

Modification, Violations and Revocation of Pretrial Release

725 ILCS 5/110-6

Hon. Debra Schafer – 17th Judicial Circuit – Winnebago County

Revised September, 2023

Modification of pretrial release

725 ILCS 5/110-6(g)

- **Removing** conditions of PTR (other than modification or removal of no contact provision)
 - On motion of either party or the court
 - May be done at any time
 - No requirement for verified written motion

Removal or modification of “no contact” provision

725 ILCS 5/110-6(g) 2d¶

- Removing or modifying condition regulating contact with victim or witness
 - Victim/witness entitled to notice pursuant to the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4.5(b)(1)
 - If victim/witness not present, court shall follow Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4.5(c-5)(10)

Rights of Crime Victims and Witnesses Act

725 ILCS 120/4.5(c-5)(10)

- **Right to notice of court proceedings.** If the victim is not present at a court proceeding in which a right of the victim is at issue, the court shall ask the prosecuting attorney whether the victim was notified of the time, place, and purpose of the court proceeding and that the victim had a right to be heard at the court proceeding. If the court determines that timely notice was not given or that the victim was not adequately informed of the nature of the court proceeding, the court shall not rule on any substantive issues, accept a plea, or impose a sentence and shall continue the hearing for the time necessary to notify the victim of the time, place and nature of the court proceeding. The time between court proceedings shall not be attributable to the State under Section 103-5 of the Code of Criminal Procedure of 1963.

Violations of Pretrial Release

725 ILCS 5/110-6(a) through (f)

- Hierarchy of violations
 - Those that are **more serious** can lead to a **revocation of pretrial release**. See 110-6(a)
 - Those that are **less serious** can lead to **sanctions**. See 110-6 (b)–(f)



Increasing conditions of pretrial release

- Court may add conditions of pretrial release only:
 - After a hearing on the State's verified petition for sanctions pursuant to 110-6; OR
 - In a warrant issued pursuant to 110-3

Revocation of pretrial release

725 ILCS 5/110-6(a)

When may pretrial release be revoked?

- Revocation is an option only if a person is:
 - On pretrial release for a felony or Class A misdemeanor; **AND**
 - The violation of pretrial release is a felony or Class A misdemeanor offense alleged to have been committed while on pretrial release

Must either offense be detainable?

- 110-6 **does not** seem to require that either the underlying offense (the offense on which the defendant is on pretrial release) or the new offense (the alleged violation offense) needs to be a detainable offense

How is pretrial release revoked?

- For all offenses but one, a petition to revoke is discretionary
- May be initiated either
 - on the court's motion; OR
 - by the state filing a verified petition
- 110-6(a) ¶2

When a petition to revoke is mandatory?

- State **MUST** file a petition to revoke pretrial release if:
 - Defendant is charged with a violation of a protective order **OR**
 - Defendant was previously convicted of a violation of a protective order; **AND**
 - The subject of the protective order is the same person as the victim in the current underlying matter

What happens next?

- Judge in Courtroom B transfers the new case to the trial judge
- Judge in B may, but is not required to, hold defendant in custody pending the revocation hearing
- Hearing must be held before the trial judge **within 72 hours** of petition to revoke being filed or court's motion for revocation (not within 72 hours of arrest)
- 110-6(a) ¶3

Defendant's rights at the hearing

- To be present in person, not virtually, unless special circumstances exist (except that the Supreme Court Order dated August 30, 2023 allows these hearings to be virtual until March 18, 2024)
- To be represented by counsel
- To have opportunity to be heard regarding the violation and present evidence in mitigation
- 110-6(a) ¶4-5

What's the burden of proof at the hearing?

- Burden of proof is on the State
- Show **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.
- 110-6(a) ¶5

Possible outcomes after hearing

- Revoke pretrial release and order detention
- Deny revocation and order the defendant be released from custody but with modified pretrial release conditions
- Deny revocation and order the defendant be released from custody without any modification of pretrial release conditions
- 110-6(a) ¶6

Resolution of case causing revocation of PTR

- If defendant is found not guilty or completes a sentence on the case causing a revocation of pretrial release or that case is dismissed, the defendant is entitled, “without unnecessary delay”, to a conditions of release hearing pursuant to 110-5 and release with or without modification of pretrial release conditions.
- 110-6(a) ¶7

Is the court's decision appealable?

- Either side may appeal a judge's decision to grant or deny a petition to revoke pretrial release.
- 110-6(a) ¶8
- See also Supreme Court Rules 604 and 605

After pretrial release is revoked

- If a defendant's pretrial release is revoked, at each subsequent court appearance the judge must find that continued detention under 110-6 is necessary to reasonably ensure the appearance of the defendant for later hearings or to prevent the defendant from being charged with a subsequent felony or Class A misdemeanor. 110-6(j)

Violations other than re-arrest for felony or class A misdemeanor

725 ILCS 5/110-6(b)–(c)

What about other types of violations?

- For **all other violations**, the defendant may be subject to **sanctions** but not revocation of pretrial release.

Sanctions

725 ILCS 5/110-6(c)

- For any other violation of pretrial release other than commission of a Class A or greater offense while on pretrial release for a Class A or greater offense. Examples include when defendant:
 - Fails to appear in court
 - Commits a Class B or C misdemeanor, traffic offense, petty offense or ordinance violation while on pretrial release for any offense
 - Commits a Class A misdemeanor or felony while on pretrial release for a Class B or C misdemeanor or traffic offense
 - Violates any other condition of release

Sanctions

- If there is an alleged violation, the court may issue a summons or a warrant for the defendant
- The court **may** issue a warrant requiring defendant's arrest and appearance for a sanctions hearing before he or she may be released (i.e. police may not issue an NTA in lieu of arrest), apparently even for non-detainable offenses.

Petitions for Sanctions

- The state may file a verified petition for sanctions once a defendant:
 - Appears at a summons return date; OR
 - Appears after arrest on a warrant
- 725 ILCS 5/110-6(d)

Defendant's rights at the hearing

- To be present in person, not virtually, unless special circumstances exist (except that the Supreme Court Order dated August 30, 2023 allows these hearings to be virtual until March 18, 2024)
- To be represented by counsel
- To have opportunity to be heard regarding the violation and evidence in mitigation

Standard at sanctions hearing

725 ILCS 5/110-6(e)

- The court shall only impose sanctions if it finds by **clear and convincing evidence** that:
 - The defendant committed an act that violated a condition of pretrial release;
 - The defendant has actual knowledge that their action would violate a court order;
 - The violation was willful; AND
 - The violation was not caused by a lack of money.

Available sanctions

- Pursuant to 110-6(f), sanctions may include:
 - Written or verbal admonishment
 - No more than 30 days in jail
 - Modification of pretrial release conditions

Questions?
