



Supreme Court of Illinois Pretrial Implementation Task Force Regional Education Seminar – Carterville, IL – December 13, 2022



Presented in collaboration with the Supreme Court of Illinois Judicial College

AGENDA

- Welcome
- History of Implementation Task Force and Pretrial Practices Commission
- Fundamentals of Pretrial Practices
- Pretrial Services in Illinois
- What Does Success Look Like?
- Overview of Pretrial Fairness Act
- Closing Plenary

December **2022**

SUN	MON	TUE	WED	THU	FRI	SAT
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

**HISTORY OF IMPLEMENTATION TASK FORCE
AND
PRETRIAL PRACTICES COMMISSION**

Hon. Thomas Tedeschi, Resident Circuit Judge, Franklin County, IL

LEARNING OBJECTIVE

- Recall the origins, purpose and goals of the Supreme Court Pretrial Practices Commission and the Pretrial Implementation Task Force



HISTORY OF TASK FORCE AND PRETRIAL COMMISSION

Illinois Supreme Court adopts Statewide Policy Statement for Pretrial Services - April 28, 2017

“Illinois pretrial principles and practices are founded upon the presumed innocence of the accused-the cornerstone of our nation's justice system. As such, defendants are entitled to bail practices that are consistent with the requirements of due process...”

“The Illinois Supreme Court seeks to ensure a fair, efficient, transparent, accountable and adequately-resourced system of pretrial services in each of Illinois’ 24 judicial circuits.”



HISTORY OF TASK FORCE AND PRETRIAL COMMISSION

- Illinois Supreme Court forms a Commission on Pretrial Practices - November 13, 2017
 - Charged with providing guidance and offering recommendations regarding pretrial reform
 - Convened for 2 years and submitted final report in April 2020, which included 54 recommendations
- Illinois Supreme Court creates a Pretrial Implementation Task Force - July 21, 2020

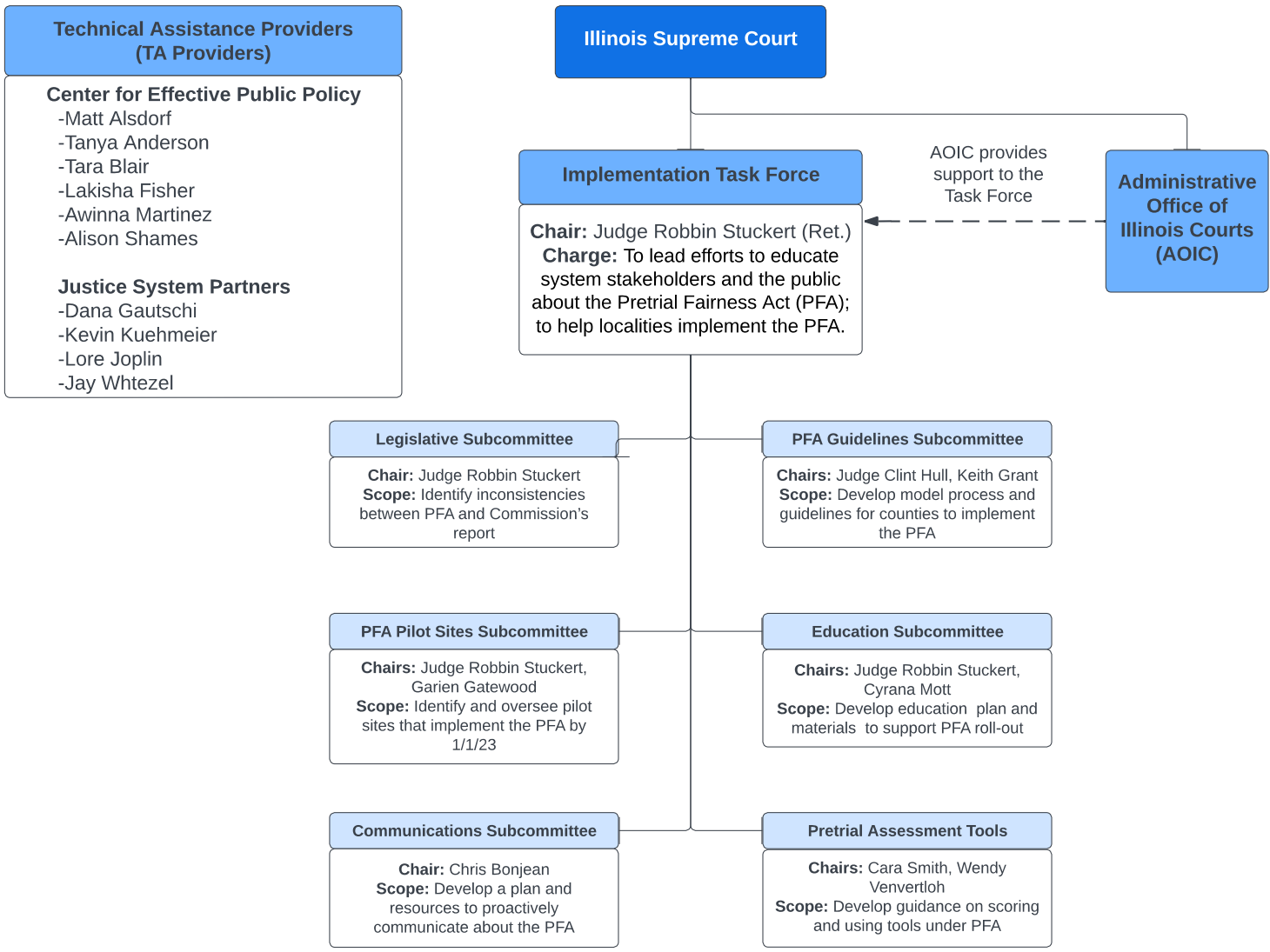


HISTORY OF TASK FORCE AND PRETRIAL COMMISSION

- Pretrial Fairness Act passed by Illinois Legislature (as part of the SAFE-T Act) – January 2021
- Illinois Supreme Court charges the Task Force with providing leadership to help the state successfully implement the PFA – January 2021



Illinois Supreme Court Commission on Pretrial Practices Implementation Task Force



QUESTIONS



FUNDAMENTALS OF PRETRIAL PRACTICES

Tanya Anderson, Senior Manager, Center for Effective Public Policy
Lakisha Fisher, Program Manager, Center For Effective Public Policy

LEARNING OBJECTIVES

- Identify the legal foundations of pretrial justice.
- Describe the reforms in pretrial justice from across the country.



FUNDAMENTALS OF PRETRIAL PRACTICES

What We Will Cover:

- Why Focus on Pretrial Justice?
- Pretrial Justice Goals
- Pretrial Law: Release, Detention, and Conditions of Release

WHY FOCUS ON PRETRIAL?

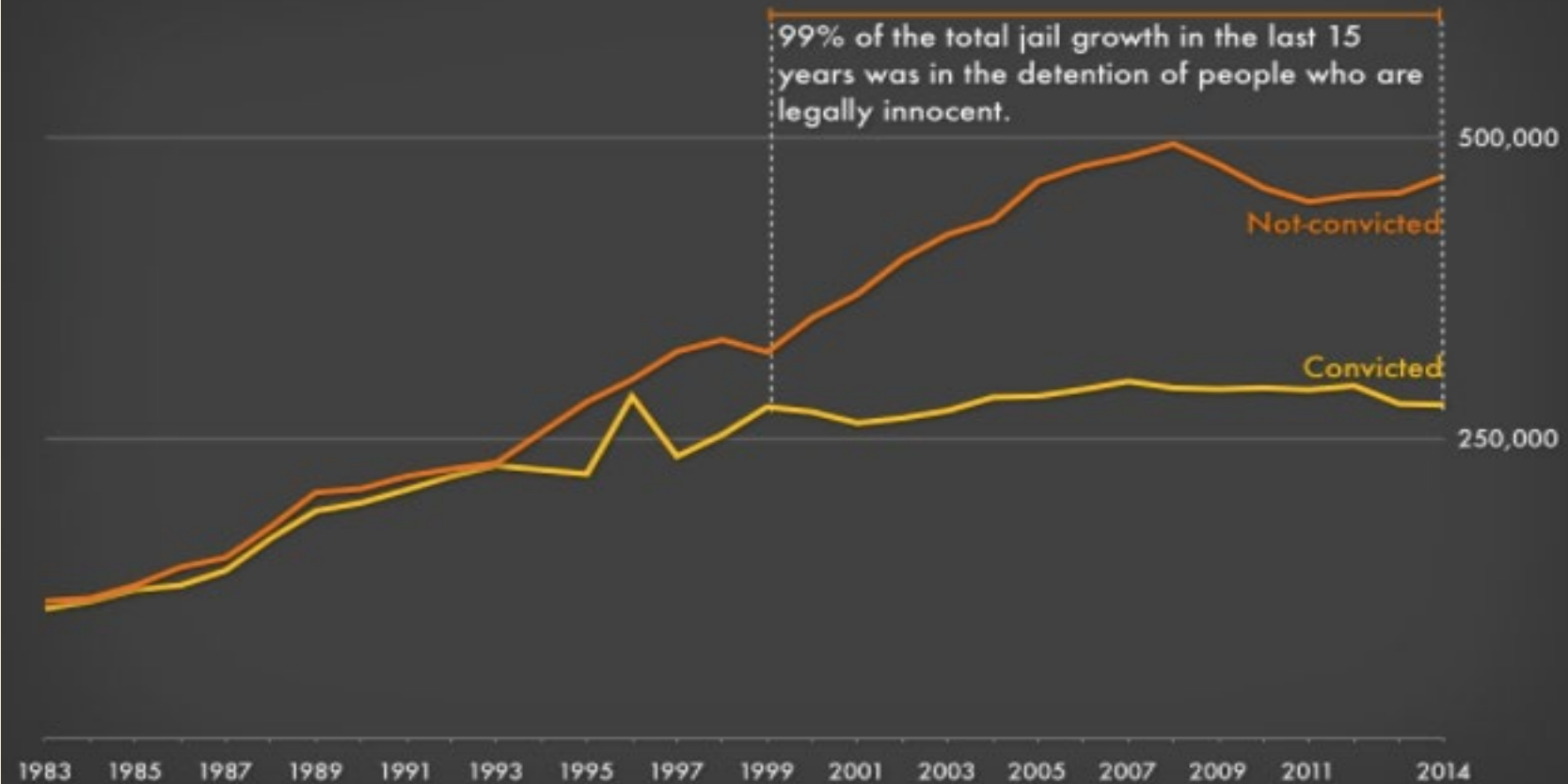
**“Pretrial decisions
determine mostly
everything.”**

~ Prof. Caleb Foote, 1956

NATIONAL JAIL POPULATION GROWTH

THE URGENT NEED FOR BAIL REFORM

(Number of convicted and non-convicted people in local jails, 1983-2014)



THE \$14 BILLION QUESTION



*Are we detaining the
right people?*

THE \$14 BILLION ANSWER

NO.

CURRENT SYSTEM: DUAL SYSTEM ERRORS

New Jersey (2013)

- 40% of defendants were in jail because they couldn't make secured money bond
- 30% of this number were held on less than \$2,500

Harris County, Texas (2015)

- 3,120 individuals annually cannot make secured money bond of \$500 or less

- ✓ Typical of jail studies nationally.
- ✓ Those with money can buy their way out.
- ✓ Those without money sit in jail.

CURRENT SYSTEM: PUBLIC SAFETY

- Unnecessary detention is actually correlated with an increase in crime

Kentucky (2022)

- ✓ Pretrial detention—even for short periods—is associated with higher rates of rearrest
- ✓ Pretrial detention has no impact on failures to appear (FTA)

CURRENT SYSTEM: FAIRNESS

- Individuals unnecessarily incarcerated during the pretrial stage are more likely to experience:
 - Loss of job
 - Destabilization or loss of housing
 - Undermining of family ties—e.g., loss of custody of children
 - Loss of educational opportunities and other support services
- It also makes it more difficult to prepare a defense—and increases pressure on accused people to plead guilty
- Disproportionate outcomes by race, ethnicity, and socioeconomic status

PRETRIAL JUSTICE: WHAT DO WE WANT TO ACHIEVE?



LAW: RIGHT TO PRETRIAL RELEASE

The U.S. Supreme Court has held that the vast majority of people arrested are entitled to release before trial.

Absent a right to pretrial release, “the presumption of innocence...would lose its meaning.”

***Stack v. Boyle*, 342 U.S. 1 (1951)**

“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

***U.S. v. Salerno*, 281 U.S. 739 (1987)**

LAW: LIMITS ON PRETRIAL DETENTION

Courts have established limits:

- **Flight** and **public safety** are the only considerations that should be used for detention
- Detention is a **last resort**—and only permitted when no conditions of release will provide a reasonable assurance that the person will not flee or commit a serious offense
- Detention is permitted only after **full due process**

LAW: DUE PROCESS

Due process includes:

- ✓ Representation by counsel
- ✓ A prompt hearing
- ✓ The right to testify on one's own behalf and to examine witnesses
- ✓ The judicial officer using constitutionally and statutorily enumerated factors to determine whether detention is necessary
- ✓ The use of a "clear and convincing evidence" standard
- ✓ Written findings of fact and statement of reasons for any decision to detain
- ✓ The right to expedited appellate review

LAW: PRETRIAL RELEASE CONDITIONS

For the vast majority of people who are legally entitled to pretrial release:

Remember: Most people will succeed on pretrial release *without any conditions other than a promise to return to court and stay out of legal trouble.*

LAW: PRETRIAL RELEASE CONDITIONS

Two main legal principles when setting conditions of release:

If any conditions are imposed, they must be the **least restrictive necessary** to provide reasonable assurance of court appearance and public safety.

U.S. v. Salerno, 281 U.S. 739 (1987)

Conditions must be **individualized**.

Stack v. Boyle, 342 U.S. 1 (1951)

LAW: *FINANCIAL* RELEASE CONDITIONS

Three main legal principles:

1. Financial conditions may not be used to intentionally detain
2. Unaffordable financial conditions will be subject to increased scrutiny
3. A person's ability to pay must be assessed *before* setting financial conditions

QUESTIONS



OVERVIEW OF PRETRIAL SERVICES IN ILLINOIS

Hon. Cara Smith

Director, Office of Statewide Pretrial Services

Donald Jones

Deputy Director, Office of Statewide Pretrial Services

Administrative Office of the Illinois Courts

LEARNING OBJECTIVES

- Discuss the role of pretrial services within the pretrial system.
- Describe the responsibilities of the Office of Statewide Pretrial Services and local pretrial services agencies.



WHAT ARE PRETRIAL SERVICES PROGRAMS?

Pretrial services programs are an important part of an effective pretrial justice system that contributes to community well-being and safety.

They help people succeed during the pretrial phase.

- ✓ Success is defined as:
 - ✓ Defendant maintains arrest-free behavior
 - ✓ Defendant attends all court dates

**Pretrial
Services
Programs
Provide**

Investigations

information to assist the judges
in making more informed pretrial
release/detention decisions

Supervision

monitoring of individuals
released from custody

ILLINOIS PRETRIAL SERVICES ACT

725 ILCS 185

Effective July 1, 1987



KEY PROVISIONS OF ILLINOIS PRETRIAL SERVICES ACT

725 ILCS 185

Section 1:

Each circuit court *shall*:

- establish a pretrial services agency
- provide the court with accurate background data regarding the pretrial release of persons charged with felonies
- provide effective supervision of compliance with the terms and conditions imposed on release

KEY PROVISIONS OF ILLINOIS PRETRIAL SERVICES ACT

725 ILCS 185

Section 1.5:

“...the Supreme Court is encouraged to establish a framework that facilitates the hiring and training of new State-employed pretrial services personnel to serve circuit courts or counties without existing pretrial services agencies, as required by Section 1.” Public Act 102-694, effective 1-7-22.

KEY PROVISIONS OF ILLINOIS PRETRIAL SERVICES ACT

725 ILCS 185

Section 7:

(a): Interview and assemble accurate background of arrested persons who are to be presented to the court for first appearance.

(b): Submit written report to the court.

(c): Supervise compliance with pretrial release conditions and promptly report violations of those conditions to the court and prosecutor.

SECTION 7(B) AS AMENDED BY HB1095

Section 7(b):

(b): Submit written reports of those investigations to the court along with such findings and recommendations, if any, as may be necessary to assess appropriate conditions which shall be imposed to protect against the risks of nonappearance and commission of new offenses or other interference with the orderly administration of justice before trial.

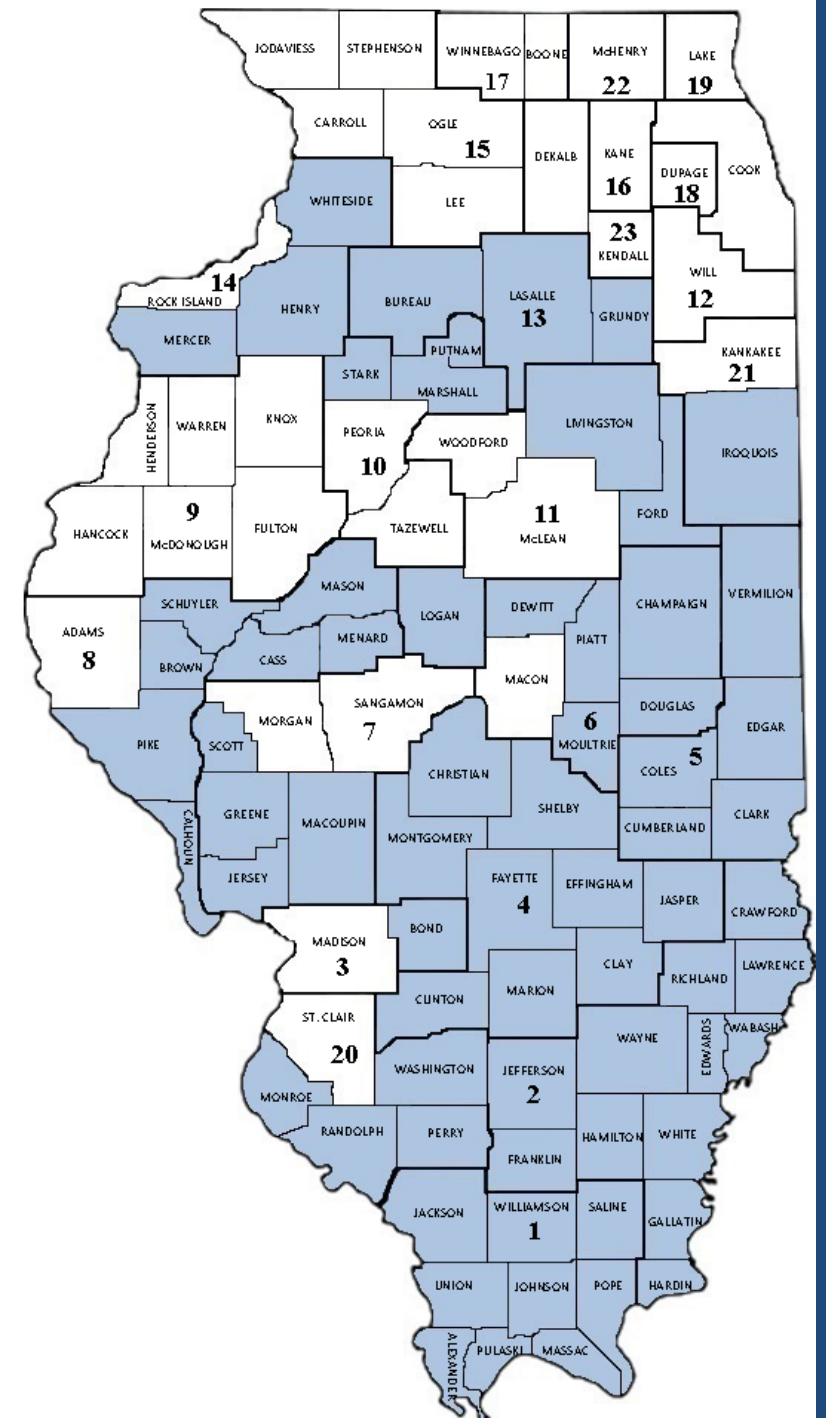
SECTION 19 AS AMENDED BY HB1095

Section 19:

Written reports under Section 17 shall set forth all factual findings on which any recommendation and conclusions contained therein are based together with the source of each fact, and shall contain information and data relevant to appropriate conditions which shall be imposed to protect against the risks of nonappearance and commission of new offenses or other interference with the orderly administration of justice before trial.

Pretrial Services in Illinois

November 2022



OSPS OPERATIONS CENTER

Operational 20 hours a day, 7 days a week

Tracks new arrests throughout the 69 OSPS Counties

Pulls LEADs for new arrests and compiles criminal histories

Responds to inquiries from law enforcement, probation or pretrial programs

ILLINOIS PRETRIAL STANDARDS

Last updated December 2001

OSPS contracted with Spurgeon Kennedy of the Justice Management Institute

Based upon state and federal laws and evidence-based practices

Ensure legal and evidence-based pretrial services throughout Illinois

Expected winter 2022/2023

OFFICE OF STATEWIDE PRETRIAL SERVICES

Director

Cara LeFevour Smith, clefevoursmith@illinoiscourts.gov

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QUESTIONS



WHAT DOES SUCCESS LOOK LIKE?

Loyola University Chicago, Center for Criminal Justice

(David Olson, Don Stemen, Branden DuPont, Patrick Griffin & Amanda Ward)

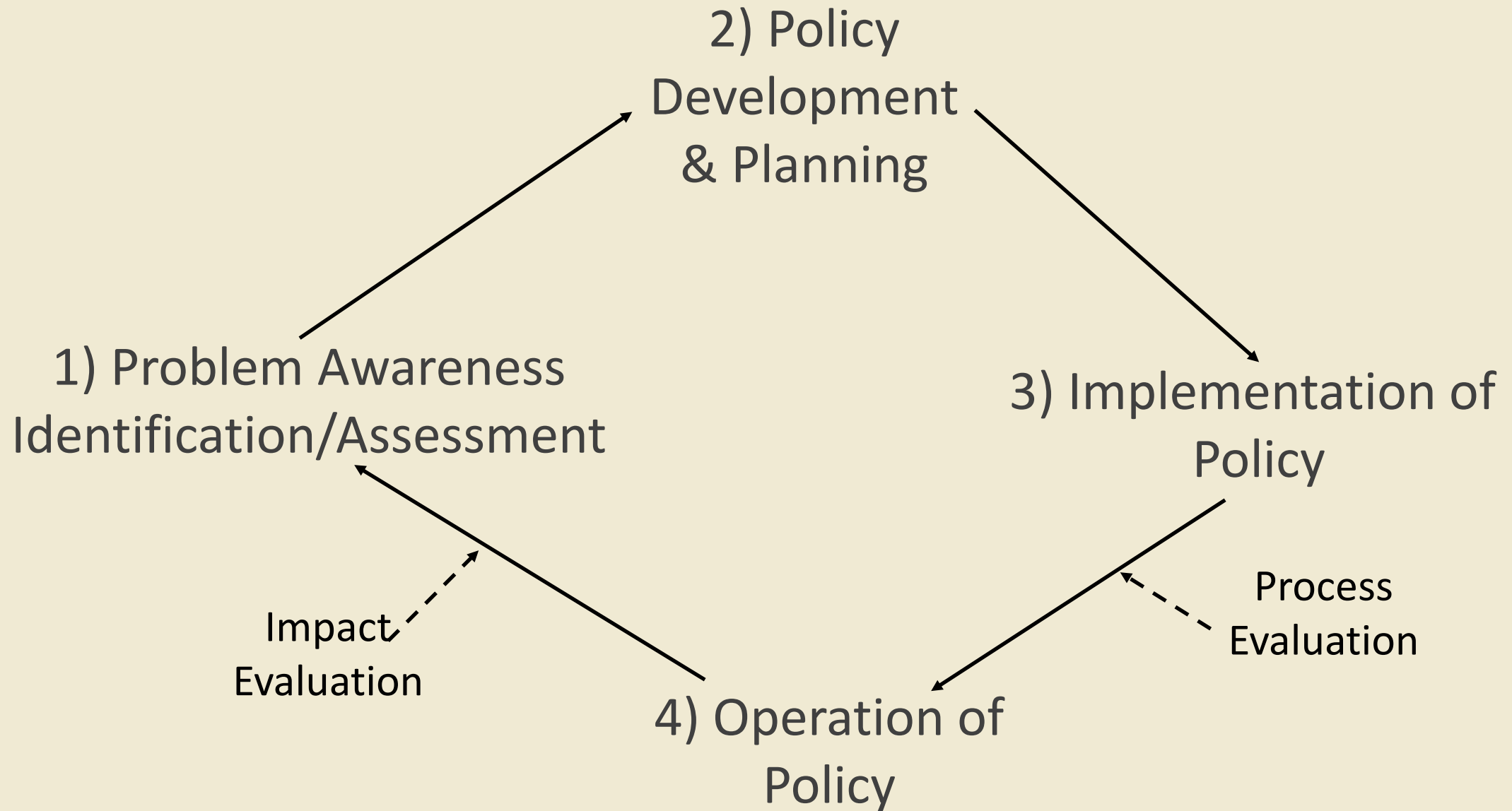
<https://loyolaccj.org/>

LEARNING OBJECTIVES

- Recognize strategies to measure success of Pretrial Fairness Act implementation.
- Identify the data collection requirements under the PFA.



THE IDEAL PROBLEM-SOLVING PROCESS



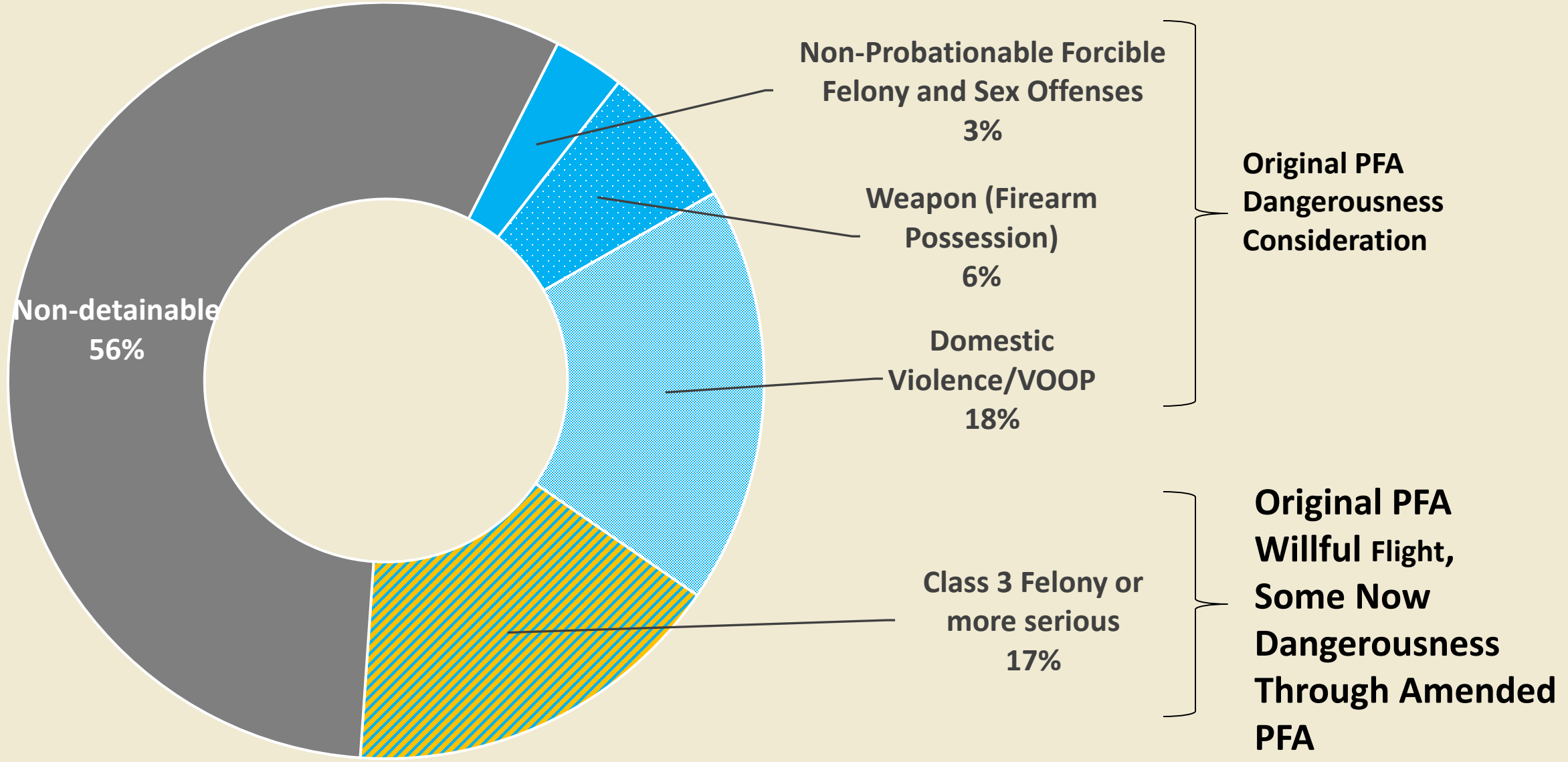
TRACKING THE IMPLEMENTATION AND IMPACT OF THE PFA

- Process Evaluation: The importance of documenting and measuring how new provisions are implemented (*Pre- and post-January 1, 2023*)
- What proportion of cases enter court system through a Notice to Appear?
- What proportion of defendants have legal representation at first appearance?
- What proportion of defendants are released pretrial?
- What conditions are imposed?
 - How many/what proportion of defendants are placed on pretrial supervision?
- What proportion of cases are eligible for detention?
 - What proportion of cases have detention sought?
 - What percent of defendants are detained?
 - How long are those who are detained being held?

TRACKING THE IMPLEMENTATION AND IMPACT OF THE PFA

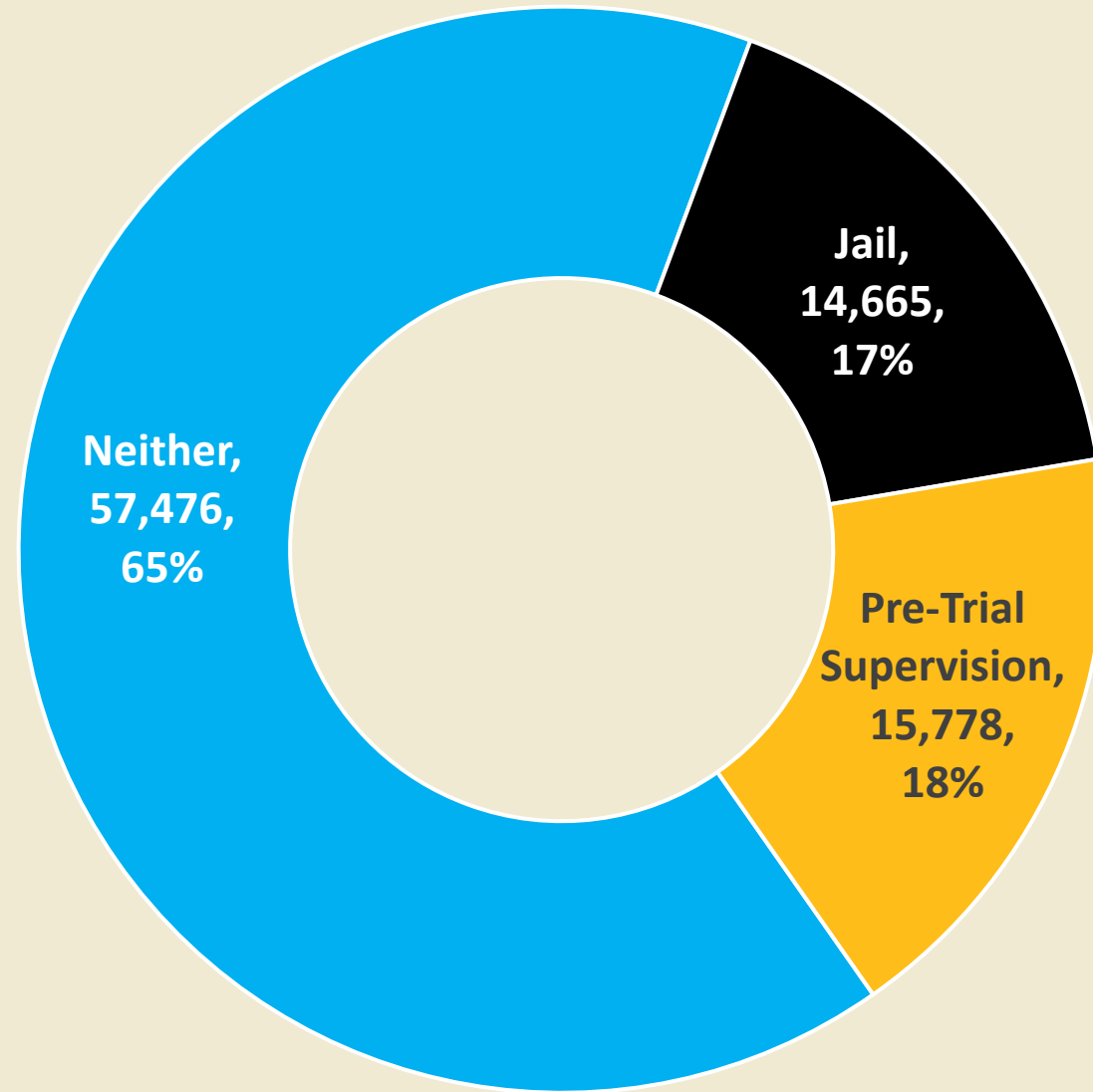
- Impact Evaluation: The importance of documenting and measuring the impact the new provisions have on justice agency operations and pretrial outcomes (Pre- and post-January 1, 2023)
- Did the size & characteristics of pretrial-detention population in jail change?
- What proportion of those released pretrial do not miss court dates?
- Of those that do, how many, and for what reasons?
- What proportion of those released pretrial are not charged with new crimes while in a pretrial status?
 - Of those that do, for what types of crime?
- What proportion of convicted defendants are sentenced to incarceration?
- How have overall crime levels changed in the community?

ARREST IN ILLINOIS FOR DETAINABLE OFFENSES, 2020-2021



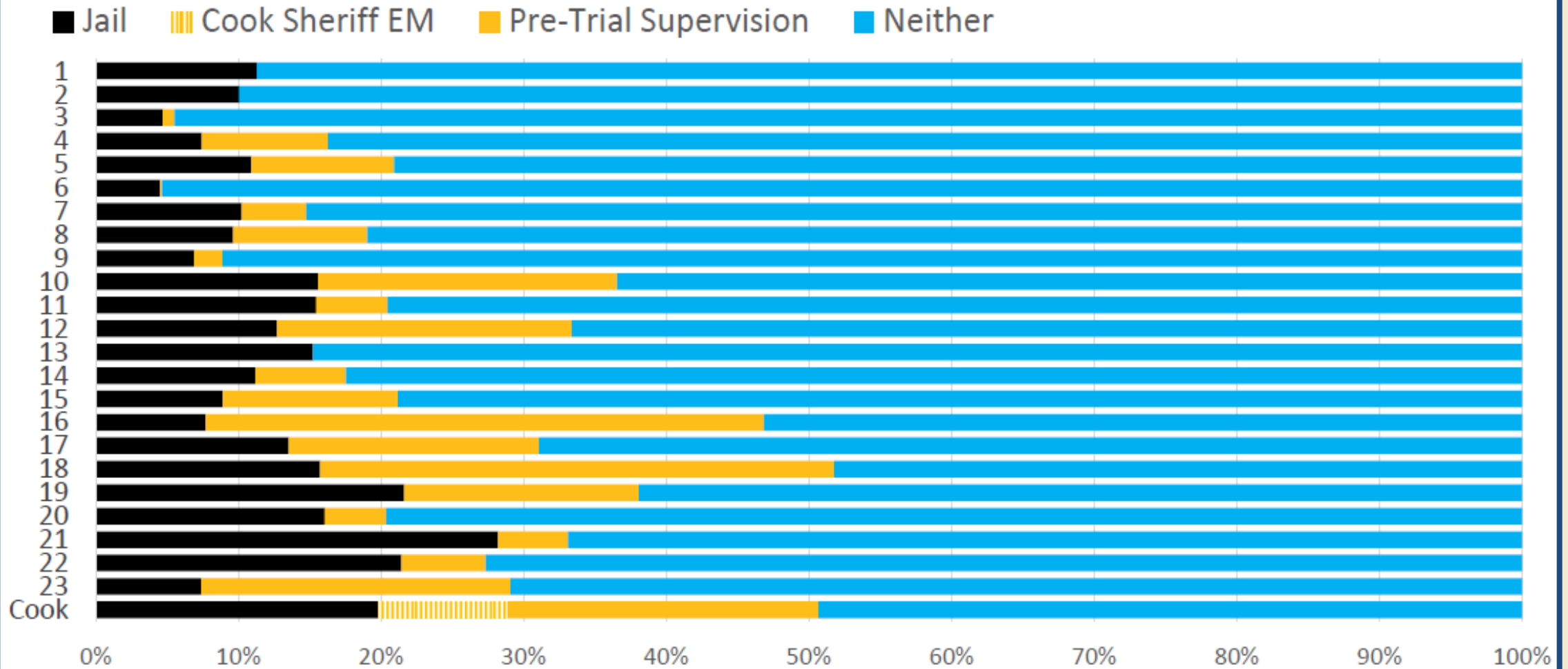
Source: Analyses of Illinois State Police Criminal History Record Information (CHRI) by the Illinois Sentencing Policy Advisory Council (SPAC) and Loyola University Chicago's Center for Criminal Justice

ESTIMATE OF PRETRIAL DETENTION AND SUPERVISION AMONG PENDING FELONY CASES IN ILLINOIS, 2017-2021 AVERAGE



Source: Analyses by Loyola University Chicago's Center for Criminal Justice of data provided by the Illinois Department of Corrections' Jail and Detention Standards Unit and the Administrative Office of the Illinois Courts' Annual Report and on-line Pretrial data portal

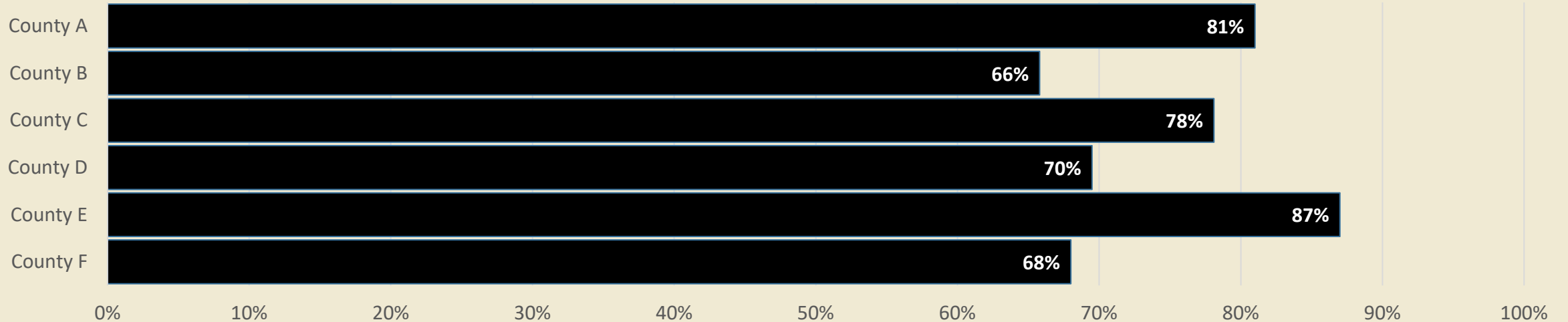
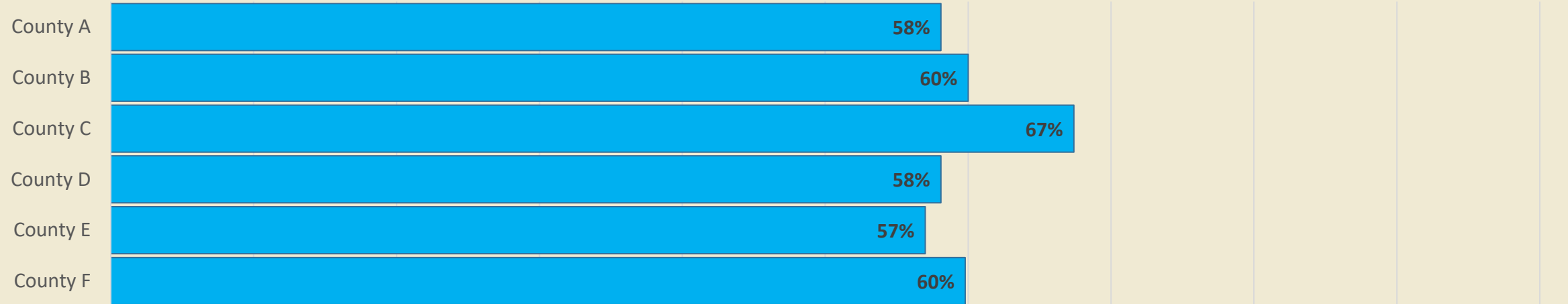
Estimate of Pretrial Detention and Supervision Among Pending Felony Cases, 2017-2021 Annual Average, by Circuit Number



Source: Analyses by Loyola University Chicago's Center for Criminal Justice of data provided by the Illinois Department of Corrections' Jail and Detention Standards Unit and the Administrative Office of the Illinois Courts' 2017-2019 Annual Report and on-line Pretrial data portal

PERCENT OF DEFENDANTS RELEASED FROM PRETRIAL DETENTION WITHIN 7 DAYS

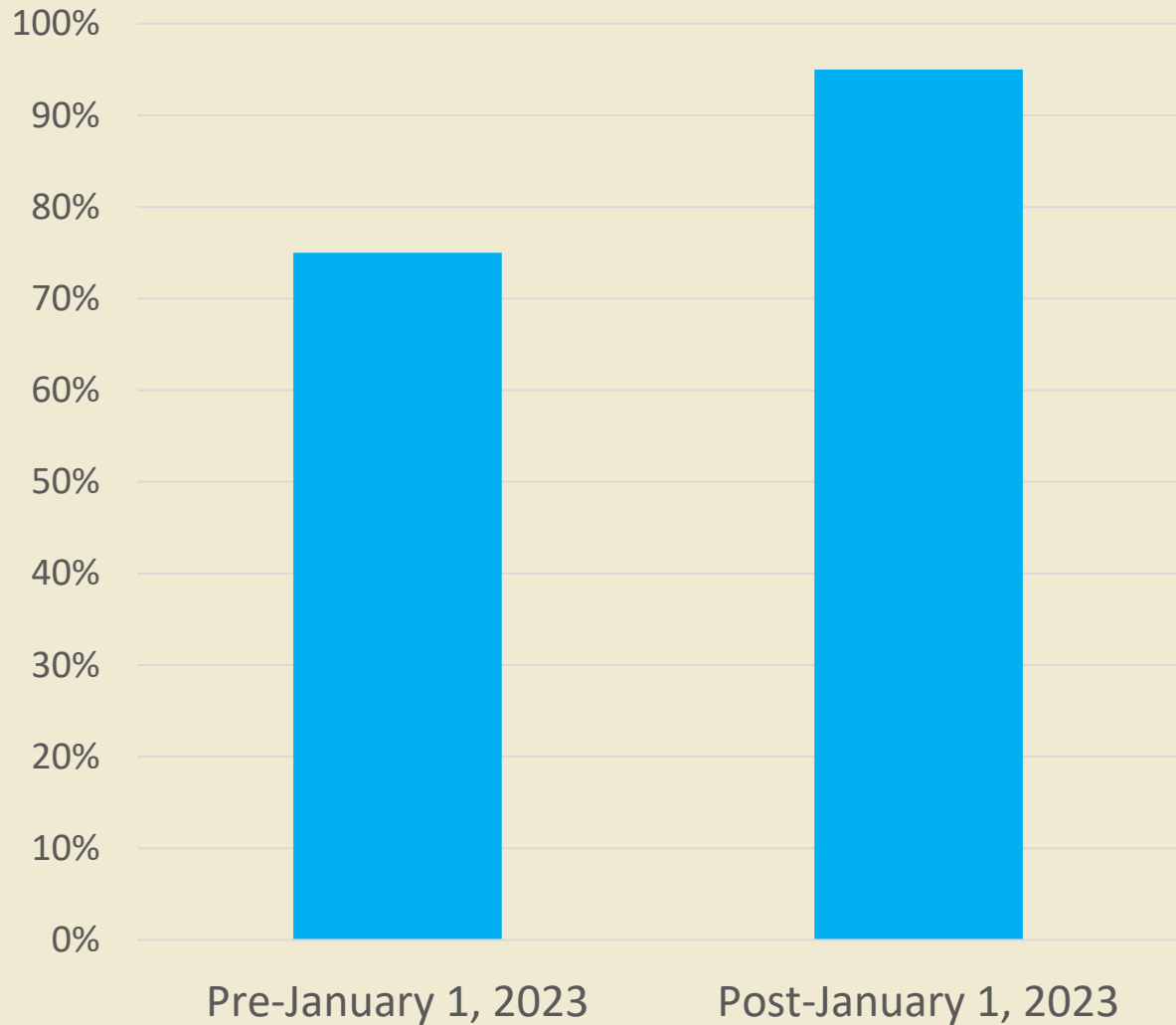
Detainable (Dangerousness)



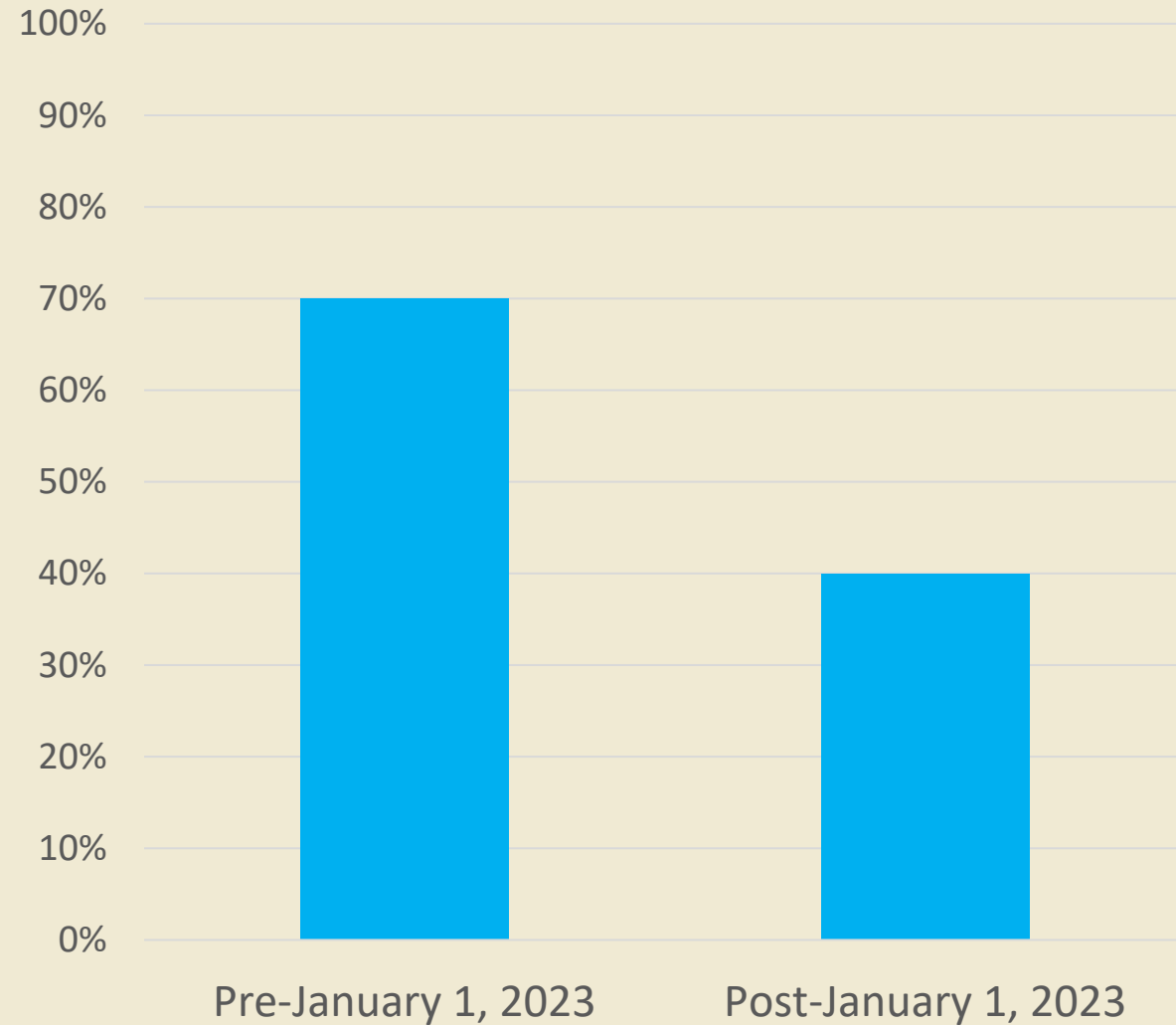
Non-detainable

HYPOTHETICAL EXAMPLES OF WHAT SUCCESS WOULD LOOK LIKE

Percent of Defendants with Legal Representation at First Appearance

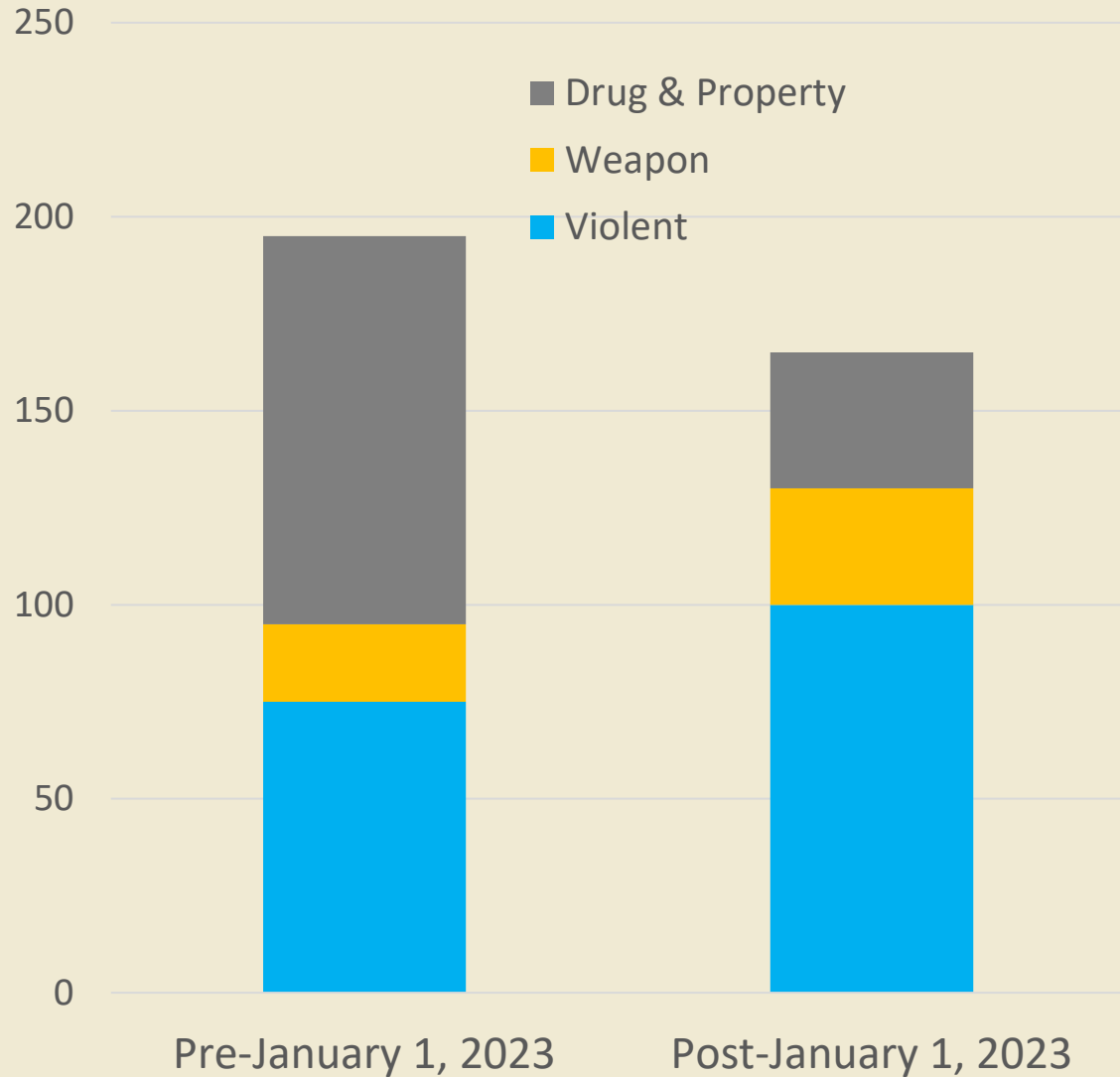


Percent of Defendants That Spend More than 2 Days in Jail

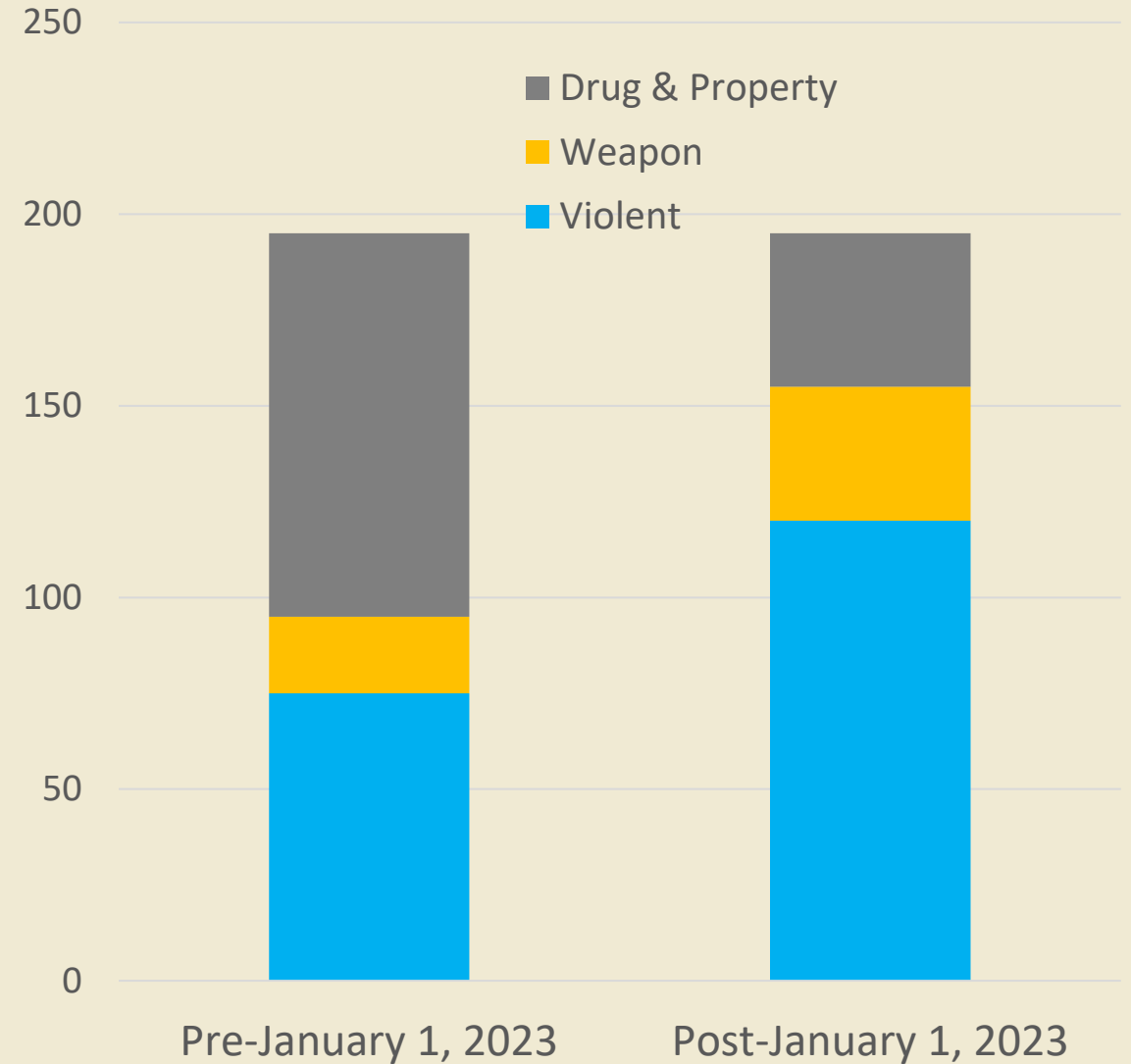


HYPOTHETICAL EXAMPLES OF WHAT SUCCESS WOULD LOOK LIKE

Size and Composition of the Jail Population

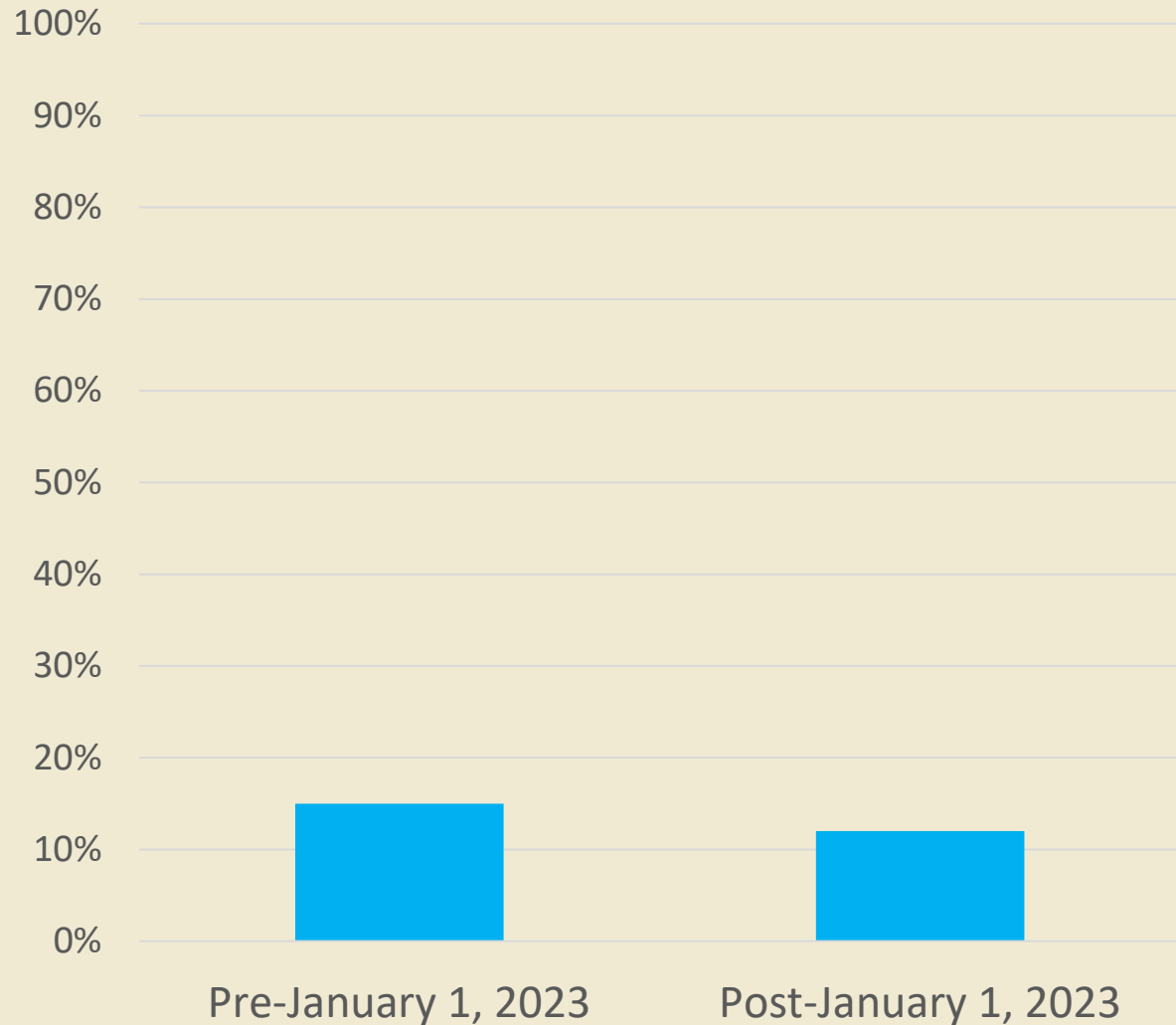


Size and Composition of the Jail Population

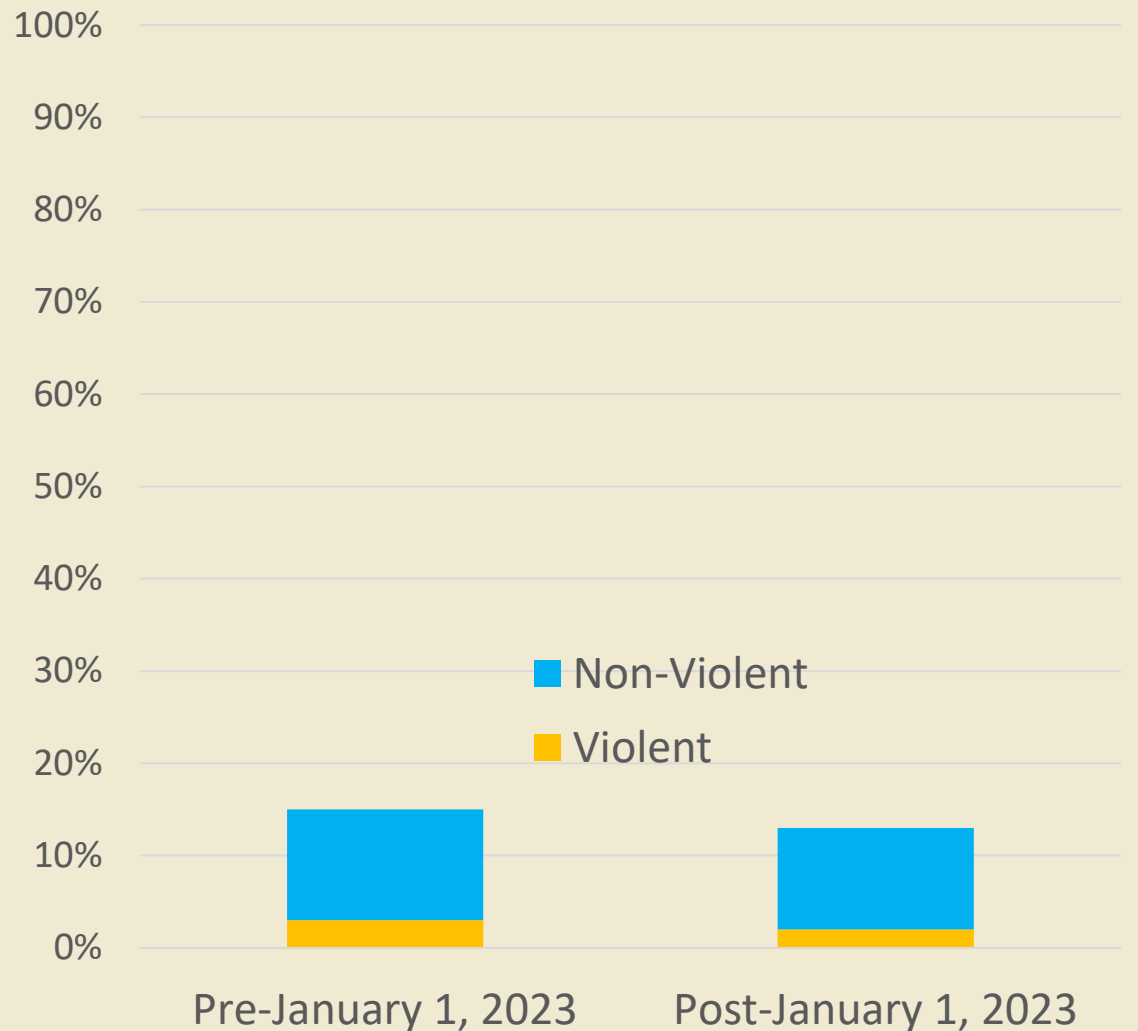


HYPOTHETICAL EXAMPLES OF WHAT SUCCESS WOULD LOOK LIKE

Percent of Defendants Released Pretrial that Missed a Court Date



Percent of Defendants Released Pretrial Charged with a New Crime



RESOURCES

- **Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field (National Institute of Corrections, 2021)**

<https://nicic.gov/measuring-what-matters-outcome-and-performance-measures-pretrial-services-field-0>

- **Guide to Pretrial Performance Measures (Advancing Pretrial Policy and Research (APPR))**

<https://advancingpretrial.org/improvement-guide/guide-to-pretrial-performance-measures/>

- **Loyola University Chicago's Center for Criminal Justice (Tracking the Pretrial Fairness Act in Illinois)**

<https://loyolaccj.org/pfa>

QUESTIONS



Time
to
Stretch



OVERVIEW OF PRETRIAL FAIRNESS ACT (PART 1)

Hon. Thomas Tedeschi, Resident Circuit Judge, Franklin County, IL

David Searby, Jr., State's Attorney, Perry County, IL

**Keith Grant, Lake County Public Defender; President, Illinois Association of
Public Defenders**

Nathan Rowland, Contract Defense Lawyer, McLeansboro, IL

LEARNING OBJECTIVES

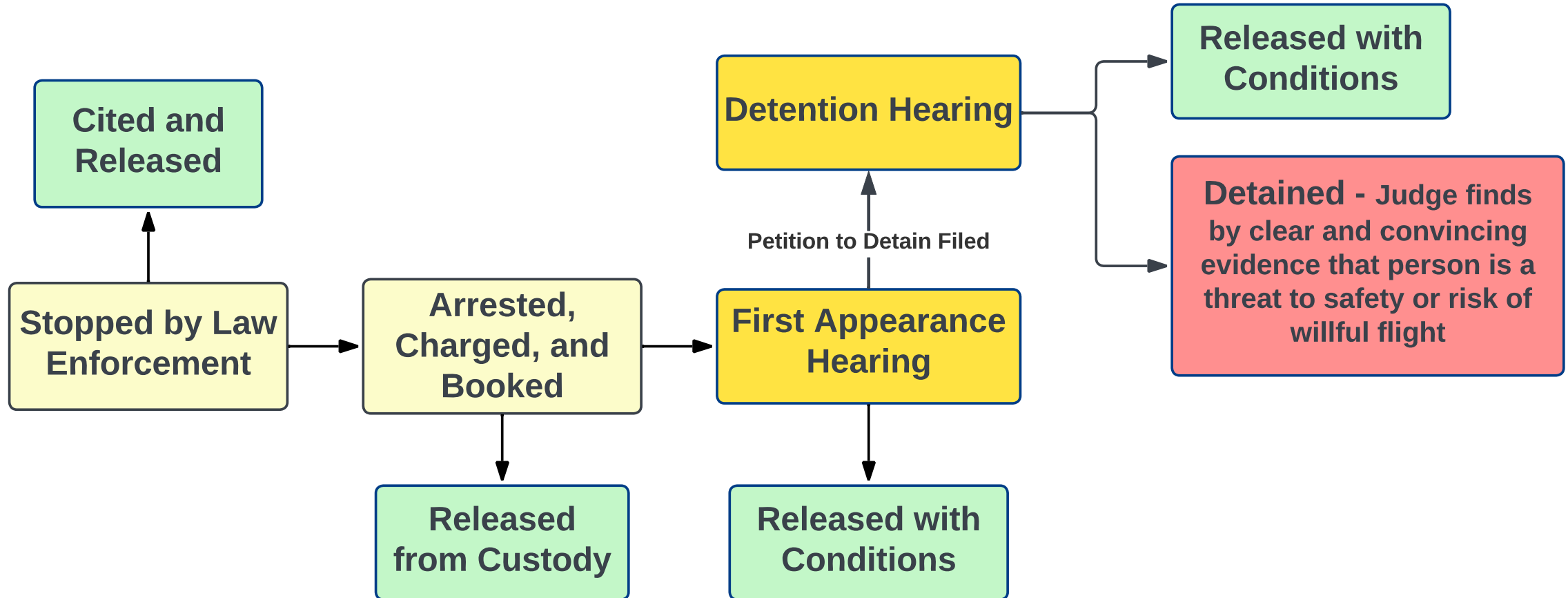
- Discuss the key changes to the administration of pretrial justice pursuant to the PFA (including changes in the Dec. 1 Amendment).
- Identify the key pretrial decision points and what the PFA says about decision making at each point:
 - (1) Release with citation,
 - (2) Release from custody;
 - (3) Pre-initial appearance;
 - (4) Initial appearance and setting of release conditions;
 - (5) Detention hearings;
 - (6) Warrants and Orders to Show Cause;
 - (7) Release modifications and revocations.
- Describe the key operational changes that the PFA will require in each jurisdiction.



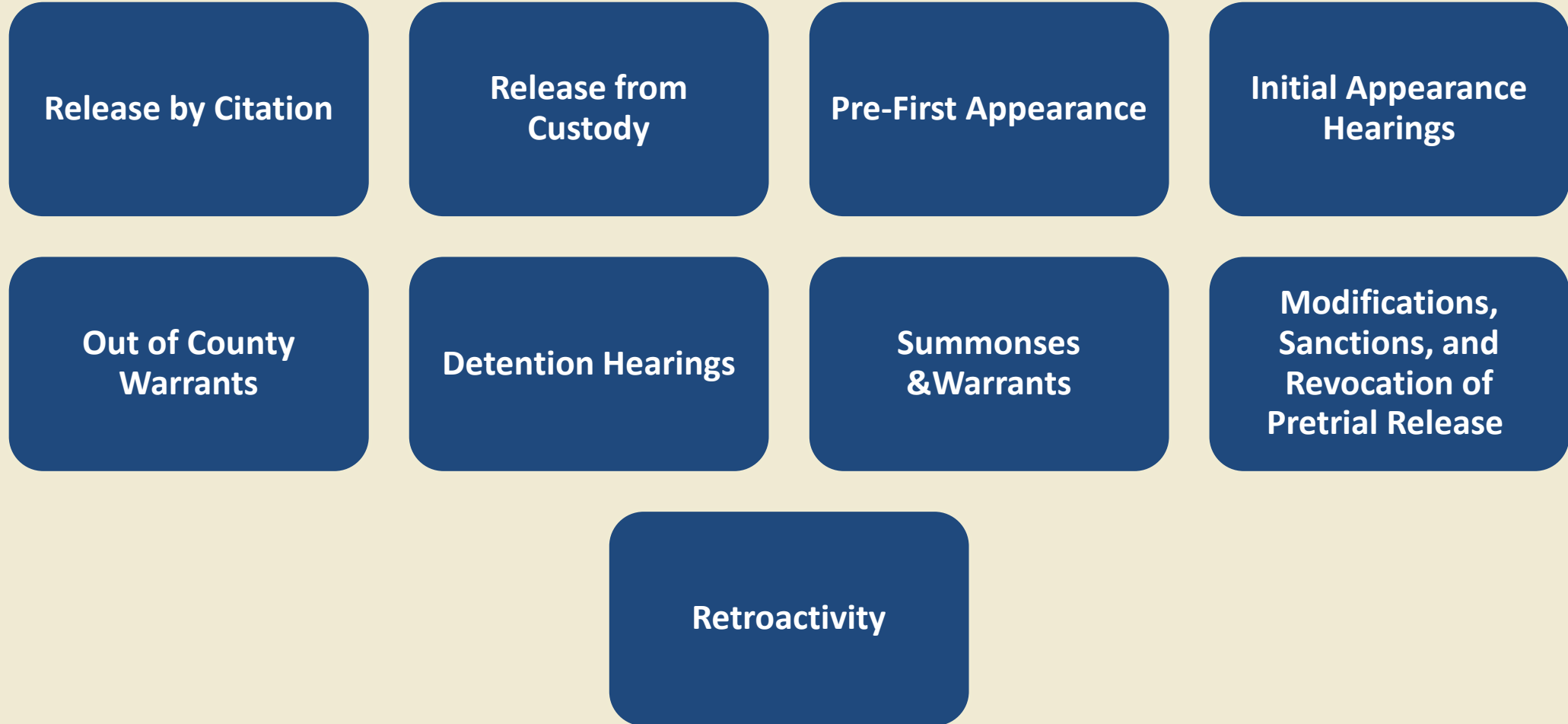
Main Elements

-
- Eliminates cash bond
 - Requires pretrial release for most misdemeanors and non-violent felonies
 - Limits eligibility for pretrial detention with a focus on safety and risk of flight
 - Encourages summons before issuing an arrest warrant for violations
 - Outlines the use of electronic monitoring as a condition of release
 - Allows for the use of risk assessment tools
 - Outlines application of the PFA to people arrested before January 1, 2023

How the Pretrial Fairness Acts Works



Pretrial Decision Points



Release by Citation – Key Operational Changes

(HB 1095, pages 146-147)

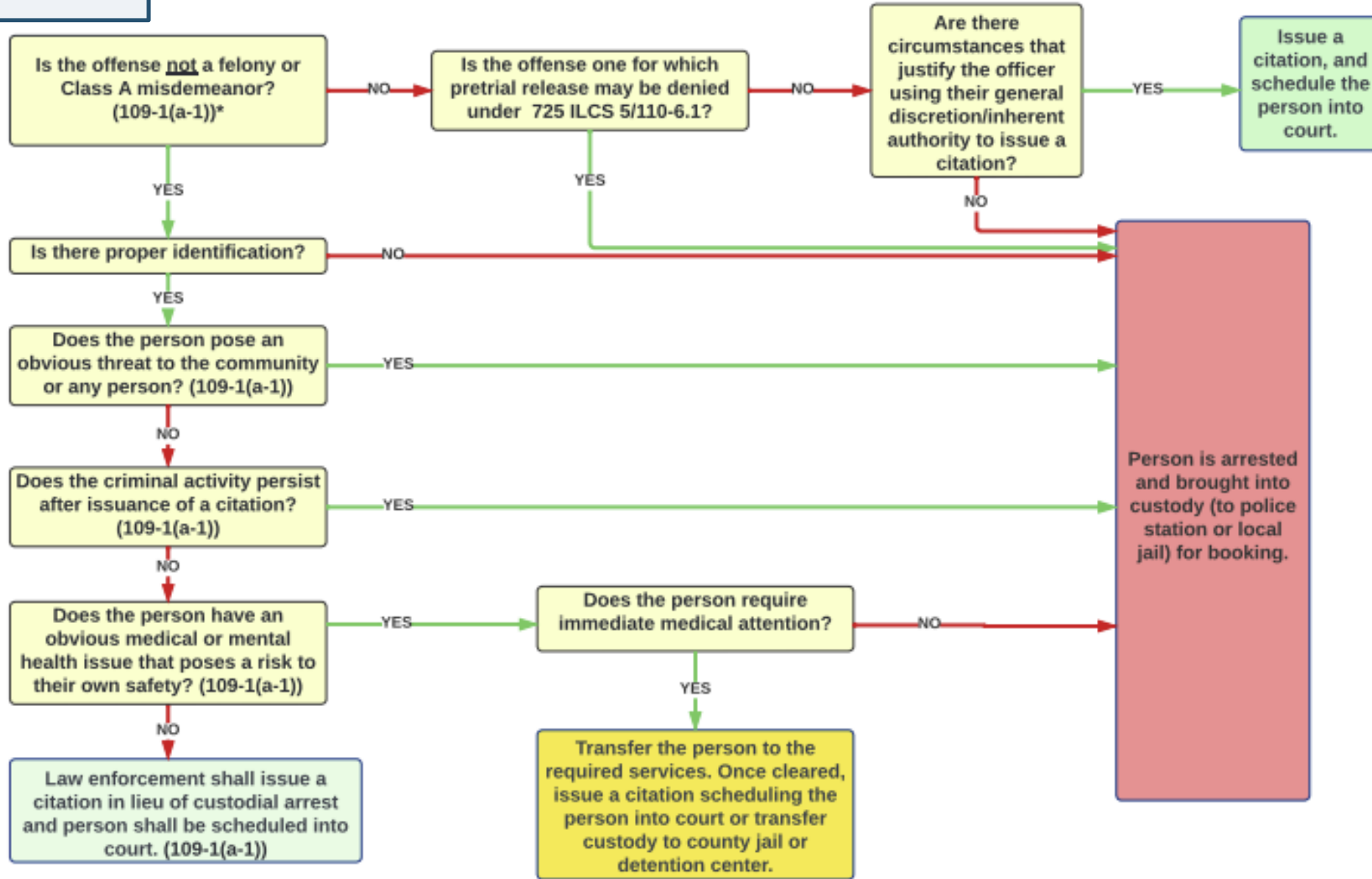
Law enforcement must now issue a citation in place of custodial arrest to those charged with all Class B misdemeanors and lower offenses.

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

EXCEPTIONS: Law enforcement retains the discretion to arrest those with Class B and lower offenses if : 1. the officer believes the accused poses a threat to a person(s)/community, 2. arrest is necessary due to persistent criminal activity after a citation is issued, and 3. the accused has an obvious medical or mental health issue that poses a risk to their own safety.

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

Law enforcement still have the discretion to cite and release those accused of Class A misdemeanor and felony offenses 725 ILCS 5/109-1(a-1)



ARTICLE V AND CITATION CHANGES

Supreme Court Rule 552: Uniform Tickets – Processing [Illinois Supreme Court Rule 552 \(windows.net\)](#)

- Gives Conference of Chief Circuit Judges authority to prescribe Uniform Citation Forms which must be used by all law enforcement agencies issuing citations (except Cook County)
- The Citation Forms prescribed by the CCI's are "Complaint" Forms and may be used to file any non-felony offense
- Requires the arresting officer to transmit the Complaint directly to the Clerk of the Circuit Court within 48 hours after the arrest

ARTICLE V AND CITATION CHANGES

Code of Criminal Procedure: 725 ILCS 5/111-2 Commencement of Prosecutions & 725 ILCS 5/111-3 Form of Charge

- 111-2(a) Requires all prosecutions of all felonies to be initiated by information or indictment.
- 111-2(b) Allows all other prosecutions to be initiated by indictment, information or complaint.
- 111-3(b) States when an officer issues a Uniform Citation, it constitutes a complaint which the defendant may plead with the circuit court. All other complaints filed, must be signed by the prosecutor (the attorney representing the State of IL or local government plaintiff)

CASE SCENARIO: CRIMINAL TRESPASS TO LAND

Defendant has previously been charged with Criminal Trespass to Land (CL. B Misdemeanor) at a Minimart and was cited and released but refuses to leave.

Questions to consider:

- How should the police respond to their refusal to leave?
- What if the individual is intoxicated, but still refuses to leave?
- What if they leave but return, would you cite and release again?

Release from Custody – Key Operational Changes

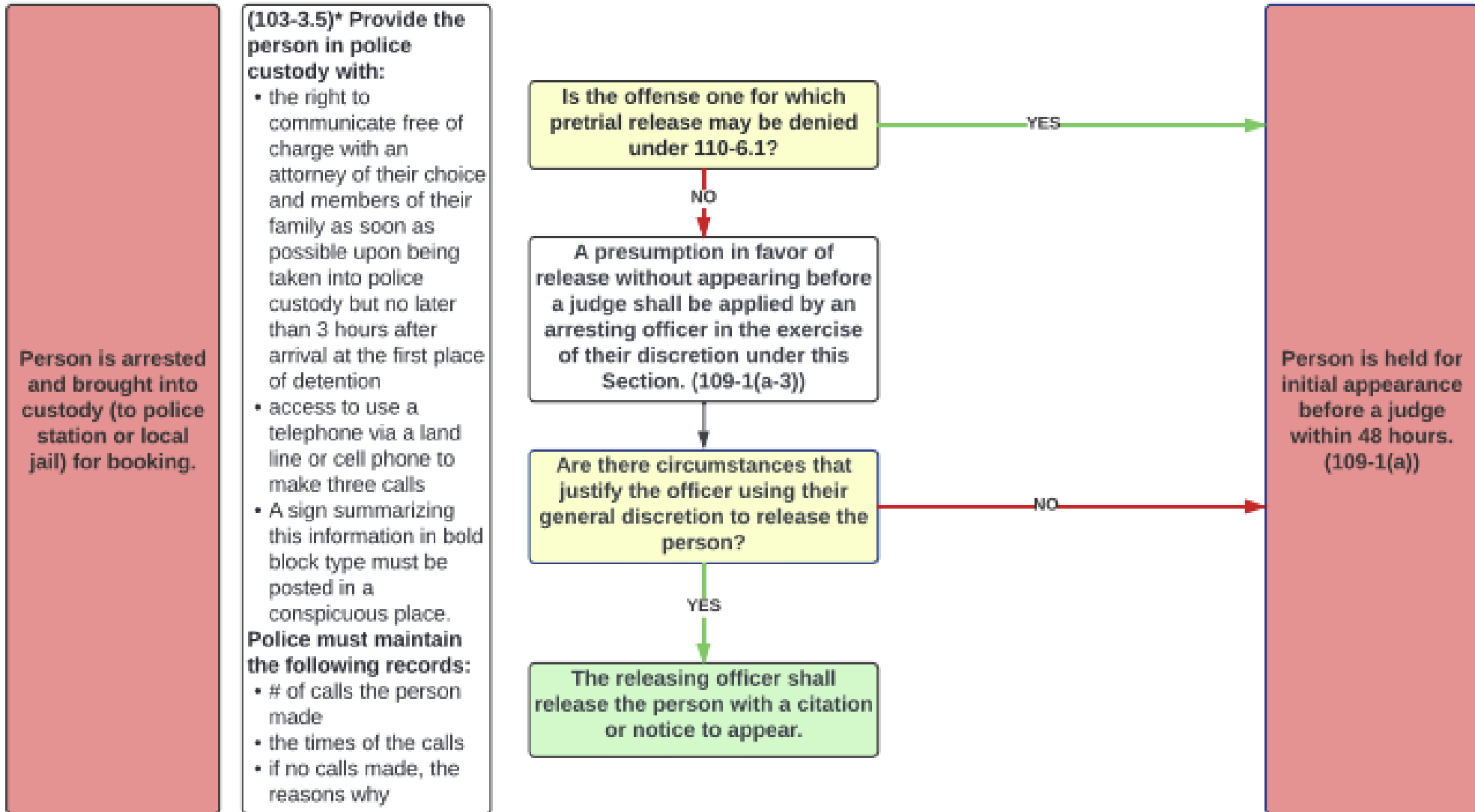
(HB 1095, page 147)

Presumption of release 725 ILCS 5/109-1(a-3)

- Following arrest and booking, there is a presumption of release and law enforcement can release someone from custody
- If charged with an offense eligible for detention, the person must be held for initial appearance

Right to communicate for those in custody 725 ILCS 5/103-3.5

- Accused person has a right to communicate with an attorney and family members free of charge as soon as possible and no later than 3 hours upon taken into custody
- Accused person must be given access to a landline or cell phone to make 3 phone calls
- Signs must be posted with this information and with contact information for the county's public defender if applicable
- Records of the number of calls made, time of calls, and reasons why no calls were made must be kept by law enforcement organization



Pre-First Appearance Activities – Key Operational Changes

(HB 1095, pages 145-147, 149-150, 186, 191)

Court Appearance After Arrest

- Those arrested for a detention-eligible offense, must appear before a the nearest and most accessible judge within 48 hours. 725 ILCS 5/109-1(a)
- Defense counsel must be appointed prior to the hearing and given an opportunity to confer with their client with sufficient time for meaningful attorney-client contact. 725 ILCS 5/110-5(f), 109-1(g)
- The person charged must be present in person. However, there are waivers that allow remote appearances: the defendant waives an in-person appearance; the court determines a remote hearing is necessary due to the health and safety of any associated person; or due to operational issues and through approval of the chief judge. 725 ILCS 5/109-1(f)

Conducting Pretrial Assessments

- A pretrial services agency must interview and prepare a report for felony charges. 725 ILCS 185/7(a)
- These interviews must be conducted individually, in facilities that allow for adequate discussion. 725 ILCS 185/12
- The pretrial assessment can include the use of a validated risk assessment tool. 725 ILCS 5/110-5(b)

Protecting Victims

- Victims must be notified of the initial appearance hearing by the State's Attorney's office. 725 ILCS 5/109-1(c)
- Victims must be informed of their opportunity to obtain an order of protection at the hearing. 725 ILCS 5/109-1(c)

Public Defender Grant Program

(HB 1095, pages 43-44)

55 ILCS 5/3-4014

- Establishes a public defender grant program: “the Administrative Office of the Illinois Courts shall establish a grant program for counties for the purpose of training and hiring attorneys on contract to assist the county public defender in pretrial detention hearings.”
 - Allows AOIC to serve the role of the program's grant manager.

Pre-First Appearance Activities

PC TO BE DECIDED WITHIN 48 HOURS, FOR WARRANTLESS ARRESTS. GERSTEIN, RIVERSIDE

INITIAL APPEARANCE FOR THOSE WHO CAN BE DETAINED, TO OCCUR WITHIN 48 HOURS (109-1(a))

Person is held for initial appearance before a judge.

Person receives a citation or summons and is scheduled to appear in court.

- ### Ensure a Meaningful First Appearance
- Hearing must be in-person unless the physical health and safety of the person would be endangered by appearing, the person waives the right to be present, or the chief judge of the circuit orders the use of a two-way audio-visual system due to operational challenges. (109-1(f) (And see Supreme Court Rule 45))
 - Prior to appearance, and with sufficient time for an attorney-client meeting, the Court shall appoint counsel to represent the person for purposes of the hearing, unless counsel has already been obtained. (110-5(f))
 - Counsel must be given adequate opportunity to confer with client prior to first appearance hearing, with physical or audio-visual accommodation made to facilitate attorney/client consultation. (109-1(g))

Notice to Victims

Crime victims shall be given notice by the State's Attorney's office of the first appearance hearing and shall be informed of their opportunity at this hearing to obtain an order of protection. (109-1(c))

- ### Assess the Person Charged
- Pretrial Services Agency should interview the person. (Pretrial Services Act, 725 ILCS 185, Section 7(a))
 - The person may be assessed using a validated risk assessment tool, including a DV risk assessment. (110-5(b), 110-6.4)
 - If a risk assessment tool is used, defense counsel shall be provided with the information and scoring system of the tool used to arrive at the determination. (110-5(b))

Initial Appearance Hearing

Setting Release Conditions – Key Operational Changes

(HB 1095, pages 181-192, 251-260)

Abolishment of monetary bail. 725 ILCS 5/110-1.5

Presumption of personal recognizance. 725 ILCS 5/110-2(a)

Person must be released unless a petition to detain is filed. 725 ILCS 5/109-1(b)(4)

Prosecution must prove by clear and convincing evidence that a condition of release is necessary. 725 ILCS 5/110-2(b)

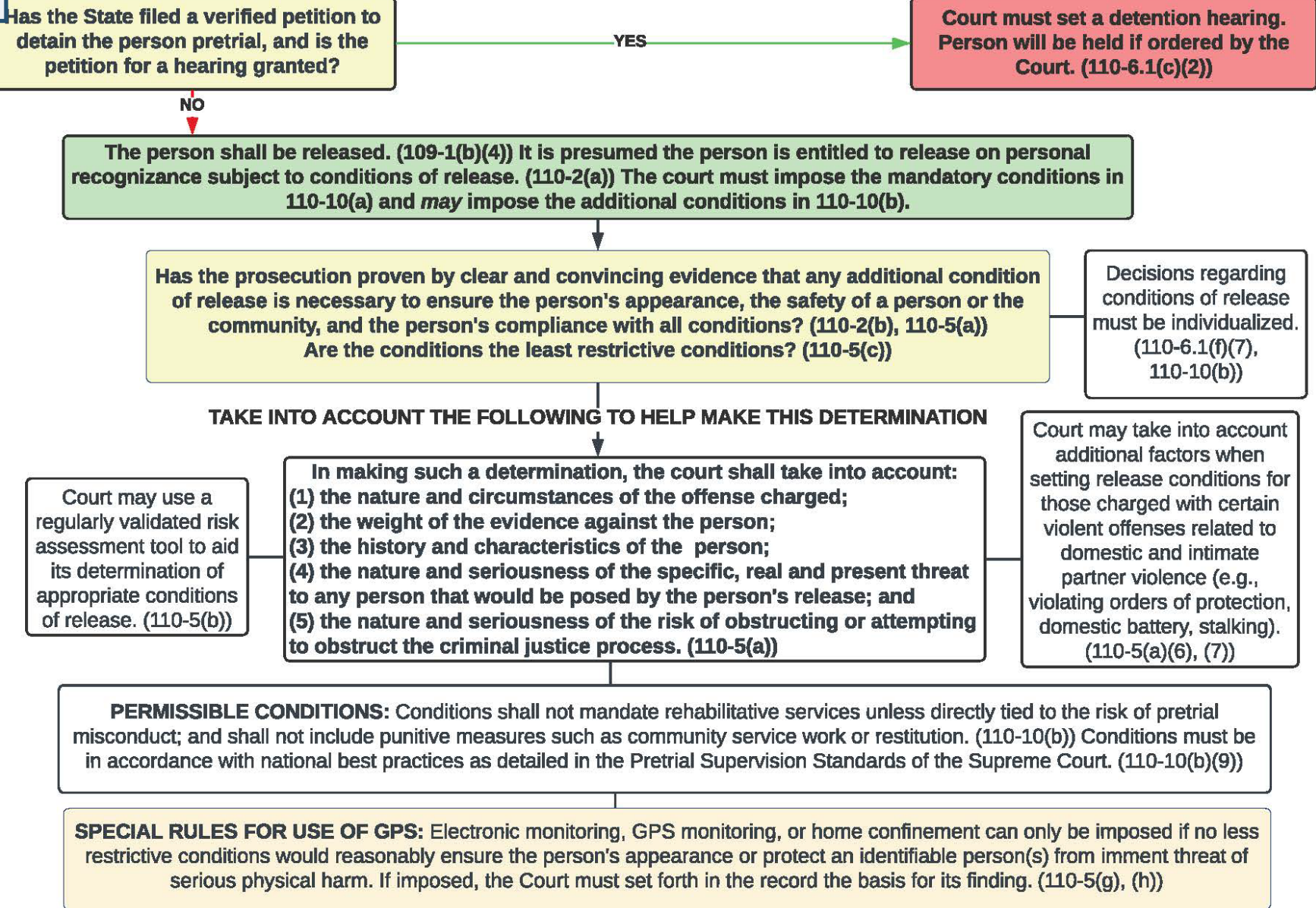
Additional conditions must be necessary, least restrictive, and individualized. 725 ILCS 5/110-10-(b)

Conditions shall not be punitive, shall not mandate rehabilitative services, and must be consistent with national best practices. 725 ILCS 5/110-10(b)

Use of Electronic Monitoring is restricted. 725 ILCS 5/110-5(g), (h), (i)

More factors to consider in setting conditions for violations of OOP. 725 ILCS 5/110-5(a)(6)(L)

Initial Appearance Hearing



Right to Appeal

(HB 1095, pages 193, 208, 235-37)

Both parties may appeal:

- Orders imposing conditions of pretrial release. 725 ILCS 5/110-5(k)
- Orders revoking or denying revocation. 725 ILCS 5/110-6(a)
- Orders denying pretrial release or denying detention. 725 ILCS 5/110-6.1(j), (k)

Rules on Appeal 725 ILCS 5/110-6.6

- Appeals will be governed by Supreme Court Rules.
- AV recording or other electronic recording system, or transcription by a court reporter shall be entered into the record for purposes of appeals.

CASE SCENARIO: DOMESTIC VIOLENCE

Law enforcement respond to a 911 call, caller says the couple in the apartment next door is arguing loudly and they think the man may have hit the woman. Law enforcement arrives to find the couple fighting and the woman indicates that yes, she was slapped. Law enforcement checks and there are no prior calls to the residence, no orders of protection and no warrants.

The individual was arrested and charged with Domestic Battery (Class A Misdemeanor).

Points to Consider:

- Hold for First Appearance
- Victim notification and orders of protection
- Petition to Detain
- Detention hearing release timeline
- Pre-First appearance activities (includes notice and assessment)
- Meaningful/Initial first appearance
- Setting conditions- modifications of conditions-sanctions
- Supervision
- OSPS assessment process

Out of County Warrants – Key Operational Changes

(HB 1095, pages 152-55)

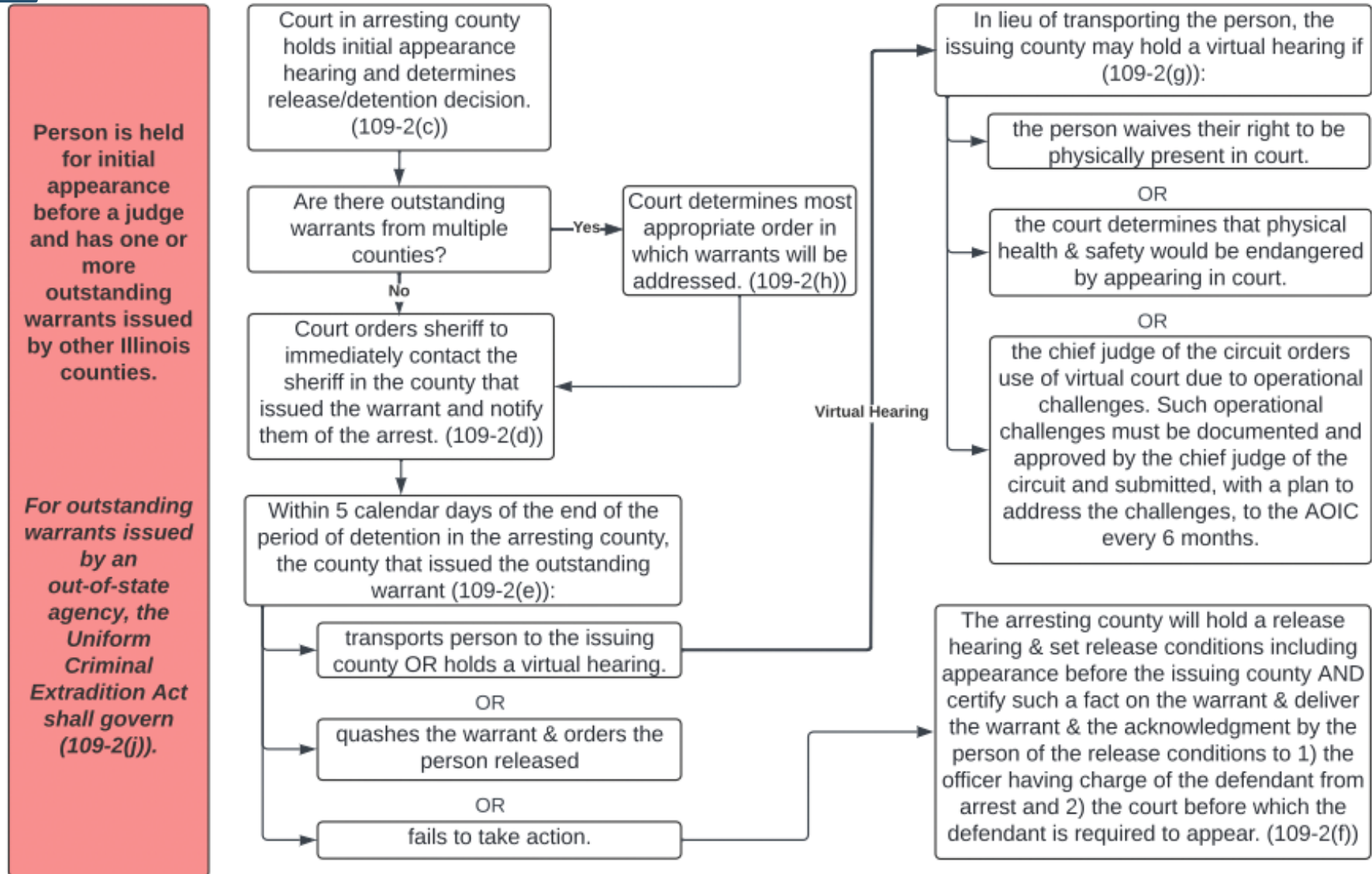
725 ILCS 5/109-2 outlines a process for jurisdictions to follow when someone is arrested on an out-of-county warrant. Jurisdictions have 5 calendar days to resolve the person's release status. 725 ILCS 5/109-2(f)

Allows for a person arrested on a warrant to be produced in person before a judge in the county of arrest without necessary delay OR via a remote hearing. 725 ILCS 5/109-2 (a) and (b)

Clarifies the role of the arresting jurisdiction and outlines steps if the issuing jurisdiction is not responsive. 725 ILCS 5/109-2(e)

Specifies that the same process must be repeated if the person arrested has multiple warrants from different jurisdictions. 725 ILCS 5/109-2(h)

For out-of-state warrants, the Uniform Criminal Extradition Act shall govern 725 ILCS 5/109-2(j)





OVERVIEW OF PRETRIAL FAIRNESS ACT (PART 2)

Hon. Thomas Tedeschi, Resident Circuit Judge, Franklin County, IL

David Searby, Jr., State's Attorney, Perry County, IL

**Keith Grant, Lake County Public Defender; President, Illinois Association of
Public Defenders**

Nathan Rowland, Contract Defense Lawyer, McLeansboro, IL

Detention Hearing – Eligibility to Detain

(HB 1095, pages 219-236)

Dangerousness Standard: 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.

- Applies to all offenses listed under See 725 ILCS 5/110-6.1(a)(1)-(7) except for (a)(2)(stalking/aggravated stalking), which specifies the threat to the safety of a victim of the alleged offense.
- Changes in the PFA now include an **attempt to commit** of any offenses in (1)-(6.5) as detention-eligible. 725 ILCS 5/ 110-6.1 (a)(7)

Willful Flight Standard: “intentional conduct with a purpose to thwart the judicial process 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.” 725 ILCS 5/110-1 (f)

- Can be applied to any detention-eligible felony offense under the dangerousness standard (a) (1)-(7)
- Any class 3 felony or above 725 ILCS 5/110-6.1(a)(8)

Detention Hearing – Eligibility to Detain

725 ILCS 5/110-6.1 (a)(1)

“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, 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;”

- Subsection (a)(1) eligible offense/circumstance = *non*-forcible felonies that based on the charge *or* the person's criminal history require a sentence of imprisonment in a state-run facility. These are known as “non-probationable” felonies.
- *Note:* Non-probationable felonies that would only require a jail sentence, rather than a state prison sentence, are excluded from this definition. *See 110-1(c)*

Detention Hearing – Eligibility to Detain

725 ILCS 5/110-6.1 (e)(4)

“for offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to paragraph (1) of subsection (a), no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article 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, and the defendant poses a serious risk to not appear in court as required.”

- Subsection (e)(4) states that certain drug related felonies included within subsection (a)(1) must meet the dangerousness standard and must also prove that the defendant poses a serious risk to not appear in court as required.

Detention Hearing – Eligibility to Detain

725 ILCS 5/110-6.1 (a)(1.5)

“...the defendant is charged with a forcible felony, which as used in this Section, means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement, or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement;”

- Subsection (a)(1.5) eligible offense/circumstance = forcible felonies listed in this subsection.
- The list is based on the forcible felony definition in 720 ILCS 5/2-8, but includes additional offenses.

Detention Hearing – Eligibility to Detain

725 ILCS 5/ 110-6.1 (a)(2)

“the defendant is charged with stalking or aggravated stalking, and it is alleged that the defendant's pre-trial release poses a real and present threat to the safety of a victim of the alleged offense, and denial of release is necessary to prevent fulfillment of the threat upon which the charge is based;”

- Subsection (a)(2) eligible offenses/circumstances = “stalking or aggravated stalking”
- Subsection (a)(2) eligible offenses/circumstances = “stalking or aggravated stalking”

Detention Hearing – Eligibility to Detain

725 ILCS 5/110-6.1 (a)(3)

“the defendant is charged with a violation of an order of protection issued under Section 112A-14 of this Code or Section 214 of the Illinois Domestic Violence Act of 1986, a stalking no contact order under Section 80 of the Stalking No Contact Order Act, or of a civil no contact order under Section 213 of the Civil No Contact Order Act...”

- Subsection (a)(3) eligible offenses/circumstances = violations of any of the following:
 - an order of protection
 - a stalking no contact order
 - a civil no contact order

Detention Hearing – Eligibility to Detain

725 ILCS 5/ 110-6.1 (a)(5)

“the defendant is charged with any offense under Article 11 of the Criminal Code of 2012, except for Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35, 11-40, and 11-45 of the Criminal Code of 2012, or similar provisions of the Criminal Code of 1961...”

- Subsection (a)(5) eligible offenses = sex offenses listed in the criminal code as specified

Detention Hearing – Eligibility to Detain

725 ILCS 5/110-6.1 (a)(6)

“the defendant is charged with any of the following offenses under the Criminal Code of 2012...”

- Subsection (a)(6) eligible offenses = specific offenses listed in this subsection.

Offenses Eligible for Detention Under Subsection 110-6.1(a)(6)

- | | |
|---|--|
| (A) Section 24-1.2 (aggravated discharge of a firearm); | (M) Section 10-9 (c) (involuntary sexual servitude of a minor); |
| (B) Section 24-2.5 (aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm); | (N) Section 10-9(d) (trafficking in persons); |
| (C) Section 24-1.5 (reckless discharge of a firearm); | (O) Non-probationable violations: (i) (unlawful use or possession of weapons by felons or persons in the Custody of the Department of Corrections facilities (Section 24-1.1), (ii) aggravated unlawful use of a weapon (Section 24-1.6), or (iii) aggravated possession of a stolen firearm (Section 24-3.9); |
| (D) Section 24-1.7 (armed habitual criminal); | (P) Section 9-3 (reckless homicide and involuntary manslaughter); |
| (E) Section 24-2.2.2 (manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon's breath shotgun shells, bolo shells, or flechette shells); | (Q) Section 19-3 (residential burglary); |
| (F) Section 24-3 (unlawful sale or delivery of firearms); | (R) Section 10-5 (child abduction); |
| (G) Section 24-3.3 (unlawful sale or delivery of firearms on the premises of any school); | (S) Felony violations of Section 12C-5 (child endangerment); |
| (H) Section 24-34 (unlawful sale of firearms by liquor license); | (T) Section 12-7.1 (hate crime); |
| (I) Section 24-3.5 (unlawful purchase of a firearm); | (U) Section 10-3.1 (aggravated unlawful restraint); |
| (J) Section 24-3A (gunrunning); or | (V) Section 12-9 (threatening a public official); |
| (K) Section on 24-3B (firearms trafficking); | (W) Subdivision (f)(1) of Section 12-3.05 (aggravated battery with a deadly weapon other than by discharge of a firearm). |
| (L) Section 10-9 (b) (involuntary servitude); | |

Detention Hearing – Eligibility to Detain

725 ILCS 5/110-6.1 (a)(6.5)

“the defendant is charged with any of the following offenses:...”

Subsection (a)(6.5) eligible offenses = specific offenses listed in this subsection (*mostly DUI related offenses*)

Offenses Eligible for Detention Under Subsection 110-6.1(a)(6.5)

- (A) Felony violations of Sections 3.01, 3.02, or 3.03 of the Humane Care for Animals Act (cruel treatment, aggravated cruelty, and animal torture);
- (B) Subdivision (d)(1)(B) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence while operating a school bus with passengers);
- (C) Subdivision (d)(1)(C) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence causing great bodily harm);
- (D) Subdivision (d)(1)(D) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence after a previous reckless homicide conviction);
- (E) Subdivision (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence leading to death); or
- (F) Subdivision (d)(1)(J) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence that resulted in bodily harm to a child under the age of 16).

Detention Hearings – Key Operational Changes

(HB 1095, pages 219-236)

State's Attorney must file a petition to detain to trigger the detention process
725 ILCS 5/110-6.1 (a)

Detention hearing must be held immediately (or within 24-48 hrs.)
725 ILCS 5/110-6.1 (c)(2)

Establishes a thorough hearing process before determining detention
725 ILCS 5/110-6.1 (f)

Each party has the right to appeal the detention hearing decision
725 ILCS 5/110-6.1 (j) and (k)

Decisions to detain must be revisited at each subsequent court appearance
725 ILCS 5/110-6.1 (i-5)

Has the State filed a verified petition to detain the person in a timely manner? (110-6.1(c)(2))

YES

The court shall immediately hold a detention hearing. If a continuance is requested and granted, the hearing shall be held within 48 hours (if charged with first degree murder, a Class X, 1, 2, or 3) or 24 hours (Class 4 or misdemeanor) of the person's first appearance. (110-6.1(c)(2))

NO

The person shall be released and the court shall set mandatory and additional conditions, if needed. (109-1(b)(4))

TIMING OF PETITION

The petition may be filed at the first appearance hearing, or upon reasonable notice to defendant, within the 21 days after arrest and release of the person. (110-6.1(c)(1))

The State may file a second or subsequent petition so long as it sets forth in detail any new facts not known or obtainable at the time of the previous filing. (110-6.1(d))

INTEREST OF VICTIMS

Victims shall be given notice of this hearing and be informed of their opportunity to obtain a protective order. (110-6.1(m); see also relevant Task Force flowchart)

CONDUCT OF HEARING

Both parties may present evidence by way of proffer. (110-6.1(f)(2))

The defendant has the right to be represented by counsel, and if he or she is indigent, to have counsel appointed for him or her. The defendant shall have the opportunity to testify, to present witnesses on his or her own behalf, and to cross-examine any witnesses that are called by the State. (110-6.1(f)(3)) The Court may deny a defendant's request to compel the complaining witness. (110-6.1(f)(4))

Has the State proven by clear and convincing evidence that:

YES

PRE-HEARING TENDER

Prior to the hearing the State shall tender to the defendant copies of defendant's criminal history available, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the prosecutor's possession at the time of the hearing. (110-6.1(f))

If alleging dangerousness:

(1) the proof is evident or the presumption great that the person committed an offense listed in paragraphs 110-6.1(a)(1) through (a)(7); and (2) the defendant poses a real and present threat to the safety of a person or the community (will vary depending on the charges), based on the specific, articulable facts of the case; and (3) no condition or combination of conditions can mitigate the real and present threat. (110-6.1(e))

For offenses under Section 407(b) of the Illinois Controlled Substances Act that fall under 110-6.1(a)(1), the State must prove (1) through (3) above and the defendant poses a serious risk to not appear in court as required. (110-6.1(e)(4))

If alleging willfull flight:

(1) the proof is evident or the presumption great that the person committed a detention-eligible felony offense under 110-6.1(a)(1)-(7) or a felony under 110-6.1(a)(8); and (2) no condition or combination of conditions can mitigate the defendant's high likelihood of willful flight. (110-6.1(e)) "Willful flight" means "intentional conduct with a purpose to thwart the judicial process to avoid prosecution." (See 110-1(f) for complete definition)

If the court decides to detain the defendant, the Court must make a written finding summarizing why less restrictive conditions would not avoid 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, or prevent the defendant's willful flight from prosecution. (110-6.1(h)(1))

APPEAL

Either party may appeal any decision to detain or not to detain under this Section. (110-6.1(j),(k))

At each subsequent appearance, the judge must find that continued detention is necessary. (110-6.1(i)(5))

CASE SCENARIO: ROBBERY AND AGGRAVATED BATTERY

Defendant, age 34, is charged with robbery and aggravated battery – great bodily harm. The complaint alleges Defendant knocked a woman to the ground and stole her purse. The victim suffered a fractured skull as a result of her head hitting the concrete when Defendant pushed her to the ground. The State files a petition seeking detention pursuant to 725 ILCS 5/110-6.1(a)(1).

The State alleges Defendant has been convicted of burglary in 2008 and residential burglary in 2012. The State argues that under 730 ILCS 5/5-4.5-95(b), Defendant, if convicted of robbery, must be sentenced as a Class X offender, as this would be his third Class 2 or greater felony conviction, and the earlier Class 2 convictions were for forcible felonies. The State alleges Defendant is a threat to the community. Defendant has no prior history of failures to appear.

Questions to Consider:

- Is this a detention eligible offense even though robbery is a class 2 probationable forcible felony?
- Assume Defendant is detained. On the next court date, can the Judge continue to detain Defendant based on the finding Defendant is a threat to the community?

Warrants & Summonses– Key Operational Changes

(HB 1095, pages 169-70)

Issuing a Summons as an Alternative to Arrest Warrant 725 ILCS 5/110-3(a)

- Provides the defendant with an opportunity to appear in court rather than being arrested via warrant
- The PFA emphasizes the reliance on summonses instead of arrest warrants whenever possible

Opportunity to Cure a Missed Court Appearance 725 ILCS 5/110-3(b)

- An FTA cannot be recorded until the defendant has missed a hearing in response to a summons
- Risk assessments or an evaluation of willful flight should not take into consideration an FTA cured by appearance at a summons court date. 725 ILCS 5/110-3(c)

Use of Arrest Warrants 725 ILCS 5/110-3(a)

- Court may issue an arrest warrant if the defendant fails to comply with any condition of release
- The Court may also issue a warrant for arrest if the person fails to appear on the date in the summons. 725 ILCS 5/110-3(b)

Person on pretrial release fails to comply with a condition of pretrial release.

This section shall be construed to effectuate the goal of relying upon summonses rather than warrants to ensure the appearance of the defendant in court whenever possible. (110-3(a))

The court may, on its own motion or upon motion from the State, issue a summons or a warrant for the person's arrest. (110-3(a))

If a person fails to appear in court on the date listed on the summons, the court may issue a warrant for the person's arrest. (110-3(b))

In response to a violation described in subsection 110-6(d) (which includes violation of any condition of pretrial release), the court may issue a warrant specifying that the defendant must appear before the court for a hearing for sanctions and may not be released by law enforcement before that appearance. (110-6(d))

Court holds a sanctions hearing pursuant to Section 110-6(e)

The court retains discretion to take no action or issue a notice to appear.

OPPORTUNITY TO CURE FTA

A person who appears in court on the summons date, or within 48 hours of service, whichever is later, shall not be recorded in the official docket as having failed to appear at the initial missed court date. (110-3(b))

WHEN FTA IS CURED ...

For the purpose of any risk assessment or future evaluation of risk of willful flight or risk of failure to appear, a nonappearance in court cured by an appearance in response to a summons shall not be considered as evidence of future likelihood of appearance in court. (110-3(c))

Modifications of Release – Key Operational Changes

(HB 1095, pages 211)

Removing Conditions of Pretrial Release

- Can occur anytime by motion of the court or either party. 725 ILCS 5/110-6(g)

Adding Conditions of Pretrial Release

- Can only occur at a hearing or through a motion from the state. 725 ILCS 5/110-6(g)

Modification of Contact with Victims

- The court cannot remove conditions involving contact with a victim or witness unless the subject of the condition is given notice of the hearing. 725 ILCS 5/110-6(g)

Person is on pretrial release subject to conditions.

REMOVING CONDITIONS OF RELEASE

At any time, either party or the court may make a motion to remove previously set conditions of pretrial release. (110-6(g))



Removal of conditions may occur with or without a hearing, except if the condition regulates contact with a victim or witness.

ADDING CONDITIONS OF RELEASE

The court may only add or increase conditions of pretrial release at a revocations or sanctions hearing under section 110-6.

REMOVING CONDITIONS OF RELEASE REGARDING VICTIMS OR WITNESSES

The court shall not remove a previously set condition of release regulating contact with a victim or witness in the case, unless the subject of the condition has been given notice of the hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act. If the subject of the condition of release is not present, the court shall follow the procedures of paragraph (10) of subsection (c-1) of the Rights of Crime Victims and Witnesses Act. (110-6(g))

Sanctions – Key Operational Changes

(HB 1095, pages 208-11)

Sanctions 725 ILCS 5/110-6(b), (c), (d)

- Sanctions can be requested for *any* violation of pretrial release (not just when a person is rearrested)
- State must file a petition requesting a sanctions hearing

Sanctions Hearing 725 ILCS 5/110-6(e)

- The defendant must be represented by counsel and have an opportunity to be heard
- The State bears the burden of proving by clear and convincing evidence that the defendant knew of the condition and willfully violated the condition

Available Sanctions 725 ILCS 5/110-6(f)

- Verbal or written admonishment from the court
- Imprisonment in county jail for no more than 30 days
- Modification of pretrial release conditions
- Revocation of pretrial release is prohibited 725 ILCS 5/110-6(b) (revocation is only available for rearrest on Class A misdemeanor and higher)

Sanctions for Violating Conditions of Pretrial Release

Person is on pretrial release subject to conditions.

Has the person violated any of their conditions of release (not limited to failing to appear or being arrested on a new offense) (110-6(c))?

NO

The court may still modify the conditions of release. See 110-6(g).

YES

The court shall follow the procedures set forth in section 110-3 (summons or warrant) to ensure the person's appearance in court for a sanctions hearing and the court may order the person held prior to that hearing. (110-6(c))

The State may file a verified petition requesting a hearing for sanctions when the person appears in court pursuant to 110-3 or after the person is arrested on a new offense. (110-6(d))

Has the State proven by clear and convincing evidence that:

- (1) The person committed an act that violated a term of their pretrial release;
- (2) The defendant had actual knowledge that their action would violate a court order;
- (3) The violation of the court order was willful; and
- (4) The violation was not caused by a lack of access to financial monetary resources. (110-6(e))

DUE PROCESS
During the hearing for sanctions, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. (110-6(e))

YES

Sanctions for violations of pretrial release may include:

- (1) A verbal or written admonishment from the court;
- (2) Imprisonment in the county jail for a period not exceeding 30 days;
- (3) A modification of the defendant's pretrial conditions. (110-6(f))

NO

The court may still modify the conditions of release. See 110-6(g).

Revocation of Pretrial Release – Key Operational Changes

(HB 1095, pages 203-208)

Eligibility for Revocation

- The original charge is a felony or Class A misdemeanor, and the person is charged with a new Felony or Class A misdemeanor alleged to have occurred while the person is on pretrial release. 725 ILCS 5/110-6(a)
- The person is charged with a violation of an order of protection and the subject of the OOP is the same victim in the original case. 725 ILCS 5/110-6(b)(2)

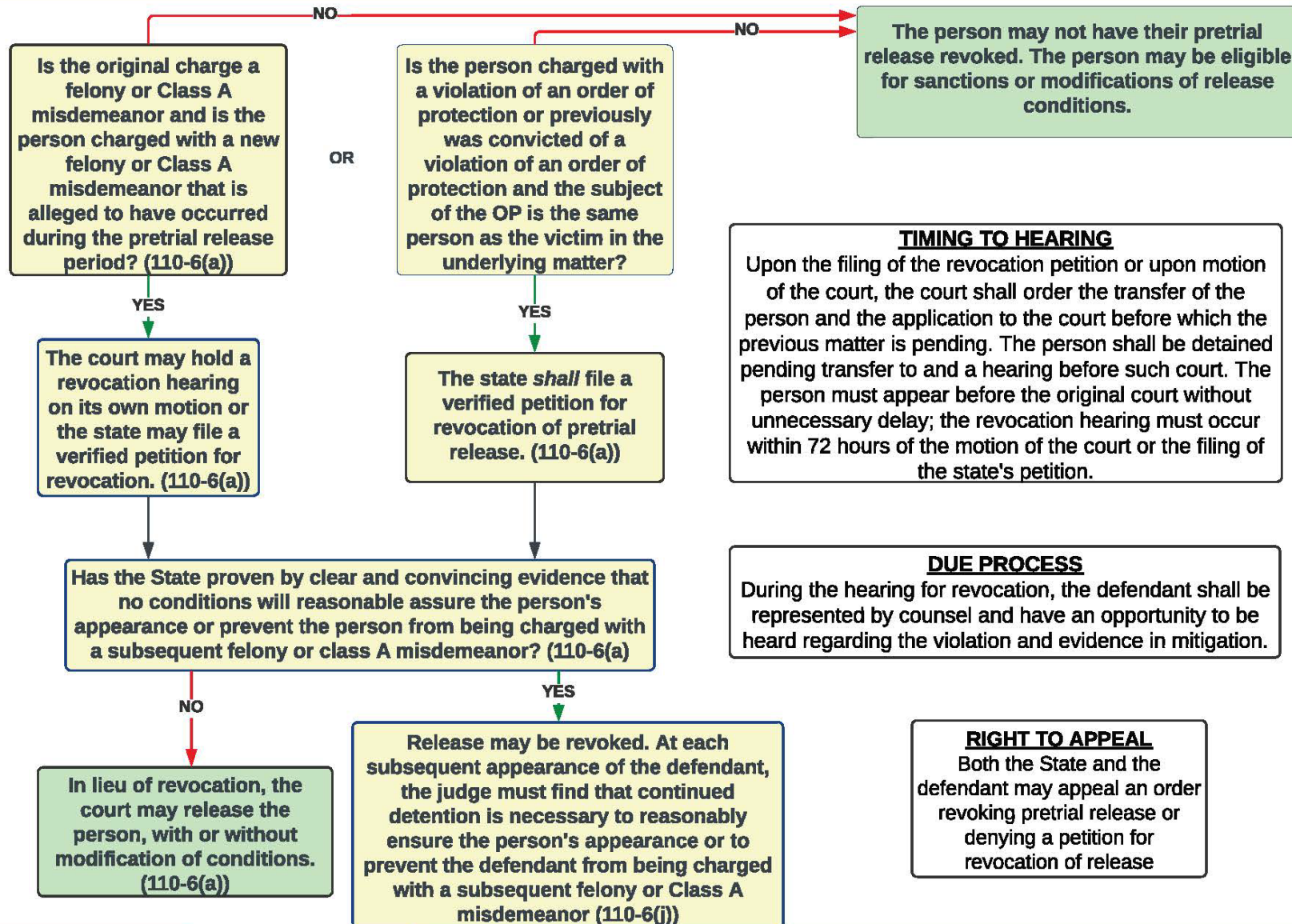
Revocation Process

- Unless initiated by the Court, the State must file a verified petition to revoke
- Within 72 hours of the filing of the petition to revoke, the defendant must be transferred to the court before which the previous felony matter is pending. 725 ILCS 5/110-6(a)

Revocation Decisions

- Release can be revoked only if court finds by clear and convincing evidence that no conditions would reasonably assure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or class A misdemeanor. 725 ILCS 5/110-6(a)
- At each subsequent court appearance the judge must find that continued detention under the revocation is necessary to ensure court appearance or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor. 725 ILCS 5/110-6 (j)
- Each party has the right to appeal the revocation hearing decision. 725 ILCS 5/110-6(a)

Person is on pretrial release subject to conditions.



CASE SCENARIO: REVOCATION OF PRETRIAL RELEASE

Jane Doe, who faces a Class B misdemeanor charge of driving with an expired license of less than one (1) year, posts on her social media account that she thinks the traffic stop was ridiculous and unlawful, that she has no intention whatsoever of going to her court date and that none of it matters because she is moving to Florida starting next week. The prosecutor catches wind of her social media activity and files a petition to revoke pretrial release stating she has a high likelihood of engaging in willful flight from prosecution.

Question to Consider:

- Can the prosecutor file a petition to revoke pretrial release?
- Would this meet the willful flight standard 110-1(f)?

APPLICATION OF PFA TO ARRESTS BEFORE 1/1/23

(HB 1095, pages 237)

110-7.5(a): People Previously **Released** on Condition of Monetary Bond

“On or after January 1, 2023, any person having been previously released pretrial on the condition of the deposit of security shall be allowed to remain on pretrial release under the terms of their original bail bond. This Section shall not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1 or a petition for revocation or sanctions under Section 110-6.”

APPLICATION OF PFA TO ARRESTS BEFORE 1/1/23

(HB 1095, pages 237-38)

110-7.5(b): People **Detained** After Ordered Released on Money Bond

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

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

- 1) For persons charged with offenses under paragraphs (1) through (7) of subsection (a) of Section 110-6.1, the hearing shall be held within 90 days of the person's motion for reconsideration of pretrial release conditions.
- 2) For persons charged with offenses under paragraph (8) of subsection (a) of Section 110-6.1, the hearing shall be held within 60 days of the person's motion for reconsideration of pretrial release conditions.
- 3) For persons charged with all other offenses not listed in subsection (a) of Section 110-6.1, the hearing shall be held within 7 days of the person's motion for reconsideration of pretrial release conditions.

QUESTIONS



CLOSING PLENARY

Hon. Thomas Tedeschi, Resident Circuit Judge, Franklin County, IL

TASK FORCE ACTIVITIES

<https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/>

- **Next Education Seminar: December 14th** Champaign, I Hotel and Conference Center
- Task Force website will be updated very soon with new flowcharts and considerations documents.
- Virtual Town Hall
 - Friday, December 16, 12pm

Thank you!