiate? Only the State. The court can only initiate detention when there is a violation of pretrial release.
- When can it be filed? At the first appearance or within 21 days of arrest.
- How many can the State file? One (1). (This does not preclude the state from filing petitions to revoke pretrial release upon violation)
- Contents: Must be verified and must allege specific person or persons the State believe the person poses a danger to (or allege danger to the community in non-probationable forcible felony cases-725 ILCS 5/110-6.1(a)(1)).

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## Initial Court Appearance (Detention Hearing Phase)

### Timing / logistics of petition to detain (725 ILCS 5/110-6.1(c) and (d)):

When must the hearing be held?

IMMEDIATELY upon filing (unless a continuance is granted)

Granting Continuances are within the Court's discretion.

If a continuance is granted the hearing be held:

Class 3 or greater: Max. within 48 hours of the defendant's first appearance.

Class 4 and under: Max. 24 within 24 hours of the defendant's first appearance.

The Court can release the defendant pending the petition hearing.

Detention Hearing / Crime Victims:

725 ILCS 5/110-6.1(m): Crime victims shall be given notice of the hearing on the petition to detain and shall be informed of their opportunity at this hearing to obtain an order of protection under Article 112A.

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## Initial Court Appearance (Detention Hearing Phase)

### BURDEN OF PROOF

The Court MAY deny pretrial release only if the state proves, by clear and convincing evidence that...

Wait a minute. Clear and convincing evidence?\*

\*The clear and convincing evidence standard requires proof greater than a preponderance, but less than the standard of beyond a reasonable doubt.  
See In Re D.T. A Minor, 212 Ill.2d 347 (2004)

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## Initial Court Appearance (Detention Hearing Phase)

### BURDEN OF PROOF

The Court MAY deny pretrial release only if the state proves, by clear and convincing evidence that (725 ILCS 5/110-6.1(e):

(1) The proof is evident or the presumption is great that the defendant has committed the (qualifying offense)

AND

(2) The defendant poses a real and present threat to the ~~physical~~ safety of a specific identifiable person or persons, by conduct which may include but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined under the IDVA (or poses a threat to the community when charged with a non-probationable forcible felony- See 725 ILCS 5/110-6.1(a)(1))

AND

(3) No condition or combination of conditions set forth in subsection (b) of section 110-10 (permissible conditions of pretrial release) can mitigate the real and present threat to the safety of any person or persons or the defendant's willful flight.

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## Initial Court Appearance (Detention Hearing Phase)

### BURDEN OF PROOF

#### Paradigm Shift:

par·a·digm shift

/ˈperəˌdɪm ʃɪft/ noun

a fundamental change in approach or underlying assumptions.

~~Beyond a reasonable doubt~~

Clear and convincing evidence

~~Preponderance of the evidence~~

~~Probable Cause~~

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## Initial Court Appearance (Detention Hearing Phase)

### Other detention hearing logistics

725 ILCS 5/110-6.1(f)

- The State or the defendant may present evidence by PROFFER.
- The defendant has the right to testify, present witnesses, cross examine witnesses
- Prior to the hearing, the state shall tender copies of the defendant's criminal history available, written or recorded statements, substance of oral statements made by any person, or relied upon by the state in its petition, and any police reports in the State's attorney's possession at the time of the hearing.
- If the defense seeks to call the complaining witness in its favor, it shall petition the court for permission. The Court can only grant this request if it finds by clear and convincing evidence that the defendant will be materially prejudiced if request is denied and the ends of justice so require. If this request is granted, the court must state its reasons on the record.
- Rules of evidence do not apply.

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## Initial Court Appearance (Detention Hearing Phase)

### Detention Decision

If detention is denied: The court will proceed to the conditions of pretrial release phase.

If petition to detain is granted: The court will enter a detention order and case will be set within 30 days in destination courtroom.

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## Initial Court Appearance (Detention Hearing Phase)

### DETENTION ORDER

725 ILCS 5/110-6.1(h)

The Court shall, in any order for detention:

- (1) Briefly summarize the evidence of the defendant's guilt or innocence, AND the court's reasons for concluding that the defendant should be denied pretrial release.

#### SEE ALSO

725 ILCS 5/110-2(d): If after the procedures set out in Section 110-6.1, the court decides to detain the defendant, the Court must make a written finding as to why less restrictive conditions would not assure safety to the community and assure the defendant's appearance in court.

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# Initial Court Appearance (Detention Hearing Phase)

## DETENTION ORDER

# Initial Court Appearance (Detention Hearing Phase)

## DETENTION ORDER ISSUED.

Next steps/considerations.

Effect of detention order: 725 ILCS 5/110-6.1(i): The defendant shall be brought to trial on the offense for which he is detained within 90 days after the order for detention was entered. If the defendant is not brought to trial within the 90 day period, he shall not be denied pretrial release. (Defense continuances toll 90 days).

The defendant and the State have the right to appeal the detention hearing order. (5/110-6.1(j) and (k).)

5/110-6.1(l): Nothing in this section (detention hearing) shall be construed as modifying or limiting the defendant's presumption of innocence.

## Initial Court Appearance (Detention Hearing Phase)

DETENTION ORDER ISSUED- Next steps.

Reassessing detention: 725 ILCS 5/110-2 (d): At each subsequent court appearance, the judge must find that the continued detention or current set of conditions imposed are necessary to avoid the specific, real and present threat to any person or willful flight from prosecution to continue detention of the defendant. The court is not required to be presented with new information or a change in circumstance to reconsider pretrial detention on current conditions.

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Thank You.

Questions or concerns?

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