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CH. 6

BAIL

§6-1

Generally

United States Supreme Court

U.S. v. Salerno, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) The Court upheld bail act, which allowed pretrial detention of defendant charged with certain felonies where defendant poses a threat to the safety of individuals or the community.

Schall v. Martin, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) State statute allowing pre-trial detention of juveniles upon a finding of a “serious risk” that the juvenile may commit a crime upheld.

Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951) The traditional right to pre-trial bail:

permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning. Bail set at a figure higher than an amount reasonably calculated to [assure the presence of an accused] is ‘excessive’ under the Eighth Amendment . . . To infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act.

Other Federal Court

Meechaicum v. Fountain, 696 F.2d 790 (10th Cir. 1983) (and cases cited therein) The Eighth Amendment’s excessive bail provision is binding upon the states under the Fourteenth Amendment.

Illinois Supreme Court

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) The “no-bail” provisions of the stalking and aggravated stalking statutes allowing the trial court to deny bail where “the proof is evident or the presumption great” that defendant was guilty, defendant presented a “real and present threat” to the victim's physical safety, and denial of bail was necessary to assure the victim's safety, do not violate the Illinois Constitution.

People ex rel. Hemingway v. Elrod, 60 Ill.2d 74, 322 N.E.2d 837 (1975) The right to bail before conviction is qualified by the inherent authority of the courts "as an incident of their power to manage the conduct of proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure." However, denial or revocation of bail may not be based on mere suspicion, "but must be supported by sufficient evidence to show that it is required." Under the inherent power to manage the proceedings, courts may in appropriate circumstances keep an accused in custody pending trial "to prevent interference with witnesses or jurors or to prevent the fulfillment of threats." See also, **People v. Ealy**, 49 Ill.App.3d 922, 365 N.E.2d 149 (1st Dist. 1977).

People ex rel. Morrison v. Sielaff, 58 Ill.2d 91, 316 N.E.2d 769 (1974) A defendant is not

entitled to sentence credit for time on bail.

People v. Harris, 38 Ill.2d 552, 232 N.E.2d 721 (1967) An order denying bail may only be reviewed prior to conviction.

People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8 (1930) A bail is excessive where its only purpose is to keep defendant confined.

Illinois Appellate Court

People v. Patton, 2020 IL App (2d) 190488 Trial court erred in dismissing indictments on the basis that it had set defendant's bail at an excessive amount. The trial judge specifically acknowledged that he had set defendant's bail high solely for the purpose of keeping him in custody, which violated the Eighth Amendment according to **People ex rel Sammons v. Snow**, 340 Ill. 464 (1930). The judge concluded that the only reasonable remedy was to dismiss the charges.

On appeal, the State argued that even if defendant suffered a due process violation due to the excessive bail, dismissal of the indictment was the wrong remedy. The Appellate Court agreed. Defendant needed to establish actual and substantial prejudice to warrant relief. In the context of an excessive bail claim, that would require defendant to show that had a lower bond been set, he could have posted it and gained release. Here, however, the record established both that defendant would not have been able to post bail, and he had outstanding warrants and holds in other counties, so he would not have been entitled to release.

Even if defendant had established prejudice, dismissal of the indictment was an abuse of discretion. Instead, defendant should have availed himself of the review process under Rule 604(c)(1).

People v. Gil, 2019 IL App (1st) 192419 A court has discretion to deny bail under circumstances as set forth in 725 ILCS 5/110-4(a). And, the procedures and requirements for denying bail in non-probationable felony cases are set forth in 725 ILCS 5/110-6.1. Here, the court erred in denying bail without the filing of a verified petition and without making the specific finding required by Section 110-6.1. Accordingly, the no-bail order was reversed and the matter was remanded to the circuit court for determining monetary bond and other conditions of release on bail.

People v. Johnson, 2019 IL App (3d) 190582 Over a dissent, the Appellate Court affirmed the denial of defendant's motion to reduce his \$2 million bond. Although the legislature recently amended the bail provisions of the Code of Criminal Procedure in order to shift the focus of bail decisions from the wealth of the accused to the threat to safety and the risk of failure to appear, the court here considered appropriate factors when arriving at the \$2 million figure, including the seriousness of the offenses (possessing nearly 300 grams of heroin with intent to deliver), the likelihood of conviction, and defendant's criminal history. The dissent would have found that a \$2 million bond is a functional denial of bond in contravention of the clear intent of the legislature, which recently passed section 110-5(a-5), wherein the legislature mandated a "presumption that any conditions of release imposed

shall be non-monetary in nature and the court shall impose the least restrictive conditions” to ensure defendant’s appearance.

People v. Simmons, 2019 IL App (1st) 191253 Appeals from the denial of bail are governed by Illinois Supreme Court Rule 604(c). Under Rule 604(c), the appeal is made by motion, supported by specific items listed in the rule, as well as a limited record. Here, defendant failed to include some of the supporting material, specifically his financial condition, residence information, and employment history. The Appellate Court concluded that these deficiencies were not so serious as to warrant dismissal of the appeal and went on to consider the merits of defendant’s motion for review.

As a matter of first impression, the Appellate Court determined that the decision to deny bail is reviewed for an abuse of discretion. Here, the court did not abuse its discretion where defendant was facing a 21-year minimum sentence for an armed robbery charge on which there appeared to be strong evidence, including defendant’s own inculpatory statement. The Court also noted that defendant had a criminal history, and that while there were some factors to support the granting of bail, the decision to deny bail was not arbitrary, fanciful, or unreasonable.

People v. Williams (Edwards), 2012 IL App (2d) 111157 (No. 2-11-1157, 7/25/12) Under 725 ILCS 5/110-7(a), a person who posts bail for a criminal defendant must receive written notice that the bail may be used to pay costs, fees, fines, attorney’s fees, or restitution, and that all or part of the deposit may be lost or forfeited. The written notice must be distinguishable from the surrounding text, in bold type or underscored, and in a type size that is at least two points larger than the surrounding type. (725 ILCS 5/110-7(a)).

§110-7(a) creates a mandatory requirement concerning the notice to be given to a person who posts bail, but even a mandatory provision may be satisfied by substantial compliance where: (1) the purpose of the statute was achieved despite the absence of strict compliance, and (2) the petitioner suffered no prejudice from the lack of strict compliance.

Here, the petitioner posted \$50,000 bond for a relative. The text of the written notice provided to the petitioner contained the statutory warnings in a “boxed-off” area on the bottom left corner of the page. Although the notice did not strictly comply with §110-7(a) because there were other bolded words on the page and the type was not two points larger than the surrounding text, the court concluded that the two-part test set out above was satisfied. Thus, the notice complied with §110-7(a).

First, the purpose of §110-7(a) is to place third persons on notice that they may lose money which they post as bond for criminal defendants. This purpose was served where the notice section of the form was “boxed-off” in a corner of the page, the bolded heading in the box stated: **“NOTICE TO PERSON PROVIDING BAIL BOND OTHER THAN THE DEFENDANT,”** and the box contained a warning that the bond could be used for costs, fees, or restitution. The notice also stated that the deposit could be forfeited. Any variations from the form required by §110-7(a) were *de minimis* and did not prevent the petitioner from being placed on notice that his bond deposit might not be returned.

Next, the court concluded that the petitioner was not prejudiced by the failure to strictly comply with the statute. The record showed that the petitioner posted bond because he believed the defendant to be innocent, not because he was unaware of the possible drawbacks of posting bond. Also, the petitioner was present at a hearing when the possibility that the money would not be returned was discussed. Having received actual notice that his

money might not be returned, the petitioner cannot claim to have been prejudiced by the failure of the form to strictly comply with statute requirements.

The court affirmed the trial court's order applying the \$50,000 bail bond to restitution.

People v. Maldonado, 402 Ill.App.3d 411, 930 N.E.2d 1104 (1st Dist. 2010) Under 725 ILCS 5/110-14, a defendant is entitled to a credit against a "fine" for each day of pretrial incarceration on a "bailable" offense. Under Illinois law, all offenses are "bailable" except for certain offenses specified in 725 ILCS 5/110-4.

As it applies to this case, §110-4 prohibits bail if the "proof is evident or the presumption great that the defendant is guilty of the offense" and the offense is either: (1) a capital offense, or (2) a felony offense for which conditional release is not authorized. For the latter class of offenses, the State must also establish in a hearing that release of the defendant would pose a real and present threat to the physical safety of one or more individuals.

Because the defendant was granted bail in the trial court, it was clear that the State failed to satisfy its burden to show that the offense was non-bailable. Because the offense was bailable, defendant was entitled to credit against his fines.

Lampe v. Ascher, 59 Ill.App.3d 755, 376 N.E.2d 74 (4th Dist. 1978) A police department does not have discretion to refuse tendered bail. The police are required to accept tendered bail set either by a judge or a Supreme Court Rule.

Gende v. Flemming, 55 Ill.App.3d 659, 371 N.E.2d 191 (3d Dist. 1977) A circuit clerk is not liable as a garnishee in regard to money held as bail bond from a judgment debtor.

§6-2

As Fund for Costs, etc.

United States Supreme Court

Schilb v. Kuebel, 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed.2d 502 (1971) The Court upheld Illinois statute allowing clerk to retain 10% of bail deposit (affirming **Schilb v. Kuebel**, 46 Ill.2d 538, 264 N.E.2d 377 (1970)). See also, **Andrews v. Danaher**, 62 Ill.2d 268, 342 N.E.2d 49 (1976).

Illinois Supreme Court

People v. Love, 177 Ill. 2d 550, 687 N.E.2d 32 (1997) 725 ILCS 5/113-3.1 requires the trial court to conduct a hearing into defendant's financial circumstances and find an ability to pay before it may order defendant to pay reimbursement for appointed counsel, even where a cash bail bond has been posted on defendant's behalf. See also, **People v. Webb**, 276 Ill.App.3d 570, 658 N.E.2d 852(3d Dist. 1995).

People v. Dale, 112 Ill.2d 460, 493 N.E.2d 1060 (1986) Bail is first subject to fines and court costs, not attorney fees, even if defendant assigns the right to the bail deposit to his attorney.

People v. Lange, 102 Ill.2d 225, 464 N.E.2d 1071 (1984) A court clerk may not retain 10% of the original bond posted, but only 10% of the amount on deposit when the criminal proceeding is finally concluded. Thus, where the original bond was \$100,000 but bond was reduced to \$10,000 pending appeal, the clerk was entitled to retain only 10% of the \$1,000

posted on the \$10,000 bond.

People v. Castile, 87 Ill.2d 73, 429 N.E.2d 495 (1981) Costs taxed by a trial court may be ordered paid from a bail deposit in the custody of the clerk of the appellate court. See also, **People v. Crete**, 133 Ill.App.3d 24, 478 N.E.2d 846 (2d Dist. 1985).

County of Champaign v. Anthony, 64 Ill.2d 532, 356 N.E.2d 561 (1976) When defendant was released on bail, the county placed an around-the-clock guard on the complaining witness to protect her from injury. After defendant was convicted, the county filed a complaint against him seeking to recover the cost of providing the guard. The trial court dismissed the complaint, and the Supreme Court affirmed. [Article 1, §9 of the Illinois Constitution](#) prohibits the administrative imposition of a financial obligation upon a defendant in addition to the conditions fixed by the court in admitting him to bail. "The defendant's constitutional right (to bail) would be diluted if not nullified if he could be subjected, at the will of the prosecutor, to an undisclosed but retroactive financial obligation."

Illinois Appellate Court

People v. Lovelace, 2018 IL App (4th) 170401 Following defendant's acquittal, the circuit clerk retained 10% of the \$350,000 bond posted on defendant's behalf. [725 ILCS 5/110-7\(f\)](#) allows the court to keep 10% of the bond. While the statute also allows the court to keep less than 10%, the trial court did not abuse its discretion when it declined to lower defendant's bond cost here.

The Appellate Court also rejected various constitutional challenges to section 110-7(f). The statute's purpose is to reimburse for the cost of administering a bail bond system. The statute does not impose a penalty and thus is not an unconstitutional fine. **Nelson v. Colorado**, 137 S.Ct. 1249 (2017), requiring a court to return assessments exacted as a consequence of a conviction which is later reversed, was distinguished because the bail bond cost is not dependent upon conviction. Section 110-7(f) does not violate equal protection or due process because it bears a rational relationship to the government's interest in administering a bail bond system and applies equally to all individuals who seek the benefit of release on bond. And, the statute does not violate the uniformity clause of the Illinois Constitution, even though it sets a maximum bond fee of \$100 for counties with populations greater than 3 million (Cook County), because the legislature believed the bond system could be adequately funded in a much larger county by other sources.

People v. Devine, 2012 IL App (4th) 101028 (No. 4-10-1028, 9/6/12) In counties with population of less than three million, the trial court has discretion to use bail from a criminal case to satisfy the defendant's financial obligations in other cases, including child support, so long as court costs have been paid in the case in which the bail was posted. Although [725 ILCS 5/110-7\(f\)](#) specifically mentions the use of bond for child support only in counties with population of more than three million, the court found that trial courts in smaller counties have discretion to direct unused bond to outstanding child support obligations.

People v. Gutierrez, 405 Ill.App.3d 1000, 938 N.E.2d 619 (2d Dist. 2010) The trial court may order as a condition of bond that defendant be supervised by a pretrial services agency, probation department, or court services department, and defendant may be assessed fees for such services. [725 ILCS 5/110-10\(b\)\(14\)](#) and [\(14.3\)](#). No such fee can be assessed if defendant is never released on bond, even though the court ordered the supervision and the supervision fee as a condition of bond.

People v. Mompier, 276 Ill.App.3d 393, 657 N.E.2d 1190 (1st Dist. 1995) The court upheld the trial court's order refunding defendant's bond deposit to defense counsel, even though the Illinois Department of Revenue had filed a lien for \$56,250 in taxes, \$225,000 in penalties, and \$2,109 in interest under the Drug Tax Act. The Department of Revenue lacks statutory authority to file a lien against a bond deposit posted by a third party. Although the Drug Tax Act (35 ILCS 520/15(a)) authorizes a lien against defendant's "real and personal property," it does not authorize liens against the property of third parties, even if that property has been posted as bond for defendant's benefit.

People v. Hans, 221 Ill.App.3d 82, 581 N.E.2d 712 (1st Dist. 1991) 725 ILCS 5/110-7(f) allows for bond deposited by or on behalf of defendant in one case to satisfy the financial obligations (due to a fine, court costs, restitution, or attorney fees) of same defendant in a different case.

People v. Baugh, 188 Ill.App.3d 902, 544 N.E.2d 1165 (4th Dist. 1989) The trial judge has discretion to order a cash bond used to pay restitution.

People v. Fox, 130 Ill.App.3d 795, 475 N.E.2d 1 (1st Dist. 1985) Under the Deposit of Bail Security statute, the trial court has discretion to return more than 90% of a bail deposit.

People v. Maya, 119 Ill.App.3d 961, 457 N.E.2d 501 (1st Dist. 1983) Defendants posted a \$10,000 cash bond deposit, and were subsequently convicted and sentenced in absentia. The trial court had the power to compensate defendants' attorneys for their services from defendants' bond monies.

Illinois Supreme Court

People v. Nicholls, 71 Ill.2d 166, 374 N.E.2d 194 (1978) The purpose of the deposit of 10% of the bail is not only to ensure defendant's presence in court, but also to provide a fund from which a judgment for fine and costs may be satisfied without having an execution issue and a levy made upon the deposit. See also, **People v. Owens**, 174 Ill.App.3d 156, 528 N.E.2d 446 (4th Dist. 1988).

§6-3

Violations - Forfeiture

Illinois Supreme Court

People v. Casas, 2017 IL 120797 Violation of bail bond under 720 ILCS 5/3-5(b) is a continuing offense for purposes of the statute of limitations. But it continues only until a final judgment in the case. Therefore, defendant, who was indicted for violating his bond in 1998, and tried and sentenced *in absentia* shortly thereafter, could not be prosecuted for violating bond after he was finally taken into custody in 2014, as the three-year limitations period had expired.

The continuing offense exception to the statute of limitations states, "When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed." 720 ILCS 5/3-8. The plain language of the violation of bail bond statute makes clear that the offense is committed on the thirtieth day after forfeiture of bond, but does not plainly state whether it is a

continuing offense. Turning to the “nature of the offense,” the court compared it to other crimes whose statutes do not state whether they are continuing offenses, including escape. In **United States v. Bailey**, 444 U.S. 394 (1980), the United States Supreme Court characterized escape as a continuing offense due to the continued threat posed by the escapee, a position adopted by Illinois in **People v. Miller**, 157 IL App. 3d 43 (1st Dist. 1987). Even though those who violate bond have yet to be convicted and pose less of a threat than escapees, the Illinois Supreme Court found sufficient similarities between the offenses such that both must be considered continuing offenses.

The Supreme Court rejected defendant’s reliance on **People v Grogan**, 197 Ill. App. 3d 18 (1st Dist. 1990), which held that defendants who violate bail bond do not pose the same continuing threat as escapees and therefore held that violation of bail bond is not continuing. Because bond imposes conditions and duties upon the defendant to return to court until the final order in the case, a violation occurs each time defendant fails to appear, and therefore **Grogan** must be overruled. The Supreme Court further rejected defendant’s argument that the legislature signaled its intent by acquiescing in the years following **Grogan**, during which it did not amend the statute to clarify that violation of bail bond is a continuing offense. Legislative intent to treat the offense similar to escape is evident from other sections of the Code of Criminal Procedure, including in multiple provisions treating the two offenses identically for purposes of providing for trials *in absentia*.

People v. Ratliff, 65 Ill.2d 314, 357 N.E.2d 1172 (1976) The State failed to prove that defendant willfully failed to surrender to the court within 30 days following date of forfeiture, which it was required to prove to sustain a conviction for violation of bail bond, where defendant was incarcerated for most of the period in question and his failure to appear in court, therefore, was not willful.

People v. Sanders, 131 Ill.2d 58, 544 N.E.2d 788 (1989) The trial court did not err in refusing to vacate bond forfeiture where defendant, who had been in federal custody and in a witness assistance program, did not notify the court within 30 days of forfeiture that without his fault he could not appear.

Illinois Appellate Court

People v. Casas, 2018 IL App (2d) 150456-B (4/20/18) Violation of bail bond is a continuing offense, but only so long as a defendant is obligated to appear in court. In previous Supreme Court proceedings in this matter, the Court held that defendant’s obligation to appear pursuant to his bond terminated when he was tried *in absentia* and sentenced for the underlying offense. The Supreme Court then remanded to the Appellate Court for consideration of whether the State adequately pled an exception to the statute of limitations.

The Appellate Court agreed that the State had pled the exception from 720 ILCS 5/3-7(a), which tolls the statute of limitations when a defendant is “not usually and publicly resident” in Illinois. The State did not cite the statute or use the statutory language, but did allege that defendant had “used [a] false identity to evade prosecution.” As a matter of law, a defendant is not “usually and publicly resident” when he is living in Illinois under a false identity. While quoting and citing the statutory exception to the limitations period is the better practice, the circumstances alleged were sufficient to put defendant on notice of the basis on which the State sought tolling.

People v. Casas, 2016 IL App (2d) 150456 (No. 2-15-0456, 4/14/16) 720 ILCS 5/32-10(a) provides that the offense of violation of bail bond occurs where a person who has been

admitted to bail forfeits that bail and knowingly fails to surrender within 30 days. The Appellate Court held that because violation of bail bond is a continuing offense, the statute of limitations began to run the day the accused is arrested or surrenders.

1. Generally, felony offenses must be charged within three years after the commission of the offense. In most cases, the statute of limitations begins to run when the final element of the offense is complete. In the case of continuing offenses, however, the statute of limitations starts to run only when the perpetrator ceases to satisfy the elements of the crime. At that point, the whole “arc of criminal conduct” is aggregated into a single criminal violation.

2. The court concluded that the offense of violation of bail bond constitutes a continuing offense which extends beyond the initial act of violating bail. (Rejecting **People v. Grogan**, 197 Ill. App. 3d 18, 554 N.E.2d 665 (1st Dist. 1990)). Thus, the statute of limitations does not begin to run until the defendant is apprehended. The court noted that if the statute of limitations began to run once the defendant failed to surrender within 30 days after defaulting on bail, a defendant could escape prosecution by going into hiding for three years.

Because the defendant was tried for the offense of violation of bail bond within three years after his apprehension, the statute of limitations was not violated.

People v. Costa, 2013 IL App (1st) 090833 (No. 1-09-0833, 9/27/13) To sustain a conviction for violation of a bail bond, the State must prove beyond a reasonable doubt that: (1) defendant forfeited bail; (2) defendant failed to surrender within 30 days after the bail was forfeited; and (3) defendant’s failure to surrender was willful. 720 ILCS 5/32-10(a). If a defendant is incarcerated and unable to appear in court, his failure to appear cannot be deemed willful. **People v. Ratliff**, 65 Ill. 2d 314, 357 N.E.2d 1172 (1976).

Defendant failed to appear on his court date and was arrested by the Honolulu police 27 days later on a bond-forfeiture warrant. Defendant’s failure to surrender within the statutory 30 days cannot be deemed willful because he was in custody and unable to appear in court. Whether at the time of his arrest he intended to surrender within the 30 days is immaterial. The court reversed defendant’s conviction.

People v. Davison, 378 Ill.App.3d 1010, 883 N.E.2d 648 (4th Dist. 2008) Where defendant’s bond money had been ordered forfeited because he failed to appear in court, he lacked standing to challenge the distribution of the remaining bond at the conclusion of the case. Defendant no longer had any right to the funds after the bond had been forfeited, and therefore had no real interest in how the funds were distributed. The court also noted that because defendant had assigned his rights in the bond to other persons, he would have lacked standing even had the bond not been forfeited.

People v. Chaney, 257 Ill.App.3d 247, 628 N.E.2d 944 (1st Dist. 1993) Defendant’s mother placed a second mortgage on her home to raise \$10,000 to post as bail. The bond was forfeited when defendant failed to appear for a court date. Defendant’s family filed a petition asking for return of the bond deposit, claiming that severe hardship would result from its forfeiture. The court held that defendant’s failure to appear within 30 days of the forfeiture order vests in the State the right to have judgment entered on the forfeiture and this right to judgment cannot be divested merely upon a finding that forfeiture would cause hardship to the family members who posted the bond.

People v. Denny, 238 Ill.App.3d 819, 605 N.E.2d 600 (4th Dist. 1992) After sentencing

defendant, who had posted a \$5,000 bond and failed to appear for sentencing, the court stated that the \$5,000 bond "would have to be revoked," issued a warrant for defendant's arrest, and made a docket entry stating that the bond was "revoked." Defendant was apprehended and charged with a Class 1 felony of violation of bail bond. At a hearing before a different judge, the original judge testified that he had intended to "forfeit" bond rather than "revoke" it. Over defense objection, the original order was amended *nunc pro tunc* to provide that defendant's bond had been "forfeited." Defendant was subsequently convicted and sentenced to ten years' imprisonment.

The court reversed, finding that it was improper to amend the order *nunc pro tunc* to establish an element of the offense. *Nunc pro tunc* orders may be used only to make an inaccurate record conform to the action that actually occurred, and not to alter judgments or correct judges' mistakes. Also, a nunc pro tunc order requires "definite and precise" evidence establishing that the original written order failed to conform to the court's actual ruling; such an order cannot be based on the trial judge's "true intent."

People v. Grogan, 197 Ill.App.3d 18, 554 N.E.2d 665 (1st Dist. 1990) Defendant violated bail in 1982, but was not indicted for the offense until 1987. The court reversed the conviction because defendant was not prosecuted within the three-year statute of limitations.

People v. Markovich, 195 Ill.App.3d 999, 552 N.E.2d 1232 (5th Dist. 1990) Sentencing scheme for the offense of violation of bail bond upheld.

In re E.H., 78 Ill.App.3d 854, 397 N.E.2d 571 (4th Dist. 1979) Forfeiture of bond (as distinguished from modification or revocation of bond) is authorized only when defendant fails to appear in court when ordered to do so, and is not authorized for any bond conditions, such as the commission of a criminal offense.

People v. Mitchaner, 65 Ill.App.3d 338, 382 N.E.2d 687 (4th Dist. 1978) The trial court properly vacated the bond forfeiture where defendant had fled jurisdiction but was returned to the county jail within 30 days of the forfeiture. A defendant who is arrested and brought to court by police has appeared and surrendered within the meaning of the bail statute.

People v. Canaccini, 52 Ill.App.3d 811, 368 N.E.2d 133 (2d Dist. 1977) The trial court lacked authority to vacate final judgment of bond forfeiture after more than 30 days had passed.

People v. Tompkins, 26 Ill.App.3d 322, 325 N.E.2d 83 (4th Dist. 1975) A bail bond violation is a misdemeanor if the bond was given for a misdemeanor charge and a felony if the bond was given on a felony charge, whether or not defendant was ultimately convicted of the charge.

§6-4

On Appeal

Other Federal Court

U.S. ex rel. Walker v. Twomey, 484 F.2d 874 (7th Cir. 1973) The failure of a state court to articulate its reasons for denying bail on appeal does not create a presumption of arbitrariness.

Illinois Supreme Court

People v. Williams, 143 Ill.2d 477, 577 N.E.2d 762 (1991) Chapter 38, ¶110-6.2(b), which provided that a defendant who has been convicted and sentenced to imprisonment shall be held without appeal bond unless the court finds by clear and convincing evidence that: (1) defendant is not likely to flee or pose a danger to others, (2) the appeal is not for the purpose of delay, and (3) the appeal raises a substantial issue which will likely result in a reversal or new trial, is unconstitutional as a violation of the separation of powers doctrine. Because ¶110-6.2(b) is mandatory rather than permissive, it conflicts with Supreme Court Rule 609(b), which allows the trial court or reviewing court to grant or deny appeal bond.

Illinois Appellate Court

People v. Molitor, 2012 IL App (2d) 110006 A motion for return of bond is governed not by Supreme Court Rule 604(d), but by 725 ILCS 5/110-7(f), which authorizes the return of 90% of the bond deposit when the conditions of bond have been performed and the defendant has been discharged from all obligations. Because §110-7(f) does not establish a time limitation for moving for return of the bond, the Appellate Court did not lack jurisdiction to consider an appeal from denial of a motion to return bond although the defendant failed to file his motion within 30 days of sentencing.

People v. Edwards, 105 Ill.App.3d 822, 434 N.E.2d 1179 (4th Dist. 1982) Defendants posted \$10,000 deposit with the circuit clerk on \$100,000 bond. The trial court dismissed the charges; however, the State appealed and asked that bond be set pending the appeal. The trial court reduced the bonds to \$10,000 and ordered refunds representing the deductions. The clerk refunded \$8,000 to each defendant, retained \$1,000 as costs, and retained \$1,000 as 10% of the appeal bond. The clerk's retention of the fees was premature. The trial judge's statements when setting the bond indicated that the bonds were being continued but reduced, and fees may be retained only "when the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause."

People v. Green, 88 Ill.App.3d 929, 410 N.E.2d 1003 (1st Dist. 1980) The court rejected defendant's contention that the trial court's denial of bail after conviction and sentencing constituted double punishment. The "denial of bail does not constitute and has no relationship to punishment for crime."

§6-5 Pretrial Fairness Act

§6-5(a) Generally

Illinois Supreme Court

Rowe v. Raoul, 2023 IL 129248 The circuit court found Illinois' bail reform legislation, the SAFE-T Act, (P.A. 101-652 and 102-1104 (eff. Jan 1, 2023)), violated the bail clause (art. I, § 9), the crime victims' rights clause (art. I § 8.1(a)(9)), and the separation of powers clause (art. II, § 1) of the Illinois Constitution. A 5-2 majority of the supreme court disagreed and upheld the constitutionality of the Act.

The SAFE-T Act abolished monetary bail for those awaiting trial, and established a default rule for pretrial release on personal recognizance. It also allowed for pretrial detention in certain specified cases, provided the defendant poses a real and present threat

to the safety of any person or the community, or there is a high likelihood of willful flight to avoid prosecution.

The supreme court initially addressed the standing of the plaintiffs – the Kankakee County State’s Attorney and Sheriff – to bring suit. A defendant must raise standing as an affirmative defense. In this case the State, as defendant, asked for a ruling on the merits. Thus, the court found the standing issue waived.

On the merits, the supreme court first found no violation of the bail clause. [Article 1, section 9 of the Illinois Constitution](#) states that “[a]ll persons shall be bailable by sufficient sureties” except in cases involving serious offenses where the defendant poses a real and present threat to personal safety. The lower court found that “sufficient sureties” was synonymous with monetary bail, and the abolishment of monetary bail violated the clause. The supreme court disagreed, noting the constitution does not mention the word “monetary.” The bail clause is meant to balance the rights of defendants to pretrial release and the interest in the State in assuring defendant’s presence at trial and in public safety. But the clause is silent on whether monetary bail is a necessary component of that balance. The supreme court held that at the time of the drafting of the original bail clause in 1818, monetary bail was all but unknown. Therefore the abolishment of monetary bail does not run afoul of the bail clause.

Nor does the Act violate the crime victims’ rights clause of article 1, section 8.1 (crime victims have “the right to have the safety of the victim and the victim’s family considered in denying or fixing the amount of bail...”). The clause does not mention “monetary” bail, and while it uses the word “amount,” this could refer to general sureties. It could also reflect the fact that at the time of its drafting, monetary bail was commonplace in Illinois. Moreover, the Act does include several provisions that take crime victims into account.

Finally, the Act does not violate the separation of powers. The legislature has long regulated the bail system, including in its first codification of criminal procedure in 1963. The bail provisions within the Code of Criminal Procedure have been revised more than 20 times since then, and even include a provision identifying more than 100 factors a court “shall” determine in setting bail. The plaintiffs had never faulted the legislature for these previous forays into bail law. The court has long held that the legislature may insert itself even in areas belonging exclusively to the judiciary, such as providing for mandatory sentences. Therefore, the Act does not violate the separation of powers.

Illinois Appellate Court

[People v. Lanier, 2025 IL App \(1st\) 242603](#) The trial court did not err in denying defendant pre-trial release. Defendant was carrying a heavy, distinctively colored backpack when he fled at the sight of the police. The police chased and apprehended him, then found the backpack discarded nearby. The backpack contained a firearm with a “switch.” Defendant was charged with armed habitual criminal and unlawful possession of a weapon by a felon. He had just been paroled on a prior weapons offense two weeks earlier. He had three prior felonies, including two prior gun convictions. Together, these facts showed by clear and convincing evidence that defendant: (1) committed a detainable offense; (2) he posed a danger to the community by possessing a gun with a “switch” that turned his handgun into a machine gun; and (3) no conditions could mitigate the threat to safety posed by his release given he repeatedly ignored laws that prohibited him from carrying a weapon.

[People v. Jones, 2025 IL App \(2d\) 250003](#) Defendant was charged with multiple offenses in three separate cases. Initially, cash bail was set but defendant was unable to post. After the

effective date of the PFA, defendant moved to reconsider release, the State petitioned to deny release, and the court ordered defendant detained.

Subsequently, defendant was convicted in one of the cases and sentenced to five years in prison. The court did not move forward with trial on the remaining two cases but rather opted to hold those cases until defendant finished serving his prison sentence. Defendant then filed various motions, *pro se*, including requests for counsel and for a speedy trial, prompting the court to set both cases for a status hearing. In doing so, the court ordered both cases continued “on the motion of defendant,” but also noted that defendant was not present.

Counsel was appointed, and defendant moved for immediate release pursuant to [725 ILCS 5/110-6.1\(I\)](#), noting that he had been paroled on the first case. That section mandates release if the defendant is not tried within 90 days of being detained. At a hearing on the motion, counsel argued that defendant had moved for a speedy trial and had not agreed to any continuances before 90 days had expired. The trial court denied the motion.

The appellate court reversed and remanded, ordering a hearing to determine whether the continuance in question was attributable to defendant. Under section 110-6.1(I), the 90-day requirement can only be tolled if defendant requests a continuance or if the State does so “upon a showing of good cause.” If the continuance was not attributable to defendant, he was not tried within 90 days and release is required.

People v. Seymore, 2025 IL App (2d) 240616 Defendant violated the terms of his pretrial release, and the court granted the State’s section 116-6(f) motion to sanction defendant to 30 days in jail without good-time credit. On appeal, defendant argued that he was entitled to 15 days of credit pursuant to the County Jail Good Behavior Allowance Act, [730 ILCS 130/3 \(West 2022\)](#).

The court first rejected the State’s argument that the appellate court lacked jurisdiction because under Rule 604(h), there was no basis for an interlocutory appeal where the sanctions order did not impose conditions of release, revoke or refuse to revoke pretrial release, deny pretrial release, or refuse to deny pretrial release. The appellate court disagreed, finding that the sanctions order is an order revoking pretrial release, albeit temporarily, under Rule 604(h)(1)(ii). Also, it is an order imposing conditions of release under Rule 604(h)(1)(I), because serving the sanction became a condition of continued release.

Next, the court decided to reach the merits, despite the case being moot (defendant had already served the 30-day term). The court found an exception to the mootness doctrine applies, because identifying whether the Behavior Allowance Act applies to pretrial confinement ordered as a sanction is a question of public importance that is likely to recur, and the answer will guide public officers in the performance of their duties.

The court held that the defendant was entitled to good-time credit. The Behavior Allowance Act states that “[t]he good behavior of any person who commences a sentence of confinement in a county jail for a fixed term of imprisonment...shall entitle such person to a good behavior allowance.” While the circuit court held that a term served pursuant to a sanction order is not covered by this provision, this ignores the plain language of the statute. The statute uses the words “shall entitle,” and includes six exceptions. Given that a period of confinement ordered as a sanction is not one of the exceptions, courts must presume that defendant’s confinement was covered. Additionally, courts have previously held that confinement ordered by a contempt finding is covered, and a sanctions order is similar to criminal contempt. Although the provision uses the word “sentence” rather than “sanction,” this was a “distinction without a difference.” Finally, the legislature recently amended the Behavior Allowance Act to remove a reference to bail, meaning the legislature considered the

impact of the Pretrial Fairness Act on the statute, yet did not add a sanctions term as a seventh exception.

People v. Serrato-Zavala, 2024 IL App (2d) 240255 The trial court erred in finding that defendant's Class 2 aggravated DUI (fourth violation) was a detainable offense. Under 725 ILCS 5/110-6.1(a)(1), a defendant may be denied pretrial release where he is charged with a felony, other than a forcible felony, for which "a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction." Here, the plain language of the applicable DUI statute provided that probation and conditional discharge were not available sentencing options, but the statute did not exclude periodic imprisonment as an available disposition. See 625 ILCS 5/11-501(d)(2)(A), (d)(2)(C). Accordingly, under Section 110-6.1(a)(1), defendant's DUI charge was not a detainable offense.

And, while defendant did not raise this issue below or in his notice of appeal, the appellate court opted to overlook forfeiture in the interest of justice. Here, given that defendant's argument had merit, strict enforcement of forfeiture would result in continued pretrial detention of a person who had not committed a detainable offense. Further, considerations of judicial economy warranted overlooking forfeiture where defendant would be able to raise this argument at a future trial court appearance and then appeal any unfavorable decision, resulting in unnecessary additional time and resources being spent on the matter. The detention order was vacated and the matter remanded for a hearing on conditions of release.

People v. Andres, 2024 IL App (4th) 240250 The State charged defendant with violating an order of protection, then moved to deny pretrial release. Its written petition checked a box next to pre-printed allegations that he committed a detainable offense and posed a threat to safety, without further written explanation. At a hearing on the petition, the State proffered that defendant contacted the complainant via Facebook, that he had several prior convictions, and that the complainant feared for her life. The trial court granted the State's request for pretrial detention. On appeal, defendant argued the State's petition to deny pretrial release was insufficient.

The appellate court found the claim forfeited. Although defendant argued that he was never admonished that his failure to include the claim in the notice of appeal would result in forfeiture, the appellate court held that both Rule 604(h) and the notice of appeal form itself inform defendants of the need to include all grounds for relief in the notice of appeal. Regardless, defendant also has a duty to object during the proceedings in order to preserve claims for appeal, and he failed to do so here.

Nor did the plain error doctrine apply, as the appellate court found no clear error. Pursuant to 725 ILCS 5/110-6.1(d)(1), the State's petition to deny pretrial release must "state the grounds upon which it contends the defendant should be denied pretrial release, including the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts or flight risk, as appropriate." Defendant alleged that the State's petition lacked articulable facts. The appellate court found "no explicit requirement" that the State's petition include a factual basis or written proffer.

Defendant pointed out that appellate courts often dismiss appeals from pretrial detention orders when the notice of appeal lacks detail as required by Rule 604(h). The appellate court disagreed with this comparison because in the context of the State's petition, the parties present evidence and provide argument before the court. When a blank notice of

appeal form is filed, with no memorandum on appeal, the case lacks reasoned argument on which to decide the appeal.

Finally, the court held it would not review other claims defendant included in the notice of appeal but did not raise in his appellate memorandum. The memorandum, if filed, becomes the “controlling document for identifying the issues or claims on appeal,” and any claims not raised therein are considered abandoned.

People v. Boose, 2024 IL App (1st) 240031 The appellate court concluded that it lacked jurisdiction to consider defendant’s challenge to the trial court’s denial of her request for day-for-day credit against the 30-day jail term imposed as a sanction for a violation of a condition of release. Specifically, the court noted that under Rule 604(h), sanctions orders are not listed as a type of appealable interlocutory order. And, the court found no statutory basis under the County Jail Good Behavior Allowance Act for the appeal, either. Accordingly, the appeal was dismissed.

People v. Windsor, 2024 IL App (4th) 231455 Rule 604(h) does not authorize an appeal from a trial court order denying a defendant’s request for release under **725 ILCS 5/110-6.2**. Section 110-6.2 governs post-conviction detention, specifically it allows a court to release an individual after being found guilty but prior to imposition of sentence if the court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any person or the community. Rule 604(h) only authorizes appeals from pretrial release and thus does not include Section 110-6.2 appeals. Accordingly, defendant’s appeal was dismissed.

People v. Mancilla, 2024 IL App (2d) 230505 The order granting the State’s petition to deny pretrial release was affirmed. The State’s evidence at the detention hearing, consisting of a police synopsis, was sufficient to sustain the State’s burden. The synopsis contained a lengthy narrative of events, including allegations of violent conduct by defendant and multiple identifications of defendant as the perpetrator. And, many of the dangerousness factors were present here, including that the offense involved a firearm, defendant had a violent criminal history, and one of the victims here suffered great bodily harm and was at least 60 years old.

Defendant’s remaining claims of error were simply checked boxes on the notice of appeal form and were not supported by evidence or argument in the notice. Further, no memorandum was filed on appeal. Accordingly, the court deemed those contentions forfeited, but also went on to conclude they were without merit.

Finally, the court discussed the ethical obligations of defense counsel in appeals under the SAFE-T Act and held that under Rule 3.1 of the Rules of Professional Conduct, defense counsel is required to inform the court “as to whether the defendant’s claims are meritorious and, if not, to withdraw any frivolous claims or even the entire appeal.” While the SAFE-T Act provides a streamlined appeals procedure, it does not obviate defense counsel’s ethical obligations to present only meritorious claims and contentions. Compliance with the **Anders v. California, 386 U.S. 738 (1967)** procedure is not required in appeals under Rule 604(h). Instead, attorneys can withdraw non-meritorious claims by filing an amended notice of appeal or by statement either in counsel’s memorandum or the notice filed in lieu of such a memorandum.

People v. Basurto, 2024 IL App (2d) 230512 Defendant pled guilty to AUUW and was sentenced to a term of probation. The State subsequently filed a petition to revoke defendant’s probation, alleging that he committed the offense of aggravated battery to a peace officer. Upon the filing of the petition to revoke, the court, *sua sponte*, revoked defendant’s

pretrial release. Defendant then filed a motion for release, arguing that the State had not filed a petition to detain, and the court denied that motion. Defendant appealed.

Where a petition to revoke probation is filed, [730 ILCS 5/5-6-4\(b\)](#) provides that the court “shall” release the defendant pending the hearing on the petition “unless the alleged offense is itself a criminal offense in which case the offender shall be admitted to pretrial release on such terms as are provided” in the Code of Criminal Procedure ([725 ILCS 5/110-1, et seq.](#)). The appellate court held that under this language, defendant was entitled to pretrial release while the petition to revoke remained pending. Accordingly, the court should have held a hearing to determine what conditions, if any, to impose upon defendant’s release under [725 ILCS 5/110-10](#).

People v. Dyer, 2024 IL App (4th) 231524 Where a defendant is serving a term of probation and the State files a petition to revoke, the matter of pretrial release is governed by [730 ILCS 5/5-6-4](#). Under that section, if the alleged probation violation is a criminal offense, the court looks to the pretrial release provisions of the Code of Criminal Procedure, [725 ILCS 5/110-1, et seq.](#) If the alleged violation is not a criminal offense, however, the defendant must be admitted to pretrial release pending the hearing on the petition to revoke.

Here, the petition to revoke did not allege a new criminal offense. The court ordered defendant released, but erroneously imposed conditions pursuant to Section 110-5. The fact that defendant was subsequently charged with a new criminal offense while on pretrial release pending the hearing on the petition to revoke did not render him eligible for detention under [725 ILCS 5/110-6\(a\)](#), either. That section only applies where a defendant is on pretrial release “under this Section.” Because defendant’s pretrial release was pursuant to Section 5-6-4 of the Code of Corrections, Section 110-6(a) did not apply by its own terms.

Similarly, the court erred when it subsequently revoked defendant’s pretrial release pending adjudication of the petition to revoke probation. Under Section 5-6-4, there was no statutory authority to detain defendant pending the hearing on the petition to revoke. But, the State later filed an amended petition to revoke which included the new criminal offenses, triggering application of the Code of Criminal Procedure. Accordingly, the appellate court vacated the improper order revoking pretrial release and remanded the matter with directions to admit defendant to pretrial release on such terms as are provided in article 110 of the Code.

People v. Pugh, 2024 IL App (5th) 231128 Defendant had been released on bond prior to the effective date of the SAFE-T Act, and once the Act became effective, the State petitioned to revoke pretrial release. The court revoked defendant’s release, finding defendant had been charged with a new felony while on bond.

Defendant argued the State’s petition was not authorized by the Act because [725 ILCS 5/110-6\(a\)](#) states that revocation of pretrial release is only permissible “when a defendant has previously been granted pretrial release under this Section.” Defendant argued his release pre-dated the Act and therefore he was not released under “this Section.” The appellate court disagreed. Reviewing the entirety of the statute, including section 110-7.5(c)(5), which authorizes revocation when a defendant released on bond violates his conditions of pretrial release, “it is clear that the legislature did not intend to limit the applicability of the Act to only those defendants arrested after its effective date.”

People v. Gray, 2023 IL App (3d) 230435 Defendant had cash bail set prior to the effective date of the SAFE-T Act, remained in custody, and filed a motion to remove the monetary bail

condition after the Act took effect. The State responded by filing a verified petition to deny pretrial release. The court held a hearing, concluded that defendant posed a risk of willful flight, and ordered him detained, and defendant appealed.

On appeal, defendant argued that the State was not permitted to move to revoke a previously set bond for a detained defendant. The State argued that defendant had forfeited that argument by not raising it in the circuit court. The appellate court rejected the forfeiture argument, concluding that it would be inequitable to find forfeiture where the Act had only been in effect for two days on the date of defendant's hearing and thus case law and arguments were still developing.

The court went on to reject defendant's challenge to the State's filing of a petition to detain here. Defendants who were arrested prior to implementation of the Act may elect to continue under the terms of their previously set cash bail or may file a motion to modify the previously established conditions. If a defendant chooses the latter option, the State may file a responding petition seeking detention. The detention order was affirmed.

People v. Swan, 2023 IL App (5th) 230766 On September 8, 2023, defendant was charged with various felonies and given a \$50,000 bond. He did not pay the bond and remained in custody. On September 21, 2023, pursuant to the newly effective SAFE-T, or Pretrial Fairness, Act ("PFA"), the State filed a petition to deny pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure. That same day, defense counsel filed a motion for pretrial release pursuant to sections 110-6.1 and 110-7.5. The court held a hearing on the State's petition to deny pretrial release and entered a written detention order finding that no condition(s) could mitigate the real and present threat to the safety of the community and that defendant posed a serious flight risk. Defendant's motion for release was not heard.

On appeal, defendant argued that the State did not have the authority to file a petition to deny pretrial release due to the timing requirements of section 110-6.1(c)(1). He also argued that the State was not permitted to file petition to detain where defendant had been arrested prior to the effective date of the PFA (September 18, 2023) and remained in custody after not being able to post monetary bail that previously had been set.

Under the plain language of [725 ILCS 5/110-6.1\(c\)\(1\)](#), the State may file a petition to detain at the time of the defendant's first appearance before a judge or within 21 calendar days after the arrest and release of the defendant. This section did not apply to defendant, though, because he had already been arrested, had bond set, and remained in custody. Thus, the State's petition was untimely.

Given that defendant remained in custody at the time the PFA took effect, his situation was governed by [725 ILCS 5/110-7.5\(b\)](#), which allows defendant, but not the State, to request a hearing under [725 ILCS 5/110-5](#) to determine whether his detention remained necessary. Alternatively, defendant could post cash bail in the amount previously set because, while the PFA eliminated the requirement of cash bail, it did not eliminate the option of posting the previously ordered cash bail.

The appellate court vacated the September 21 detention order and remanded the matter for further proceedings. On remand, defendant may elect to pursue his previously filed motion for pretrial release, or he may elect to stand on the terms of his original pretrial conditions. If he opts to pursue the motion for release, he is entitled to have a hearing within 48 hours of requesting it.

People v. Barner, 2023 IL App (1st) 232147 Defendant was arrested for criminal damage to government-supported property and was released on a D-bond of \$15,000 after depositing

the requisite 10%. After the Pretrial Fairness Act took effect, defendant missed a Zoom court appearance. The court issued a warrant for defendant, who was arrested and brought to court. The State moved to revoke his bond. The court granted that motion, ordering that defendant be detained “[t]ill the case is over.”

The appellate court reversed the detention order. The PFA does not permit revocation of pretrial release for the mere failure to appear; only the commission of a felony or Class A misdemeanor (or the violation of an order of protection) while on pretrial release will warrant a revocation of pretrial release. 725 ILCS 5/110-6(a). The court does have the authority to issue a sanction for the mere failure to appear, including incarceration for up to 30 days. 725 ILCS 5/110-6(a), (c)-(f). But the court did not hold a sanctions hearing and, in any event, more than 30 days have passed, and defendant remained in detention.

Upon receiving the defense memorandum, the appellate court asked the State if defendant was entitled to immediate release. The State agreed, and the appellate court entered an order releasing defendant on previous conditions of bond.

People v. Whitmore, 2023 IL App (1st) 231807 Defendant appealed his pretrial detention, arguing that because he was given bond prior to passage of the SAFE-T Act, the State could not petition for pretrial detention once the Act was in place. Defendant argued that under sections 110-7.5(b) and 110-5(e), the court had to reopen the conditions of release hearing, but it did not provide the State with the right to petition for detention. The appellate court disagreed, pointing to section 110-7.5(a), which states that nothing in this section limits the State’s ability to seek pretrial detention.

Nor was the State’s petition untimely under section 110-6.1(c), which requires the State to file a petition at the first appearance before a judge or within 21 days after arrest and release. The appellate court found defendant’s reading of this section would result in a near total inability of the State to file a detention petition for anyone granted bond prior to the passage of the SAFE-T Act, and this reading of the statute would conflict with section 110-7.5(a), as well as section 110-6.1, which states that a purpose of the Act is to ensure the safety of the community through detention of dangerous individuals. The appellate court noted that while agreeing with the outcome, its reasoning diverged from that of **People v. Rios**, 2023 IL App (5th) 230724, ¶¶ 12, 17; **People v. Vingara**, 2023 IL App (5th) 230698, which held that the State’s right to seek detention emanates from section 110-5(e)’s hearing requirement, and from that of **People v. Jones**, 2023 IL App (4th) 230837, ¶ 17, which held that in these cases, the State’s detention petition could be viewed as a “motion to increase the pretrial release conditions to the furthest extent” so as to avoid the timing requirement.

Finally, the trial court did not abuse its discretion in granting the detention petition. Defendant was seen on video placing lighter fluid and commercial grade fireworks under his ex-girlfriend’s car and igniting them, causing substantial damage. The trial court could conclude on these facts that defendant presented a real threat to the community that no conditions of pretrial release could mitigate.

People v. Lippert, 2023 IL App (5th) 230723 A defendant who is awaiting trial on monetary bond imposed prior to January 1, 2023, is entitled to a new detention hearing under 725 ILCS 5/ 110-7.5(b). Here, the trial court held a detention hearing *sua sponte* and, finding a need for continued detention, re-imposed the monetary bond. The appellate court found this procedure violated sections 110-7.5(b) and 110-5(e), because by acting *sua sponte*, defendant was denied an opportunity to choose whether he would move to reconsider pretrial conditions or stand

on the terms of his original pretrial conditions. The trial court could not re-impose monetary conditions unless defendant elected to stand on the previous terms.

People v. Bradford, 2023 IL App (1st) 231785B Defendant was arrested the day after the SAFE-T Act went into effect. He appeared in court the following day, and was ordered released on electronic monitoring. A week later, he was still in custody because he had been unable to identify a satisfactory address for electronic monitoring. The State then filed a petition to detain under the “dangerousness” provision of the Act. At a subsequent hearing, the court ordered that defendant be detained.

On appeal, defendant argued that the State’s petition was untimely. Under 725 ILCS 5/110-6.1(c)(1), the State may file a petition to detain within 21 days of a defendant’s arrest “and release,” but defendant was never actually released. Accordingly, defendant argued that Section 110-5(e) applied, instead, and only permitted a further hearing on conditions of release where the defendant remained detained 48 hours after having been ordered released. The appellate court disagreed.

As used in section 110-6.1(c), “release” is ambiguous in that it could mean either physical release or simply the court’s order for release. The appellate court concluded that defendant’s reading – physical release – would ultimately produce absurd results by requiring the State to wait for a defendant’s physical release before seeking to prevent release on the basis of defendant’s dangerousness. A 110-6.1(c) detention hearing and a 110-5(e) conditions hearing may even proceed simultaneously if both are appropriate. Here, the State’s petition to detain was timely filed within 21 days, and the trial court did not abuse its discretion in finding that the State had met its burden of establishing a need to detain under the dangerousness standard. The detention order was affirmed.

People v. Davidson, 2023 IL App (2d) 230344 Prior to the effective date of the SAFE-T Act (“the Act”), defendant was charged in two separate cases with aggravated battery, aggravated battery to a peace officer, resisting arrest, and aggravated assault with a vehicle. His bond was set at \$2.5 million dollars. Defendant remained in custody and, the day after the Act took effect, he filed a motion for a hearing on pretrial release with conditions. The State then filed a verified petition to deny release. The court held a hearing and granted the State’s petition to detain, and defendant appealed.

On appeal, defendant argued that the State had no authority to petition for detention when it did. The appellate court disagreed. Under the Act, where a defendant was arrested, had monetary bond set, and remained in custody, he may either file a motion seeking to have pretrial conditions reviewed anew or may elect to stay in detention until such time as he is able to post the previously set monetary bond. If he opts to file a motion, the State may then file a responsive pleading seeking his detention under the Act. Thus, the State’s petition was proper. And, the court did not abuse its discretion in finding that defendant posed a risk of willful flight and that no combination of conditions was sufficient to mitigate that risk. Defendant attempted to flee at least three times during his arrest, striking an officer and injuring another citizen. And, he had a significant criminal history which included prior missed court appearances. Accordingly, the appellate court affirmed the detention order.

People v. Clark, 2023 IL App (1st) 231770 The Cook County State’s Attorney charged defendant with aggravated vehicular hijacking and obtained an arrest warrant along with a bail amount of \$100,000, although defendant was in custody in McHenry County at the time. Three weeks later, he was arrested and detained on the Cook County warrant. Two days after

that, the SAFE-T Act went into effect, and the State filed a petition to detain. The trial court denied pretrial release.

The appellate court majority reversed, finding that the Act does not allow the State to file a petition to detain. Under section 110-6.1(c), the State must file the petition at the first appearance before a judge. Here, the State's first appearance before a judge involved the filing of the complaint, the application for the arrest warrant, and the bond order. The State did not file a petition to detain at this time, and therefore it could not do so at the subsequent appearance. Defendant remained entitled to the original conditions of bail.

§6-5(b) Standard of Review

Illinois Supreme Court

People v. Morgan, 2025 IL 130626 The standard of review on appeal is determined by the type of question posed, whether it's one of fact, law, or use of discretion. Questions of law are reviewed *de novo*, and questions bearing on a judge's control of the courtroom or the progress of trial are reviewed for an abuse of discretion. When a question of fact is posed, the manifest weight of the evidence standard applies, because the trial court is in a superior position to hear and observe witnesses, and thereby judge their credibility, and because the reviewing court never has the full benefit of hearing and observing the live witnesses' testimony. An exception to this rule occurs when the circuit court has not heard live testimony and the evidence instead consists solely of documentary evidence. Under these circumstances, the circuit court's factual findings are not entitled to deference, as the reviewing court stands in the same position as the circuit court and should review the record *de novo*.

Here, the parties disputed the standard of review on appeal from a pretrial detention hearing under **725 ILCS 5/110-6.1**. Pursuant to this section, to obtain detention, the State must prove that defendant is charged with an offense eligible for detention under section 110-6.1(a), and that: (1) the proof is evident or the presumption great that the defendant committed the detention-eligible offense; (2) the defendant poses a real and present threat to the safety of any person, persons, or the community, based on the specific, articulable facts of the case; and (3) no condition or combination of conditions of pretrial release can mitigate the defendant's dangerousness or the risk of the defendant's willful flight. The supreme court concluded that these hearings "contemplate unique factual questions that the circuit court must resolve based on an individualized assessment of the evidence," and therefore the manifest weight of the evidence standard applies. However, in cases with no live witnesses, and only documentary evidence, there is no need to defer to the circuit court's factual findings, so *de novo* review applies.

The detention hearing in this case was conducted entirely via proffered evidence, with no live witnesses. The circuit court ordered detention, and the appellate court reviewed the decision using the abuse of discretion standard. It reasoned that the circuit court was required to apply facts to a legal standard, which is a form of discretion. The supreme court rejected this holding, because factfinding with respect to a party's burden of proof, even when conducted in conjunction with the balancing of statutory factors, is not a discretionary act. Rather, it's a fact determinations. While the three-justice special concurrence also believed the abuse of discretion standard applied, the majority maintained that the act of deciding whether or not the State met its burden is a finite, binary choice that is purely factual. Thus, the manifest weight of the evidence standard is the default standard of review for a pretrial detention hearing.

The court rejected defendant's argument that *de novo* review should always apply given the important liberty interests at stake. The standard of review is not dictated by the interests involved, but by the nature of the question presented. Because the assessments involved in a 110-6.1 hearing are factual and not legal, *de novo* review would be inappropriate. The court also rejected defendant's alternative argument that a two-part standard of review applied, whereby factual questions were reviewed using the manifest weight of the evidence standard, while the application of those facts to the burden of proof would be reviewed *de novo*. The court disagreed that the analysis involved any legal questions. It analogized similar hearings under the Juvenile Court Act involving parental fitness and termination of rights. These hearings also involve the application of factual findings to a legal standard, and they are reviewed using the manifest weight of the evidence standard.

The parties agreed that the instant case involved no live witnesses, yet the State nevertheless maintained that the reviewing court owed the circuit court deference, insisting the circuit court retains a factfinding advantage merely by virtue of its ability to observe the defendant's demeanor. The majority disagreed, unable to discern any value in the observation of a silent defendant's demeanor. Similarly, the court rejected the special concurrence's conclusion that the circuit court will, through practice, do a better job at predicting whether release or detention is more appropriate, finding this conclusion speculative and unsupported by any evidence. Thus, the appropriate standard here was *de novo*. Applying *de novo* review, the supreme court affirmed the decision to detain.

Illinois Appellate Court

People v. Davis, 2024 IL App (1st) 241747 The April 2024 amendment to Supreme Court Rule 604(h), which removed the 14-day filing requirement for notices of appeal, was a procedural change that applies retroactively. Accordingly, defendant's notice of appeal filed in August 2024 was sufficient to confer jurisdiction over the original detention order entered in December 2023, as well as the continued detention determination made in July 2024.

When reviewing detention decisions, a two-tiered standard of review is appropriate. Findings of fact are reviewed under the manifest weight of the evidence standard, and the ultimate detention decision is reviewed for an abuse of discretion. Applying that standard, the court affirmed the detention determinations here.

The court did not err in finding that no conditions could mitigate the threat to safety posed by defendant's release based on the violent nature of the alleged offense here, an armed robbery where defendant fired a gun, as well as defendant's history of committing violent crimes involving weapons in the past. And, the court did not err when it found that defendant posed a flight risk based on his post-offense conduct of attempting to flee the scene. That conduct, coupled with the fact that defendant faced a potential life sentence based on his criminal history, was sufficient to support the original flight-risk finding.

Additionally, the court did not err in ordering defendant's continued detention. Defendant offered no new evidence to counter the court's finding that he posed a threat to safety if released. And, while defendant offered evidence that he worked and had a place to live if released on electronic monitoring, the court was free to weigh

other factors more heavily, including his flight risk, access to weapons, criminal history, and an out-of-state bench warrant.

People v. Williams, 2024 IL App (1st) 241013 Defendant was charged with aggravated criminal sexual assault and the circuit court granted the State’s petition for pretrial detention. After an amendment to Rule 604(h), defendant moved under 604(h)(2) for a motion for relief. The circuit court allowed defendant to present new witnesses at this hearing, and while those witnesses testified on defendant’s behalf, the circuit court upheld its detention ruling.

On appeal, the defendant challenged the circuit court’s findings as to whether the State proved that (1) the proof is evident or the presumption great that the defendant has committed a detainable offense, (2) the defendant poses a real and present threat to the safety of any person or the community based on the specific facts of the case, and (3) no conditions or combination of conditions exist that can mitigate this threat or defendant’s willful flight. The appellate court upheld the circuit court’s findings. Defendant allegedly took advantage of an intoxicated 17 year-old girl and forcefully assaulted her. While defendant argued the case for detention rested entirely on the fact of the offense itself, the circuit court pointed to other considerations, such as the inadequacy of conditions to prevent this type of behavior.

The authoring justice reviewed the first two questions using the manifest weight of the evidence standard and the third question using an abuse of discretion standard. One concurring justice would have upheld the circuit court using the manifest weight of the evidence standard for all three questions as well as for the ruling on the motion for relief. A third justice would have applied the abuse of discretion standard to all three questions and for the motion for relief.

The State also argued that the defendant should not have been able to call new witnesses at the hearing on the motion for relief under 604(h)(2), because these hearings are meant to reconsider the original detention hearing, and are not new detention hearings. The appellate court agreed, holding that the parties should not present new evidence at a hearing on the motion for relief. But it found the error harmless because the circuit court’s ruling on the motion for relief was correct. A concurring justice went further and cautioned lower courts not to allow a defendant a “redo” at the motion for relief. This justice urged defendants who intend to call witnesses to request a continuance of the original detention hearing instead.

People v. Thomas, 2024 IL App (1st) 240479 The trial court did not err in continuing defendant’s pretrial detention, even though it incorrectly used the standard outlined in section 110-6.1(e)(1)-(3), which applies to initial detention hearings, rather than section 110-6.1(i-5), which applies to subsequent hearings. Defendant was arrested for armed habitual criminal and possession of a stolen motor vehicle while on parole. The trial court granted the State’s initial petition for pretrial detention, finding under section 110-6.1(e) that he posed a threat to safety that could not be mitigated by conditions of release. When defendant’s parole period ended, he moved for pretrial release based on this change in circumstances. The court denied his request, again employing section 110-6.1(e).

The appellate court affirmed. Although the trial court should have reviewed the petition under section 110-6.1(i-5), detention would be warranted under either standard. Section 110-6.1(i-5) asks whether “continued detention is necessary to 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....” It therefore is “effectively subsumed” by section 110-6.1(e), in that it carries a lower burden – it no longer requires proof of the commission of the offense

by clear and convincing evidence, it starts from the premise that detention was necessary due to defendant's threat to safety, and it contains no standard of proof.

Given the lack of a standard of proof within section 110-6.1(i-5), the appellate court reviewed the trial court's judgment for an abuse of discretion, rather than determining whether the judgment was against the manifest weight of the evidence, as it would on appeal from an initial detention hearing. In this case, defendant had multiple prior convictions for UUW by a felon, and had been prohibited by law from carrying a firearm for over 10 years. Defendant was on parole for his last UUW by a felon conviction when he was again charged with a gun offense, and with stealing a motor vehicle that resulted in a crash. His discharge from parole did not change the fact that he continued to present a threat to safety. Thus, the trial court did not abuse its discretion in ordering his detention.

People v. Carpenter, 2024 IL App (1st) 240037 On appeal from an order for pretrial detention, the circuit court's factual determinations are reviewed under the manifest weight of the evidence standard. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. The circuit court's ultimate determination as to whether the defendant is entitled to pretrial release is reviewed for an abuse of discretion.

Here, the court's finding that the proof was evident or the presumption great that defendant committed the detainable offense of predatory criminal sexual assault of a child was not against the manifest weight of the evidence. The State's proffer included allegations of sexual acts between defendant and the five-year-old victim, the immediate outcry by the victim and her sister to their mother, and defendant's DNA in a sample taken from the victim's underwear. While the defense presented evidence of inconsistencies between the victim's statements and her sister's statements, the court considered that argument in the context of all of the evidence presented. The court's finding that the State met its burden was not against the manifest weight of the evidence. Nor was the court's finding that defendant presents a real and present threat to any person or the community where the record showed that the court expressly considered factors set forth at [725 ILCS 5/110-6.1\(g\)](#). And, considering the nature and circumstances of the charged offense, the court did not err in finding that no conditions could mitigate the safety risk posed by defendant's release.

The dissenting justice would have held that the court's statement that there was no way to guarantee that defendant would not come into contact with other children if released was conclusory and inadequate to satisfy the requirement that the court make individualized findings before ordering pretrial detention. The court was not presented with any evidence about defendant's potential to come into contact with minors if released, and a decision to detain cannot be based on the nature of the charges alone.

People v. Morgan, 2024 IL App (4th) 240103 Defendant appealed the order that he be detained pretrial, asserting that the trial court's ruling should be reviewed *de novo* and that the court erred in denying release because the State failed to establish by clear and convincing evidence that no conditions of release would mitigate the real and present threat he posed to the community.

Regarding the standard of review, the court held that the abuse-of-discretion standard applies to detention decisions under the act. While many cases have applied the manifest-weight standard, that standard is typically reserved for findings based on evidence. In pretrial detention proceedings, however, the evidence consists primarily, if not wholly, of proffers, making it difficult if not impossible to determine the "weight" to be accorded to them.

Because the circuit court judge reviews the proffered information and makes a judgment on the question of detention, the abuse-of-discretion standard is the better fit. With regard to *de novo* review, the appellate court found that it would diminish the significance of the circuit court's decision-making authority and would be unworkable in practice, essentially allowing a second bite at the apple for every aspect of every detention decision.

On the question of conditions of release, defendant argued that the State failed to present evidence that his proposed condition ordering treatment for a recent bipolar diagnosis would not mitigate defendant's dangerousness. But, the State's proffer was made before defendant even suggested his bipolar diagnosis, making it unreasonable to expect the State to present such evidence. The State is not required to raise and argue against every possible condition of release in every single case. Instead, the State may meet its burden by addressing conditions related to the charged conduct, defendant's criminal history and risk assessment scores, and other relevant considerations about the defendant that are known to the State at the hearing. Here, at the detention hearing, the State focused on defendant's history of misconduct, and defendant focused on his recent mental health diagnosis. And, the court acted within its discretion in finding that defendant's history of non-compliance with conditions was more probative on the issue of conditions of release.

People v. Pitts, 2024 IL App (1st) 232336 The trial court ordered defendant detained before trial, finding he committed the detainable offense of armed violence. Defendant argued that the State failed to prove by clear and convincing evidence that defendant committed armed violence. The appellate court affirmed. The majority did so using the manifest weight of the evidence standard of review. The majority explained that while some courts have reviewed this issue using an abuse of discretion standard, these courts improperly adopted that standard from cases that reviewed bail and detention under the prior statute. Unlike this earlier statute, the SAFE-T Act, which controls the issue presented here, involves an evidentiary burden – clear and convincing evidence – which is traditionally reviewed using the manifest weight of the evidence standard. A concurring justice advocated for the abuse of discretion standard, arguing that the hearings that typically occur under the SAFE-T Act don't involve the type of evidence – witness testimony, documents, physical evidence – that requires credibility determinations.

The trial court's determination here was not against the manifest weight of the evidence where the State's proffer described defendant carrying a garbage bag in which police found both a firearm and controlled substances, meeting the elements of armed violence.

People v. Castillo, 2024 IL App (1st) 232315 At a detention hearing under the SAFE-T Act, the State bears the burden of proving by clear and convincing evidence that the defendant committed a detainable offense, the defendant poses a real and present threat to the safety of any persons or the community based on the specific, articulable facts of the case, and that no conditions or combination thereof can mitigate the real and present threat or the defendant's willful flight. On appeal, the trial court's detention decision is reviewed under a two-part standard of review. The circuit court's factual findings are reviewed under the manifest-weight-of-the-evidence standard, and the ultimate decision whether to detain the defendant is reviewed for an abuse of discretion.

Here, the appellate court first found that defendant's notice of appeal was adequate to preserve her argument that the State failed to prove that no conditions could mitigate the risk of willful flight. By approving the pretrial release notice of appeal forms, the Illinois Supreme Court "expects appellants to at least include some rudimentary facts, argument, or

support” for their claims beyond just checking a box on the form. Here, defendant checked the box indicating that the State failed to prove by clear and convincing evidence that no conditions could mitigate any threat and included additional details, specifically that pretrial release would be to inpatient treatment at Haymarket on electronic monitoring, which would prohibit her from leaving the facility. This was sufficient to preserve defendant’s argument that less restrictive conditions would mitigate any risk posed by release.

On the merits, the court found that the circuit court’s conclusion that the State had proved by clear and convincing evidence that no conditions could mitigate the threat to safety or willful flight was against the manifest weight of the evidence. Clear and convincing evidence is “that quantum of proof that leaves no reasonable doubt in the mind of the fact finder about the truth of the proposition in question.” Here, the State’s evidence at the detention hearing failed to address whether electronic monitoring or any other condition could mitigate any risk posed by defendant’s release. The evidence of defendant’s conduct here and her prior interactions with the victims demonstrated that she posed a real and present threat to the victims, but this evidence failed to address any potential conditions of release.

Likewise, while the circuit court here mentioned electronic monitoring at Haymarket as a proposed condition of release but concluded that such condition would be inadequate based on defendant’s alleged behavior here, the court’s determination was against the manifest weight of the evidence. Defendant’s alleged conduct showed why she posed a risk of harm but did not indicate why lesser restrictions than detention would not mitigate that risk. The evidence at the detention hearing showed that defendant had no prior convictions, was a minimal risk for new criminal activity or failure to appear, and had participated in a number of programs to improve herself while detained. The appellate court vacated the detention order and remanded for the circuit court to specifically consider alternatives to detention.

People v. Whitaker, 2024 IL App (1st) 232009 Defendant appealed the trial court’s pretrial detention order. The notice of appeal checked two boxes indicating the grounds for the appeal, and added two brief conclusory statements that defendant “poses no threat to the [complaining witness] and the public,” and that she could “be released on [electronic home monitoring].” No memo was filed by appellate counsel. While the appellate court found the notice of appeal lacking, it disagreed with **People v. Duckworth**, 2024 IL App (5th) 230911, that the appeal should be dismissed. “Nonetheless, we caution the parties that an appellant risks dismissal where the notice of appeal provides only conclusory claims of error, and the appellant chooses not to avail itself of the opportunity provided to it by Rule 604(h).”

The appellate court majority addressed standard of review at length before affirming. The court concluded that the “manifest weight of the evidence” standard must apply to the trial court’s consideration of whether the State proved commission of a detainable offense by clear and convincing evidence, and to the trial court’s weighing of the factors pertaining to the defendant’s threat to the safety of a person or the community. The trial court’s determination as to whether any less restrictive means will mitigate the threat should be reviewed for an abuse of discretion.

The concurring justice would employ a *de novo* standard of review to the entirety of the proceedings, because: “(1) the abuse-of-discretion standard is inappropriate to a review of factual findings subject to a standard of proof; (2) it is incorrect to state, as some decisions have, that we have historically reviewed detention orders under the abuse-of-discretion standard; (3) findings of fact, though typically reviewed under the manifest-weight standard, are reviewed *de novo* when the court hears no live testimony and makes findings solely on

documentary evidence and oral presentation by counsel; (4) *de novo* review is appropriate, in any event, given the gravity of the detention decision and the constitutional right at stake.”

People v. Casey, 2024 IL App (3d) 230568 Defendant was arrested for DUI and threatening a public official and detained pursuant to a State motion for pretrial detention. He did not appeal this order. After his indictment he moved for pretrial release. Defendant argued that, although he threatened police officers with violence, he was not a threat as his statements were drunken hyperbole. He also argued he was arrested two days after leaving a sober-living facility and relapsing, and that he had since received permission to rejoin the facility. The trial court denied the motion, finding he committed the alleged offense while on probation for aggravated assault, a condition of which was to avoid alcohol.

An appellate court majority affirmed. The court reviewed the factual findings using the manifest weight of the evidence standard, and reviewed the ultimate decision to grant or deny the petition for an abuse of discretion. It first pointed out that defendant did not appeal the initial detention order, and appealed only a subsequent order. At the initial hearing, the State must prove by clear and convincing evidence that: (1) the proof is evident or presumption great that defendant committed a detainable offense; (2) defendant poses a real and present threat to any person, persons, or the community or is a flight risk; and (3) no conditions could mitigate this threat or risk of flight. But at subsequent hearings, this standard does not apply. For subsequent hearings the statute only requires the court to find that “continued detention is necessary to 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 to prevent the defendant’s willful flight from prosecution.” The clear and convincing standard no longer applies. See **725 ILCS 5/110-6.1(i-5)**

Here, the evidence established that defendant made multiple threats, including threatening to bring a pipe bomb to the police department and moving aggressively towards an officer with clenched fists. Defendant was on probation for aggravated assault of a peace officer at the time. His probation required him to refrain from consuming alcohol, which he had failed to do. While defendant argued he could go back to the sober living facility, defendant had just left there days before the DUI and instant offense occurred. In light of these facts, the trial court did not abuse its discretion.

Justice McDade dissented because defendant was intoxicated when he made the threats and he scored low on a risk assessment.

People v. Inman, 2023 IL App (4th) 230864 Where a defendant appeals the circuit court’s pretrial detention decision under Supreme Court Rule 604(h), the standard of review is the same as it was for bail appeals under Supreme Court Rule 604(c)(1), that is whether the judge abused his or her discretion. The procedure, however, is different. Rule 604(c) required that an appellant file a motion for review, containing details about the trial court proceedings and arguments supporting the request for relief on appeal. Rule 604(h) contains no such requirement, though the appellate court noted that it is well established that reviewing courts are “entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented.”

Here, defendant filed a notice of appeal which included only a checked box asserting that “the State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions 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, or defendant’s willful flight,” and no additional argument. And, defense counsel on appeal

elected not to file a memorandum under Rule 604(h). The State filed a memorandum, arguing that the circuit court’s findings and written order met the statutory requirements for detention under [725 ILCS 5/110-6.1](#).

While a memorandum under Rule 604(h) is not expected in every case, an appellant should do more than simply check a box on the form notice of appeal. At a minimum, the appellant should provide facts, argument, or other support for their claim in the space provided on the notice. Given the conclusory nature of defendant’s claim of error and the fact that the record showed that the circuit court met all of its statutory obligations in ordering detention, the appellate court found no abuse of discretion and affirmed.

§6-5(c) Detention Orders and Hearings

Illinois Supreme Court

[People v. Cooper, 2025 IL 130946](#) Defendant was charged with various detainable offenses, and the State filed a verified petition to deny pretrial release pursuant to [725 ILCS 5/110-6.1](#) at defendant’s first appearance. The State requested that the detention hearing be set two days later, in the afternoon. Defense counsel responded, “for the record, we’d ask for immediate, but did receive notice of the hearing....” Counsel did not object to the afternoon setting at that time, but at the hearing, counsel argued that it was untimely under the 48-hour requirement of [725 ILCS 5/110-6.1\(c\)\(2\)](#). Specifically, counsel noted that the petition was filed in the morning on March 30 and more than 48 hours had passed by the time of the 1:30 p.m. hearing on April 1. Accordingly, counsel asserted that defendant was required to be released with conditions. The court denied that request, held a detention hearing, and ordered that defendant be detained.

The supreme court first found that the timeliness claim was forfeited by defendant’s failure to object to the afternoon setting at the time the court scheduled the hearing. It was not enough for counsel to ask for an “immediate” hearing; he needed to object specifically that the hearing was being scheduled outside of the 48-hour time limit.

Noting that forfeiture is a limitation on the parties and not the court, however, the court went on to consider the merits of the timeliness claim. The court determined that the 48-hour time limit of the statute is directory, not mandatory, because the statute does not specify any consequence for noncompliance. Moreover, delay beyond 48 hours does not generally injure a defendant’s liberty interest. The PFA serves to protect both the rights of the accused and the rights of the community such that “courts *always* have the obligation to consider the danger” posed by an accused individual when deciding whether to release him or her into the community while awaiting trial. Requiring automatic release for a minor timing violation would undermine the purpose of the Act.

In the event that a defendant can demonstrate actual prejudice from such a delay, he may be entitled to relief. Here, however, defendant did not dispute that he was subject to detention and did not claim any prejudice from the hours-long delay of the hearing. Accordingly, the detention order was upheld.

Illinois Appellate Court

[People v. Schwedler, 2025 IL App \(1st\) 242157](#) The State’s petition for pretrial detention filed on September 26, 2024, was not untimely. While defendant argued that the petition was filed more than 21 days after his initial arrest for reckless conduct on August 6, 2024, the State had filed a superceding manslaughter indictment on September 3, after it learned the victim died. This created a new case that relied on previously unknown facts. Defendant’s

first appearance on the new case was on September 17, 2024. Applying section 110-6.1(c)(1), the State had 21 days from that date to file a petition for pre-trial detention.

Although section 110-6.1(c)(1) does not discuss the deadline in terms of superceding indictments, section 110-6.1(d)(2) supports the conclusion that the clock should restart. Under that section, the State may seek to file a second or subsequent petition for pretrial detention if it can demonstrate it learned of “new facts not known or obtainable at the time of the filing of the previous petition.” The appellate court took this provision to mean that the legislature intended to allow for the fact that the State might not have all relevant information at an initial hearing.

However, the appellate court remanded the case because the circuit court failed to conduct a proper detention hearing. While the court purported to rely on a written proffer consisting of a 2-page summary of the facts, the court never gave the defense an opportunity to challenge the proffer. The court rejected the State’s argument that a violation of this unequivocal and basic requirement of section 110-6.1(f) could be harmless, and remanded for a new detention hearing.

People v. Clark, 2024 IL App (1st) 231770-B The Cook County State’s Attorney charged defendant with aggravated vehicular hijacking, and obtained an arrest warrant along with a bail amount of \$100,000, although defendant was in custody in McHenry County at the time. Three weeks later he was arrested and detained on the Cook County warrant. Two days after that, the SAFE-T Act went into effect, and the State filed a petition to detain. The trial court denied pretrial release.

The appellate court originally found that the Act did not allow the State to file a petition to detain, because, under section 110-6.1(c), the State must file the petition at the first appearance before a judge. The supreme court reversed, holding the Act did not contemplate *ex parte* hearings, and therefore “first appearance” refers to a defendant’s first appearance. **People v. Clark, 2024 IL 130364**. The supreme court remanded for consideration of defendant’s remaining arguments.

Defendant’s first remaining argument was that the State could not file a petition to detain because, under section 110-7.5(b), only he could move for reconsideration of conditions. Defendant argued that he fit within the category of defendant defined in section 110-7.5(b) as “those who remain in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security.” The appellate court held, however, under **Clark**, it must interpret the statute to effectuate its purpose of ensuring the presence of the defendant and allowing the trial court to make an informed decisions about detention. Thus, it would interpret section 110-7.5(b) as if the Code said “any person who remains in pretrial detention after having been ordered released with pretrial conditions [at a bail hearing].” Because the bond in this case was set without a hearing, the State could file a petition to detain.

Defendant also argued that the trial court did not “sufficiently articulate the correct factors” or “make adequate findings” when ordering detention. The appellate court held that the trial court complied with the Act by considering the seriousness of the offense, including the victim’s advanced age, defendant’s threat of violence against her, his prior felony convictions, and previous failures to appear.

People v. Ramyyeh, 2024 IL App (1st) 240299 Defendant was denied a fair detention hearing where the State failed to tender certain information to him prior to the hearing. Specifically, pursuant to **725 ILCS 5/110-6.1(f)(1)**, the State should have provided defendant with all police reports in the prosecutor’s possession at the time of the detention hearing,

including those from a prior conviction. It did not matter that defendant could have accessed those prior reports through other means. The State did not violate Section 110-6.1(f)(1) with regard to video recorded statements of the complaining witnesses, however, where the State provided defendant with summaries of those statements. Because the video recordings were still in possession of the police, and not yet in the hands of the prosecutor, the State was not obligated to provide them in advance of the detention hearing. The statute specifically requires only that the State produce items “in the State’s Attorney’s possession at the time of the hearing.” Remanded for a new detention hearing.

People v. Thomas, 2024 IL App (4th) 240248 Defendant was charged with unlawful possession of a weapon by a felon after he broke into his mother’s house, broke into a safe containing a rifle, and fired several rounds in the house. The trial court ordered pretrial detention after finding no conditions of release could mitigate defendant’s dangerousness. Defendant alleged on appeal that the court’s written findings lacked sufficient explanation as required by 725 ILCS 5/110-6.1(h)(1). The appellate court held that the requirements of section 110-6.1(h)(1) can be met by looking at the court’s oral pronouncements in conjunction with the written findings, and here, those findings together showed adequate consideration of relevant factors.

Defendant also argued that the court failed to consider certain potential conditions of release, such as electronic monitoring. Section 110-6.1(h) does not require courts to specifically address each potential condition of release. In this case, there was no abuse of discretion for failing to address electronic monitoring. The offense suggested a strong threat of violence coupled with possible mental health issues. Electronic monitoring cannot address every defendant’s potential dangerousness, because it merely provides defendant’s location. If coupled with home confinement, E.M. might alert police to a potential violation of that confinement. But “[k]nowing that electronic monitoring might detect a failure to comply with conditions of release does not diminish concerns that a particular defendant appears to present a greater risk of noncompliance, especially if the consequences of noncompliance may be grave.”

People v. Wright, 2024 IL App (4th) 240187 Defendant was charged with attempted murder in connection with a shooting. The State moved for pretrial detention, proffering that defendant’s girlfriend would testify that she was involved in an altercation with the victim, and that she called defendant, who came and shot the victim. The defense countered that defendant and the witness were married at the time, and therefore much of the State’s proffer would be barred by the marital privilege doctrine. The trial court ordered detention, finding the State proved defendant committed a detainable offense and, given the nature of the offense and defendant’s criminal history, he posed a danger to the community.

On appeal, defendant argued the trial court erred in considering evidence that was inadmissible due to marital privilege. The appellate court rejected this argument, because section 110-6.1(f) explicitly states that “[t]he rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the [pretrial detention] hearing.” Furthermore, as a practical matter, determining whether and which evidence would be inadmissible pursuant to nuanced rules of evidence like the marital privilege doctrine is ill-suited for pretrial detention hearings.

People v. Brown, 2024 IL App (2d) 230489 The trial court’s detention order was sufficient where it checked a box indicating defendant committed a detainable offense – aggravated

DUI involving death – and that defendant was a threat to the safety of the community, even though it contained no written findings.

Defendant alleged the order lacked the individual details and findings required by the Act. The appellate court disagreed, holding that while section 110-6.1(h)(1) requires a written summary of the reasons for denying release, courts have held that the order can be supplemented with oral findings. Here, the order, with its pre-printed findings, plus the oral findings, provided an adequate basis for pretrial detention. Defendant drove 79 mph in a residential area, ramming another car and killing two people. He was ticketed and released pending further investigation and, despite being told there would be additional charges, was arrested in Wisconsin shortly thereafter for cocaine possession. The trial court found defendant's conduct during the offense, his subsequent substance-abusing behavior, and the lack of effective conditions (the court noted that GPS would only allow the authorities to monitor his past movements), required detention. The appellate court found no abuse of discretion in this finding.

The appellate court also pointed out that the lack of statewide forms has resulted in variance among the different counties' pretrial release or detention orders. Some forms lack the necessary blank space with lines for individualized findings. The court encouraged counties to adopt forms with space for specific findings, preferably with pre-printed lines allowing for typed text.

People v. Shockley, 2024 IL App 5th 240041 Before passage of the SAFE-T Act, defendant faced multiple charges and was unable to post his \$350,000 bond. After passage of the Act, he moved for pretrial release pursuant to sections 110-5(e) and 110-7.5. The State did not respond, nor did it file a written petition for pretrial detention; instead, it orally argued that defendant posed a danger to the community and should be detained. The circuit court denied defendant's request for relief. On appeal, defendant argued detention was improper because the State did not file a written petition for pretrial detention.

The appellate court reversed and remanded. It first acknowledged that defendant failed to object below and had forfeited the issue. But, noting forfeiture is a limitation on the parties, not the courts, and the recency of the statutory amendments involved, it decided to reach the issue on the merits.

Because defendant was in custody for an inability to post bond, the court was required to hold a conditions of release hearing pursuant to [725 ILCS 5/110-5\(e\)](#). If the court wished to detain defendant, it had to follow the provisions of section 110-6.1. One such provision is the requirement of a written motion. The State's verbal request for pretrial detention was insufficient under the plain language of section 110-6.1(a). As additional support, the appellate court noted that section 110-2 mandates a "motion of a prosecutor" as a condition precedent to the denial of pretrial release.

The court concluded that nothing within section 110-5, 110-6, or 110-6.1 permits a circuit court to *sua sponte* consider the denial of pretrial release absent the filing of a verified petition as required by section 110-6.1(a). The court remanded for a new hearing.

People v. Gooden, 2024 IL App (4th) 231523 While [725 ILCS 5.110-6.1\(h\)\(1\)](#) requires that the trial court make written findings summarizing its pretrial detention decision, the court's failure to do so is not fatal. In reviewing the detention decision, an appellate court should focus primarily on the trial court's oral ruling and explanations at the detention hearing. The absence of detailed findings or explanations from the written order does not undermine an otherwise proper detention order.

People v. White, 2024 IL App (1st) 232245 The order for pretrial detention was reversed where the State failed to put on any evidence that detention was necessary and stood silent as an officer from the Office of Statewide Pretrial Services (OSPS) recommended release. The State’s petition to detain briefly described the alleged facts of the reckless homicide with which defendant was charged, and both the State and defense made proffers based on the police reports at the detention hearing. The OSPS officer informed the court that defendant scored two out of six on risk assessments for failure to appear and for commission of new criminal activity, leading to a recommendation of release with pretrial monitoring. In ordering defendant be detained, the court found the proof evident or the presumption great that defendant committed the offense, describing it as “outrageous;” concluded that defendant was a risk to persons in the community because he severely injured two people who had been passengers in his vehicle and killed another individual; and, as to the sufficiency of available conditions of release, stated that it could not risk defendant’s release due to his “lack of concern and judgment for the safety of others.”

The appellate court agreed with defendant that the State failed to prove that there were no release conditions that could mitigate any threat to the community posed by his release. It is not enough for the State to simply allege that no condition or combination of conditions can mitigate the risk. The State must actually prove this factor, and where the State presented no evidence relevant to the issue of conditions, it did not meet that burden. The appellate court remanded for the trial court to order defendant’s release with conditions.

People v. Vance, 2024 IL App (1st) 232503 Defendant appealed from an order granting the State’s petition to deny pretrial release, and the appellate court affirmed. The trial court did not err in finding defendant posed a threat to the community where he was arrested after fleeing from a traffic stop which involved a stolen vehicle and where he was found with a machine gun. The court specifically noted the danger posed by the type of gun involved, as well as the fact that there were two other people in the vehicle at the time of the stop who were also armed. As to conditions of release, the court specifically reviewed options with a representative of pretrial services and concluded that conditions were insufficient to mitigate the threat of dangerousness. That finding was not error where the court clearly considered several options, including electronic monitoring and home detention, and found them wanting because of the delay in communicating any violations to the court.

The appellate court also found that the trial court did not violate the requirement of **725 ILCS 5/110-6.1(h)(1)** that it enter written findings summarizing its reasoning for denying release. The court’s written order failed to detail why not set of conditions could mitigate the threat of dangerousness, and instead included only its conclusion on that point. But, the court gave a detailed oral explanation of its findings, and the appellate court found that the oral explanation was adequate here. It would not “serve the ends of justice” to remand for the court to produce a written order mirroring the transcribed record of its specific and thorough oral findings.

People v. Mancilla, 2024 IL App (2d) 230505 The order granting the State’s petition to deny pretrial release was affirmed. The State’s evidence at the detention hearing, consisting of a police synopsis, was sufficient to sustain the State’s burden. The synopsis contained a lengthy narrative of events, including allegations of violent conduct by defendant and multiple identifications of defendant as the perpetrator. And, many of the dangerousness factors were present here, including that the offense involved a firearm, defendant had a violent criminal history, and one of the victims here suffered great bodily harm and was at least 60 years old.

Defendant's remaining claims of error were simply checked boxes on the notice of appeal form and were not supported by evidence or argument in the notice. Further, no memorandum was filed on appeal. Accordingly, the court deemed those contentions forfeited, but also went on to conclude they were without merit.

Finally, the court discussed the ethical obligations of defense counsel in appeals under the SAFE-T Act and held that under Rule 3.1 of the Rules of Professional Conduct, defense counsel is required to inform the court "as to whether the defendant's claims are meritorious and, if not, to withdraw any frivolous claims or even the entire appeal." While the SAFE-T Act provides a streamlined appeals procedure, it does not obviate defense counsel's ethical obligations to present only meritorious claims and contentions. Compliance with the [*Anders v. California*, 386 U.S. 738 \(1967\)](#) procedure is not required in appeals under Rule 604(h). Instead, attorneys can withdraw non-meritorious claims by filing an amended notice of appeal or by statement either in counsel's memorandum or the notice filed in lieu of such a memorandum.

[*People v. Martin*, 2023 IL App \(4th\) 230826](#) In multiple cases filed between June 2022 and April 2023, defendant was charged with various felonies and monetary bond was set. Defendant posted bond and was released on the first two cases but subsequently remained in custody when he was again arrested, had a higher bond set, and did not post.

As the effective date of the SAFE-T, or Pretrial Fairness, Act ("PFA"), approached, defendant filed a motion for reconsideration of the monetary bond condition pursuant to [725 ILCS 5/110-5\(e\) and 110-7.5\(b\)](#). The State countered with a petition to deny pretrial release. A consolidated hearing was held on September 18, 2023, the Act's effective date, and the court ordered defendant detained both under the dangerousness and willful-flight provisions of the Act. Defendant filed a notice of appeal the same day, checking boxes next to allegations that the State failed to meet its burden of proof as to dangerousness and whether less-restrictive conditions were available, that the court erred in determining that no conditions could reasonably ensure defendant's appearance, and "other." As support for those allegations, the notice of appeal contained handwritten allegations that there were "insufficient facts" offered by the State and that the State failed to meet its burden to prove a risk of willful flight.

In the appellate court, defendant filed a memorandum arguing two issues that had not been raised below, specifically that the State had no authority to file petitions to deny pretrial release and that his pretrial detention could not stand because one of the charges – aggravated unlawful use of a weapon – was facially unconstitutional. The appellate court declined to review either issue. First, the court held that plain error review applies only where there is settled precedent supporting the claim of error. Because the Act was brand new, there was no settled precedent, so there could be no plain error. And, even liberally construed, these issues were not included in defendant's notice of appeal and thus were not properly before the court.

Ultimately, the appellate court did reverse and remand for a new detention hearing, however, agreeing with defendant that the circuit court's findings were insufficient. Specifically, the circuit court provided no detail explaining why detention was necessary and failed to comply with the legislative directive that the court address less restrictive conditions of release under [725 ILCS 5/110-6.1\(b\)\(3\)](#). The appellate court pointed out that just a few months prior, when cash bond was an available condition, the court had reviewed the same facts and had granted pretrial release on the condition that defendant post the required amount of monetary security. While detention may be justifiable now, the court must address

the specific basis for detention and provide the appellate court with a record adequate to allow for meaningful review.

The trial court failed to conduct a proper detention analysis, and the appellate court declined to undertake that analysis in the first instance. Instead, the appellate court vacated the detention order and remanded with directions to hold a new detention hearing applying the proper statutory factors

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

The appellate court looked to **In re Madison H.**, 215 Ill. 2d 364 (2005), in which the supreme court interpreted a different statute requiring written findings. **Madison H.** held that a written finding requirement is intended to give the parties notice of the trial court’s reasoning and to preserve that reasoning for appellate review. If the written order is deficient for this purpose, courts should look to the verbal findings and determine whether the written and verbal findings together accomplish the goal of the statute. The appellate court concluded that the **Madison H.** rationale should apply to section 110-6.1(h)(1).

The appellate court held that the trial court’s verbal ruling adequately, if efficiently, analyzed the factors concerning the determination of dangerousness, as required by section 110-6.1(g), and articulated its reasons why less restrictive conditions would not avoid the threat to safety. Because the written order, together with the trial court’s oral findings, provided sufficient notice of its reasoning and preserved that reasoning for appellate review, remand was not required.

People v. Earnest, 2024 IL App (2d) 230390 The trial court abused its discretion when it granted the State’s petition to detain defendant before trial. The State argued that defendant was a flight risk, but failed to offer any evidence to show that no conditions of release could mitigate the risk.

The State’s petition and argument at the hearing offered “context,” not a valid proffer (see 725 ILCS 5/110-6.1(f)(2)). The State never addressed its burden of proof, the class of the qualifying offense, any repeated instances to evade prosecution, or why no conditions of release could mitigate defendant’s risk of willful flight. Likewise, the trial court’s written ruling failed to explain why no conditions of release could assure defendant’s presence. “We simply cannot infer on this barren record that there are no conceivable conditions of release that would mitigate defendant’s risk of flight.” The court remanded with detailed instructions concerning the pleadings, standards, and evidentiary requirements required by sections 110-5(e), 110-7.5(b), and 110-6.1.

People v. Minssen, 2024 IL App (4th) 231198 The circuit court abused its discretion when it granted the State’s petition for detention before trial for aggravated assault. The assault charge was aggravated based on the victim’s status as a peace officer. The charging instrument and the State’s petition to detain alleged defendant attempted to bite the officer. Because aggravated assault is not among the listed forcible felonies in 725 ILCS 5/110-6.1(a)(1.5), the offense would have to fall in the residual clause, applicable to “any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.”

The State offered no details about the specific threat posed by the attempted bite. While it asked the appellate court to presume that a bite threatens great bodily harm, the SAFE-T Act creates a presumption in favor of release and it is the State's burden to prove by clear and convincing evidence that the proof is evident or the presumption great that the defendant has committed a detainable offense. Therefore, the State had an obligation to present specific facts in order to meet its burden.

People v. Hodge, 2024 IL App (3d) 230543 Defendant appealed the trial court's pretrial detention order on the grounds that the court failed to enter a written order. Under 725 ILCS 5/110-6.1(h)(1), any order for detention must include "a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release, including 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."

Here, the court checked boxes on a pre-printed form suggesting that it found defendant should be detained based on the nature of the offense, the fact he was on MSR, he posed a threat to the victims of the crime, and he had a criminal background. The appellate court found this adequate. The nine boxes on the pre-printed form matched the appropriate statutory factors. By checking the boxes the court indicated which of the factors the court found to be present in the case, based on the facts presented at the hearing. The point of requiring written findings is to give notice of the reasons for the court's findings for appellate review. Checking the boxes, in conjunction with the transcript, provided sufficient notice. Finally, prior decisions have approved of this method, including **People v. McKenzie**, 2024 IL App (4th) 231063-U.

People v. Atterberry, 2023 IL App (4th) 231028 Defendant was charged with traveling to meet a child and indecent solicitation of a child, and the State filed a petition seeking pretrial detention. Defendant had no criminal history, no history of substance abuse, and no history of mental health issues. He scored a zero on a pretrial risk assessment, indicating that he was at the lowest risk level for violating conditions of pretrial release. The trial court judge granted the State's request to detain, however, concluding that defendant posed a real and present threat to the safety of minors in the community and that any conditions of pretrial release could not be adequately monitored and enforced. The judge also voiced her disagreement with the legislature's elimination of cash bail through the SAFE-T Act and stated that she would have set a monetary bond for defendant had it still been available.

The appellate court criticized the trial court's "lengthy and biased commentary" on the elimination of cash bail under the SAFE-T Act. "The wisdom of legislation is never a concern for the judiciary." The court then went on to find that the trial court had improperly refused to consider the applicable statutory factors found at 725 ILCS 5/110-5(a)(1)-(5) for determining the propriety of detaining defendant or releasing him with conditions. The trial court failed to make the required individualized assessment here, instead ruling out pretrial release based on her general perception that conditions of release are loosely monitored. There was no evidence offered to support that conclusion or to support the court's belief that this particular defendant would not comply with any conditions of release.

People v. Mezo, 2024 IL App (3d) 230499 The trial court's decision to detain defendant under the SAFE-T Act was reversed because the State relied on his criminal history but never provided copies to the defense or filed them with the court. See 725 ILCS 5/110-6.1(f)(1) ("Prior to the hearing [on the State's petition to deny release], the State shall tender to the

defendant copies of the defendant’s criminal history....”); and [725 ILCS 5/110-6.1\(f\)\(4\)](#) (“The State shall tender to the defendant, prior to the hearing, copies, if any, of the defendant’s criminal history, if available.”)

The State had informed the defense and trial court of defendant’s prior convictions using a “LEADS” report. The defense pointed out that no criminal history had been tendered or filed. The State responded that it does not file LEADS reports. The trial court noted the State’s failure to file, but relied on the criminal history when granting the State’s petition to detain. The State’s failure to comply with its obligation required a new hearing. Formal disclosure of defendant’s criminal history allows the defense an adequate opportunity to respond to the State’s petition to deny release, ensures the reliability of information presented to the court under the strict timeframes of the statutory pretrial release provisions, and ensures a defendant receives a fair hearing on the State’s petition to deny release.

The dissent would have found the issue forfeited because the defendant did not ask for a remedy beyond pointing out the lack of compliance. While the majority found the State forfeited forfeiture by not raising it, the dissent believed the appellate court had an independent duty to do so, because defense counsel was likely acting strategically, as the filing of defendant’s lengthy rap sheet would have made detention more likely.

People v. Morales, 2023 IL App (2d) 230334 Under the plain language of [725 ILCS 5/110-6.1\(f\)\(1\)](#), prior to a detention hearing, the State must disclose to defendant all information it relied upon in filing the petition to detain. This does not require the State to disclose everything in its possession at the time of the hearing. The statute makes clear that a pretrial detention hearing is not to be used for purposes of discovery. See [725 ILCS 5/110-6.1\(f\)\(4\)](#).

People v. Gathing, 2023 IL App (3d) 230491 The State filed a petition to detain defendant under [725 ILCS 5/110-6](#), alleging that defendant committed a crime while released on monetary bail. The defendant appeared at the hearing via teleconference. The court ordered detention, and defendant voiced disagreement with the fact that the hearing was held outside his presence. He filed a notice of appeal using the form applicable to direct appeals under Rule 606, rather than the form applicable to pre-trial detention appeals under Rule 604(h).

The appellate court first held that it had jurisdiction because any deficiency in the notice of appeal is not jurisdictional. The court would overlook any forfeiture of issues resulting from the failure to comply with Rule 604(h), because defendant objected below to his absence, and because the appeal took place within 20 days of Rule 604(h)’s implementation.

The plain text of [725 ILCS 5/110-6\(a\)](#) gives the accused the right to be physically present at a hearing at which pretrial release might be revoked. Although the statute has three exceptions (waiver by the accused, the need to protect the health and safety of any participant, or operational challenges), nothing in the record suggested any of these exceptions applied here. The court remanded for a new hearing.

People v. Horne, 2023 IL App (2d) 230382 Defendant was charged with aggravated battery of a peace officer and domestic battery. The trial court granted the State’s petition to detain defendant on dangerousness grounds. Defendant appealed.

Defendant first argued the written synopsis used at the **Gerstein** hearing to establish probable cause was insufficient evidence that he committed an offense that qualified for detention under the Pretrial Fairness Act. He contended that the lack of testimony or

physical evidence meant the State did not meet the “clear and convincing evidence” standard. The appellate court disagreed. The written report described how the police encountered the complainant outside of her home, her allegation that defendant punched her, and the officers’ encounter with the defendant during which he pushed one of the officers in the forehead. The report was detailed and not inherently incredible, and thus no error occurred in finding clear and convincing evidence that defendant committed the offenses.

Nor did the trial court err in determining that defendant poses a real and present threat to the complainant and the community, specifically the police. The trial court noted that the police synopsis related statements defendant made to the officers while he was restrained, including threats to torture and kill them. Defendant was also on probation for criminal damage to property, evidence that reasonably reflected he does not follow court orders.

Finally, the court did not err in finding no set of pretrial release conditions reasonably ensured the safety of others. The PFA requires the trial court, in a detention order, to make written findings summarizing why a defendant should be denied pretrial release, “including 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.” The court did so here, citing the nature of the offense, defendant’s history of violence, and the fact that he lived with complainant.

§6-5(d) Proof of Offense

Illinois Appellate Court

People v. Watkins-Romaine, 2025 IL App (1st) 232479-B The State met its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the charged shooting offenses. The State also proved defendant’s release would threaten public safety and that no conditions of release could mitigate that threat. The pretrial detention order was therefore affirmed.

Much of the State’s evidence was circumstantial – cell data showed defendant in the vicinity of the shooting, defendant’s girlfriend’s car was used in the shooting and it contained his DNA, and he recently purchased the same ammunition used in the shooting. But the victim could not identify him as the shooter, and four other DNA samples were found in the car. Still, social media evidence established that defendant had a “beef” with the victim’s boyfriend, and that shortly before the offense, he referenced taking revenge and threatened shootings. These statements sufficiently tied the circumstantial evidence together such that the State met its burden of proving defendant committed the charged offenses by clear and convincing evidence. Similarly, the threatening comments were sufficient to prove defendant was a danger to the community and that no conditions could mitigate the threat to safety that he posed. Thus, the appellate court affirmed defendant’s pretrial detention.

People v. Davis, 2024 IL App (3d) 240244 The circuit court’s pretrial detention order was vacated because defendant was not charged with a detainable offense. Defendant made a bomb threat. He was charged with disorderly conduct based on knowingly transmitting a false report that a crime would be committed. 720 ILCS 5/26-1(a)(4), (b). Under section 110-6.1(a)(1.5), only forcible felonies are detainable. These include: (1) several enumerated offenses; and (2) any felony which involves the threat or infliction of great bodily harm or permanent disability or disfigurement. The disorderly conduct charge in this case was neither. Although defendant threatened to blow up a Social Security Administration office,

the charge itself alleged he knew his threat to be false. Thus, there was no actual threat of harm.

Defendant failed to include this issue in his notice of appeal, but the appellate court excused defendant's forfeiture. Forfeiture is a limitation on the parties, not the court, and the court may overlook forfeiture to maintain a sound body of precedent or to reach a just result. These considerations warranted reaching the merits in this case, because the issue was one of first impression and, if defendant's argument had merit, he would remain in pretrial detention despite having not committed a detainable offense.

People v. Duncan, 2024 IL App (5th) 240588 The trial court erred in concluding that aggravated battery by strangulation [720 ILCS 5/12-3.05(a)(5)] was not a detainable offense under 725 ILCS 5/110-6.1(a)(1.5). Section 12-3.05(a)(5) provides that a person commits aggravated battery when, in committing a battery, he or she knowingly strangles another. A defendant may be denied pretrial release where charged with a forcible felony as defined in section 110-6.1(a)(1.5). That section contains specifically-enumerated forcible felonies, as well as a residual clause defining a forcible felony as "any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement."

Aggravated battery by strangulation falls within the residual clause of Section 110-6.1(a)(1.5). In reaching this conclusion, the appellate court declined to follow the holdings in **People v. Grandberry**, 2024 IL App (3d) 230546, and **People v. Brooks**, 2024 IL App (4th) 240503, which found that the reference to "any other felony" in the residual clause must refer to felonies *other than* aggravated battery, which is already enumerated in the statute, and not merely to different subsets of aggravated battery. Instead, the appellate court here found that the residual clause is meant to serve as a "catch-all," allowing courts to examine the facts and circumstances of each case and determine whether the charged conduct threatened or caused great bodily harm. Given that the circuit court expressly stated that but for **Grandberry** it would have ordered defendant detained, noting its finding that his conduct threatened great bodily harm or permanent disability or disfigurement, the appellate court concluded that defendant's conduct was "precisely the conduct the legislature contemplated when including the residual clause."

The appellate court reversed the order denying the State's petition to detain and remanded the matter to the circuit court for further proceedings.

People v. Smith, 2024 IL App (2d) 240168 Defendant was charged with armed violence and attempt murder, and the State filed a petition for pretrial detention. At the hearing on the petition, defendant asserted that he should not be detained because he was acting in defense of another. The trial court disagreed, and the appellate court affirmed.

A circuit court is not required to accept a defendant's claim of justification over contrary evidence. The question is whether there was sufficient evidence to support the circuit court's findings, so long as those findings were not unreasonable. Here, while defendant claimed defense of another, the State's evidence suggested that defendant was the aggressor and was not justified in stabbing the victim multiple times. Accordingly, the court did not err in finding that the State had met its burden of showing by clear and convincing evidence that defendant had committed a detainable offense. Additionally, the court's dangerousness finding was supported by evidence of defendant's criminal history and the fact he had additional criminal charges pending against him. And, those same factors were a proper basis for the court to conclude that no conditions could mitigate the threat posed by his release.

People v. Challans, 2024 IL App (5th) 240353 Defendant was charged with aggravated assault and the State filed a petition for pretrial detention, which the circuit court granted. The appellate court reversed because aggravated assault is not a detainable offense under section 110-6.1(a)(7). The court rejected the State’s argument that detention was appropriate because defendant “could have been charged” with attempted aggravated stalking or attempted domestic battery, which are detainable offenses. Nothing in the statute suggests the legislature intended for pretrial detention based on uncharged offenses.

People v. Miller, 2024 IL App (1st) 240588 Defendant was charged with first degree murder based on an allegation that he punched the victim a single time with a bare fist, killing him. The State filed a petition for pretrial detention, which the trial court granted. Defendant appealed.

Defendant argued that the State failed to meet its burden to prove by clear and convincing evidence that the proof was evident or the presumption great that defendant committed first degree murder because hitting the victim a single time with a bare fist did not show that he intended to cause death or great bodily harm or that he knew his acts created a strong probability of death or great bodily harm. He also challenged the court’s dangerousness finding.

The evidence proffered in the circuit court tended to show that defendant and the victim engaged in a verbal dispute, defendant punched the victim a single time, and the victim fell down, hitting his head a severing an artery resulting in his death. Illinois law provides that death is not ordinarily contemplated as a natural consequence of a blow from a bare fist. The appellate court expressed doubt about the propriety of a first degree murder charge under these facts and also questioned whether the dangerousness finding could be sustained, but did not ultimately determine either issue. Instead, given that the circuit court appeared to be unaware of the applicable legal standards and principles, the appellate court remanded for additional proceedings, instructing that the circuit court “consider whether defendant should be entitled to pretrial release,” in light of the applicable law.

People v. Brooks, 2024 IL App (4th) 240503 Under 725 ILCS 5/110-6.1(a)(1.5), a defendant may be detained where charged with a forcible felony enumerated in the statute or “any other felony which involves the threat or infliction of great bodily harm.” Aggravated battery resulting in great bodily harm or permanent disability or disfigurement is an enumerated detainable offense. Here, though, defendant was charged with aggravated battery based solely on the location (public place of accommodation), which is not an enumerated offense. And, the location-based aggravated battery charge did not fall under the residual clause for those involving the “threat or infliction of great bodily harm” because that clause refers only to “other” felonies, which refers to felonies other than aggravated battery and not different forms of aggravated battery. Thus, defendant’s aggravated battery charge was not detainable.

But defendant was also charged with a Class 4 version of mob action. And, while mob action is not specifically enumerated as a detainable offense, it does fit within the residual clause where it involves “the threat or infliction of great bodily harm.” To determine whether a charge implicates the residual clause, the court looks to the specific facts and details of the charged offense. Here, the mob action charge alleged that defendant assembled with another for the purpose of committing a battery. The proffered facts were that defendant and another individual struck the victim multiple times, the victim was bleeding, and the victim suffered multiple injuries including multiple missing or broken teeth and a concussion. This was

sufficient to satisfy the requirements of the residual clause, and defendant's mob action charge qualified as a detainable offense.

People v. Delaney, 2024 IL App (5th) 240231 The State charged defendant with aggravated fleeing and sought pretrial detention, arguing defendant committed a forcible felony and that his pretrial release posed a real and present threat to any person or the community. While aggravated fleeing is not an enumerated forcible felony under section 110-6.1(a)(1.5), the State argued that it falls under the residual clause as “any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.” The State also argued that aggravated fleeing falls into the traditional definition of “forcible felony” in the Criminal Code, which includes “any other felony which involves the use or threat of physical force or violence against an individual.” See [720 ILCS 5/2-8](#).

The trial court denied the State's petition. Defendant led police on a high speed chase which eventually entered oncoming traffic and struck a vehicle head-on, but defendant did not injure anyone, and it did not appear defendant “contemplated” the use of force.

The appellate court reversed. While the Act's inclusion of the phrase “great bodily harm or permanent disability or disfigurement” creates a higher burden than section 2-8's “use or threat of physical force or violence” in terms of the severity of any threatened injury, in other ways the Act's definition is broader – it lacks an intent requirement, a limitation that the threat be against a specific individual, or that defendant contemplated the threat of great bodily harm. Thus, if the severity of harm is at issue, the Act may encompass fewer offenses than section 2-8. See, **People v. Minssen**, 2024 IL App (4th) 231198. But in this case, the trial court relied on defendant's lack of intent in finding the offense was not detainable. The appellate court would not read such a limitation into the Act. Whether defendant contemplated it or not, his act of speeding through oncoming traffic and crashing head-on with another vehicle threatened great bodily harm or permanent disability or disfigurement. The trial court's order granting pretrial release was reversed and the cause remanded for a new hearing on the State's amended petition to deny pretrial release.

People v. Rodriguez, 2024 IL App (2d) 240077 Charges of Class 4 aggravated unlawful use of a weapon qualified as detainable offenses. While they were not specifically enumerated in [725 ILCS 5/110-6.1\(a\)\(1.5\)](#), as charged they fit within Section 110-6.1(a)(6) because the charges were non-probationable. The fact that defendant was eligible for the first time weapons offense program under [730 ILCS 5/5-6-3.6](#) did not render those charges “probationable” because that program is more akin to supervision.

Further, the State met its burden to show by clear and convincing evidence that defendant posed a real and present threat to the community that could not be mitigated by conditions of release. During the charged incident here, defendant shot and killed someone. While there was evidence that the shooting was in defense of another, the evidence remained that defendant was in possession of firearms and ammunition and committed the instant offense while on supervision for a prior offense. That evidence was sufficient to sustain the State's burden.

People v. Woods, 2024 IL App (4th) 240190 The State proved defendant committed a detainable offense under [725 ILCS 5/110-6.1\(a\), \(e\)\(1\)](#).

The State alleged that defendant committed Class X possession of a controlled substance with intent to deliver, a detainable offense under the Act. The State's burden was to prove by clear and convincing evidence that the proof is evident or the presumption great

that he committed the offense. The State's proffer showed police found the cocaine when they executed a search warrant at defendant's parents' house. Personal documents belonging to defendant were found in the same room as the drugs. Based on this evidence, the trial court did not abuse its discretion in finding the State proved commission of the offense.

People v. Samuels, 2024 IL App (3d) 230782 The State filed petitions for pretrial detention in three different cases, and the circuit court granted all three petitions, finding in the first case that defendant posed a flight risk, while in the latter two cases he posed a threat to safety.

Defendant argued as to the first case – a violation of probation – the pretrial detention order should be vacated because defendant had already pled guilty to the offense and received a sentence of probation. The State argued forfeiture, noting the issue was not raised below. The appellate court agreed.

The majority went on to find that the claim lacked merit. When the State files a petition to revoke probation, and the court has not held a hearing on the petition, a defendant is entitled to pretrial release “unless the alleged violation is itself a criminal offense in which case the offender shall be admitted to pretrial release on such terms as are provided in the Code....” **730 ILCS 5/5-6-4(b)**. Here, the VOP was based on the criminal charge which formed the basis for the State's petition for detention in Case 3 (armed habitual criminal). Defendant admitted the State proffered specific articulable facts as to that charge and did not challenge this proof on appeal. Thus, defendant effectively conceded the charge was a qualifying detainable offense.

The dissent disagreed, noting a VOP is not a criminal charge in and of itself, and that section 5-6-4(b) states a defendant “shall be admitted to pretrial release on such terms as are provided in the Code.” The statute does not, as it does in other sections, merely state that such defendants are eligible for release.

While defendant also argued that the detention order in Case 2 should be vacated because the drug charges in that case were probationable and non-detainable, the appellate court disagreed. Defendant was charged with two counts of Class-1-felony delivery of a controlled substance, which is non-probationable if defendant had been convicted of a Class 1 or greater felony within 10 years. The State proffered that defendant had been convicted of the same offense in 2017. This information was also included in his criminal history as listed in the pretrial risk assessment. Accordingly, the two offenses with which defendant was charged in Case 2 were not probationable.

People v. Luna, 2024 IL App (2d) 230568 The order granting the State's petition to deny pretrial release was affirmed. Defendant was charged with aggravated DUI after being found passed out in the driver's seat of a vehicle with an empty bottle of alcohol next to him. The vehicle had sustained significant damage and was found in a parking lot where there was corresponding damage to a utility pole and business sign. Defendant had seven prior DUI convictions and had not had a driver's license since 1989. The trial court did not err in finding the proof evident or the presumption great that defendant committed the charged offense, even in the absence of specific evidence that anyone saw defendant driving, that the keys were in the ignition, or that the vehicle had been recently driven. The evidence required at a detention hearing is less than that required at trial.

Likewise, the court did not err in finding that the State showed by clear and convincing evidence that defendant's release would pose a real and present threat to safety. Defendant had seven prior DUI convictions, and the evidence here demonstrated that

defendant's vehicle crashed into two separate objects while trying to exit the parking lot. This was sufficient to make an individualized determination of dangerousness.

Finally, the court did not err in finding that no conditions of release could mitigate the threat to the community. Defendant had not had a valid driver's license for more than 30 years but had continued to violate DUI laws. Thus there was a real and present threat he would continue to drink and drive, and that threat could not be mitigated by a SCRAM device or electronic monitoring where such devices would not actually prevent defendant from drinking and driving.

People v. Mancilla, 2024 IL App (2d) 230505 The order granting the State's petition to deny pretrial release was affirmed. The State's evidence at the detention hearing, consisting of a police synopsis, was sufficient to sustain the State's burden. The synopsis contained a lengthy narrative of events, including allegations of violent conduct by defendant and multiple identifications of defendant as the perpetrator. And, many of the dangerousness factors were present here, including that the offense involved a firearm, defendant had a violent criminal history, and one of the victims here suffered great bodily harm and was at least 60 years old.

Defendant's remaining claims of error were simply checked boxes on the notice of appeal form and were not supported by evidence or argument in the notice. Further, no memorandum was filed on appeal. Accordingly, the court deemed those contentions forfeited, but also went on to conclude they were without merit.

Finally, the court discussed the ethical obligations of defense counsel in appeals under the SAFE-T Act and held that under Rule 3.1 of the Rules of Professional Conduct, defense counsel is required to inform the court "as to whether the defendant's claims are meritorious and, if not, to withdraw any frivolous claims or even the entire appeal." While the SAFE-T Act provides a streamlined appeals procedure, it does not obviate defense counsel's ethical obligations to present only meritorious claims and contentions. Compliance with the **Anders v. California, 386 U.S. 738 (1967)** procedure is not required in appeals under Rule 604(h). Instead, attorneys can withdraw non-meritorious claims by filing an amended notice of appeal or by statement either in counsel's memorandum or the notice filed in lieu of such a memorandum.

People v. Pitts, 2024 IL App (1st) 232336 The trial court ordered defendant detained before trial, finding he committed the detainable offense of armed violence. Defendant argued that the State failed to prove by clear and convincing evidence that defendant committed armed violence. The appellate court affirmed. The majority did so using the manifest weight of the evidence standard of review. The majority explained that while some courts have reviewed this issue using an abuse of discretion standard, these courts improperly adopted that standard from cases that reviewed bail and detention under the prior statute. Unlike this earlier statute, the SAFE-T Act, which controls the issue presented here, involves an evidentiary burden – clear and convincing evidence – which is traditionally reviewed using the manifest weight of the evidence standard. A concurring justice advocated for the abuse of discretion standard, arguing that the hearings that typically occur under the SAFE-T Act don't involve the type of evidence – witness testimony, documents, physical evidence – that requires credibility determinations.

The trial court's determination here was not against the manifest weight of the evidence where the State's proffer described defendant carrying a garbage bag in which police found both a firearm and controlled substances, meeting the elements of armed violence.

People v. Parker, 2024 IL App (1st) 232164 The trial court granted the State’s petition to detain defendant before trial, finding he committed the detainable offense of UUW/felon, and that he posed a threat to the community.

Defendant first argued that the court abused its discretion in failing to adequately consider that the evidence of the charged crime may have been obtained as the result of an unlawful search and seizure. The State’s proffer below raised the distinct possibility that the gun was recovered pursuant to an illegal **Terry** frisk. Under section 110-6.1(f)(6), a defendant may argue that the “proof of the charged crime may have been the result of an unlawful search or seizure, or both,” and such evidence “is relevant in assessing the weight of the evidence against the defendant.” Defendant pointed out that this provision represents a change from prior law, which deemed the legality of the search or seizure irrelevant. He argued at the detention hearing that the court should consider the likely illegality of the seizure in determining whether the State met its burden of proving defendant committed the offense.

But the appellate court noted that the new provision is contained in the subsection describing the conduct of hearings, not in the subsection listing the factors relevant to any of the requirements upon which the State must meet its burden. And this provision states that the normal rules of admissibility are not applicable to detention hearings. Ultimately, the question is still whether defendant committed the offense. Considering all of the relevant statutory provisions, the appellate court found no error. The circuit court properly considered defendant’s fourth amendment argument, which it credited favorably throughout the duration of the hearing, then balanced that argument against the State’s proffer. Its ultimate determination that the State had met its burden was not arbitrary or unreasonable.

Defendant also argued that the State failed to meet its burden of proving, by clear and convincing evidence, that he posed a real and present threat to the safety of any person or the community, given that there was no evidence of a threat and he received a low pretrial services assessment score. The appellate court disagreed. The circuit court properly considered the relevant factors outlined in section 110-6.1(g). It found that while possession of a gun is not threatening *per se*, this particular gun was an unsecured, loaded, semiautomatic with an extended magazine, and defendant did not have proper licensing. One of his four prior felonies, which included other crimes of violence, was for this same offense. This history, plus the fact that defendant escaped electronic monitoring in the past, led the appellate court to conclude that the finding was not against the manifest weight of the evidence.

People v. Saucedo, 2024 IL App (1st) 232020 Witness statements regarding the charged offense are the sort of “reliable evidence” on which the State may rely to establish that the proof is evident or the presumption great that defendant committed the detainable offense of domestic battery. Given that the SAFE-T Act specifically requires the State to tender such statements to the defendant prior to a hearing on a petition to detain, it would be anomalous to then find that such statements were insufficient evidence of defendant’s likely commission of the offense. The court held that it was the legislature’s intent that such statements would be sufficient proof that defendant committed the offense. Accordingly, where the State relied on the witness’s statement describing the offense, the circuit court did not manifestly err in finding that the proof was evident or the presumption great that defendant committed the charged offense.

And, the court did not err in finding that defendant posed a threat to the safety of a person and the community. Defendant, while intoxicated, assaulted a relative by punching and choking him and trying to hit him with a rock. A short time later, defendant physically

attacked a passerby without provocation. Additionally, defendant had a history of violent behavior, including cruelty to animals, and had a history of engaging in violent acts while intoxicated.

Finally, the court did not abuse its discretion in finding that no conditions could mitigate the real and present threat to safety. While defendant previously had been compliant with electronic monitoring during a term of parole, he had since chosen to use alcohol and commit the instant offenses. Defendant knew of his propensity to behave violently while using alcohol, yet made the conscious choice to do so here. No conditions would mitigate the danger that he would make the same choice again.

The special concurrence discussed the applicable standard of review at length, arguing that rather than applying a bifurcated manifest-error and abuse-of-discretion standard, detention decisions should be reviewed *de novo*.

People v. Grandberry, 2024 IL App (3d) 230546 Defendant was charged with aggravated battery of a peace officer and nurse. She was detained as a danger to others under the SAFE-T Act. Defendant argued that she did not commit a detainable offense because aggravated battery based on victim status is not a forcible felony under the Act. Rather, aggravated battery is a forcible felony only when it involves great bodily harm. See **725 ILCS 5/110-6.1(a)(1.5)** (defining “forcible felony” as, *inter alia*, “aggravated battery resulting in great bodily harm or permanent disability or disfigurement.”) The State argued that defendant was alleged to have bitten the officer’s finger, meaning the offense fell under the residual clause of the definition: “any other felony that involved the threat of or infliction of great bodily harm or permanent disability or disfigurement.”

The appellate court agreed with defendant. Section 110-6.1(a)(1.5) specifically lists 18 forcible felonies, one of which is “aggravated battery resulting in great bodily harm or permanent disability or disfigurement.” It then states: “or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.” Even if defendant’s conduct threatened or inflicted great bodily harm, the “any other felony” language meant that the residual clause does not include any listed felony. Because aggravated battery was listed, it could not be an “other felony.” The court remanded to the trial court with orders to determine the appropriate conditions for pretrial release.

People v. Davis, 2023 IL App (1st) 231856 The State met its burden of proving by clear and convincing evidence that the proof was evidence or the presumption great that defendant committed the detainable offense of unlawful use of a weapon by a felon where the State’s proffer showed that defendant was the sole backseat passenger in a vehicle stopped for a traffic violation, defendant was seen reaching toward the floor of the vehicle, and the police subsequently found a firearm inside a bag in the area where defendant had been reaching.

Similarly, the State met its burden of proving defendant posed a real and present threat to the safety of the community. In assessing dangerousness, the court may consider the nature and circumstances of the charged offense and whether it is a violent crime, whether defendant’s criminal history is indicative of violence, whether defendant possesses or has access to weapons, the weight of the evidence against defendant, and the nature and seriousness of any threat posed by defendant’s release. Here, both the charged offense and defendant’s prior conviction of aggravated battery qualify as violent crimes. The gun defendant was alleged to have possessed was a “ghost gun,” meaning it had no serial number making it difficult to trace, and untraceable weapons are inherently dangerous. Thus, the trial court did not abuse its discretion in finding that defendant’s release posed a threat to the safety of the community.

And, the court did not abuse its discretion in concluding that no conditions could mitigate any threat to the safety of the community. Conditions may include reporting requirements, restrictions on travel, no-contact orders, electronic monitoring and other reasonable conditions. Here, due to the nature of the threat posed by defendant's possession of an untraceable weapon, coupled with his criminal history and his high score on a risk-to-reoffend assessment, no available conditions could mitigate the threat.

Finally, defendant waived any claim of error from the State's failure to tender a copy of his criminal history prior to the detention hearing as required by [725 ILCS 5/110-6.1\(f\)\(1\)](#). Defendant did not raise the issue below. And, the appellate court concluded that he acquiesced to the admission of his criminal history at the detention hearing by not objecting and thus he could not raise the issue as a matter of plain error. Regardless, the court would have found no prejudice where the record showed defense counsel had adequate knowledge of defendant's criminal history and there were no alleged inaccuracies in what was presented to the court.

People v. Horne, 2023 IL App (2d) 230382 Defendant was charged with aggravated battery of a peace officer and domestic battery. The trial court granted the State's petition to detain defendant on dangerousness grounds. Defendant appealed.

Defendant first argued the written synopsis used at the **Gerstein** hearing to establish probable cause was insufficient evidence that he committed an offense that qualified for detention under the Pretrial Fairness Act. He contended that the lack of testimony or physical evidence meant the State did not meet the "clear and convincing evidence" standard. The appellate court disagreed. The written report described how the police encountered the complainant outside of her home, her allegation that defendant punched her, and the officers' encounter with the defendant during which he pushed one of the officers in the forehead. The report was detailed and not inherently incredible, and thus no error occurred in finding clear and convincing evidence that defendant committed the offenses.

Nor did the trial court err in determining that defendant poses a real and present threat to the complainant and the community, specifically the police. The trial court noted that the police synopsis related statements defendant made to the officers while he was restrained, including threats to torture and kill them. Defendant was also on probation for criminal damage to property, evidence that reasonably reflected he does not follow court orders.

Finally, the court did not err in finding no set of pretrial release conditions reasonably ensured the safety of others. The PFA requires the trial court, in a detention order, to make written findings summarizing why a defendant should be denied pretrial release, "including 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." The court did so here, citing the nature of the offense, defendant's history of violence, and the fact that he lived with complainant.

§6-5(e) "Threat to Safety"

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People v. Smith, 2024 IL App (2d) 240168 Defendant was charged with armed violence and attempt murder, and the State filed a petition for pretrial detention. At the hearing on the petition, defendant asserted that he should not be detained because he was acting in defense of another. The trial court disagreed, and the appellate court affirmed.

A circuit court is not required to accept a defendant's claim of justification over contrary evidence. The question is whether there was sufficient evidence to support the circuit court's findings, so long as those findings were not unreasonable. Here, while defendant claimed defense of another, the State's evidence suggested that defendant was the aggressor and was not justified in stabbing the victim multiple times. Accordingly, the court did not err in finding that the State had met its burden of showing by clear and convincing evidence that defendant had committed a detainable offense. Additionally, the court's dangerousness finding was supported by evidence of defendant's criminal history and the fact he had additional criminal charges pending against him. And, those same factors were a proper basis for the court to conclude that no conditions could mitigate the threat posed by his release.

People v. Romine, 2024 IL App (4th) 240321 The appellate court rejected defendant's argument that the court erred in detaining him pending trial for killing his mother. Defendant argued that the State failed to prove by clear and convincing evidence that he was a danger to the community and that no release conditions could mitigate the danger, where the evidence showed defendant shot his mother after she attacked him with a knife.

The court noted that while there was some evidence of self-defense, and the commission of a single violent act by someone with an otherwise spotless record might not warrant detention in all circumstances, in this case several factors justified a finding of dangerousness. Defendant did not alert the police to the shooting, led the police on a car chase, lied to police when they asked if his mother was still alive, and told the police a burglar named "John" shot her. Thus, the trial court was not required to accept defendant's contention that he acted in self-defense when defendant's attempts to evade responsibility permitted other conclusions concerning his culpability and, by extension, his potential dangerousness.

People v. Miller, 2024 IL App (1st) 240588 Defendant was charged with first degree murder based on an allegation that he punched the victim a single time with a bare fist, killing him. The State filed a petition for pretrial detention, which the trial court granted. Defendant appealed.

Defendant argued that the State failed to meet its burden to prove by clear and convincing evidence that the proof was evident or the presumption great that defendant committed first degree murder because hitting the victim a single time with a bare fist did not show that he intended to cause death or great bodily harm or that he knew his acts created a strong probability of death or great bodily harm. He also challenged the court's dangerousness finding.

The evidence proffered in the circuit court tended to show that defendant and the victim engaged in a verbal dispute, defendant punched the victim a single time, and the victim fell down, hitting his head a severing an artery resulting in his death. Illinois law provides that death is not ordinarily contemplated as a natural consequence of a blow from a bare fist. The appellate court expressed doubt about the propriety of a first degree murder charge under these facts and also questioned whether the dangerousness finding could be sustained, but did not ultimately determine either issue. Instead, given that the circuit court appeared to be unaware of the applicable legal standards and principles, the appellate court remanded for additional proceedings, instructing that the circuit court "consider whether defendant should be entitled to pretrial release," in light of the applicable law.

People v. Carpenter, 2024 IL App (1st) 240037 On appeal from an order for pretrial detention, the circuit court's factual determinations are reviewed under the manifest weight of the evidence standard. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. The circuit court's ultimate determination as to whether the defendant is entitled to pretrial release is reviewed for an abuse of discretion.

Here, the court's finding that the proof was evident or the presumption great that defendant committed the detainable offense of predatory criminal sexual assault of a child was not against the manifest weight of the evidence. The State's proffer included allegations of sexual acts between defendant and the five-year-old victim, the immediate outcry by the victim and her sister to their mother, and defendant's DNA in a sample taken from the victim's underwear. While the defense presented evidence of inconsistencies between the victim's statements and her sister's statements, the court considered that argument in the context of all of the evidence presented. The court's finding that the State met its burden was not against the manifest weight of the evidence. Nor was the court's finding that defendant presents a real and present threat to any person or the community where the record showed that the court expressly considered factors set forth at [725 ILCS 5/110-6.1\(g\)](#). And, considering the nature and circumstances of the charged offense, the court did not err in finding that no conditions could mitigate the safety risk posed by defendant's release.

The dissenting justice would have held that the court's statement that there was no way to guarantee that defendant would not come into contact with other children if released was conclusory and inadequate to satisfy the requirement that the court make individualized findings before ordering pretrial detention. The court was not presented with any evidence about defendant's potential to come into contact with minors if released, and a decision to detain cannot be based on the nature of the charges alone.

People v. Johnson, 2024 IL App (1st) 240154 The trial court's finding that defendant posed a real and present threat to the community was not against the manifest weight of the evidence. Defendant was charged with unlawful use of a weapon by a felon when a loaded firearm was found in his waistband during a traffic stop. At the time of his arrest, defendant was on parole for an armed robbery conviction which also involved a firearm. Defendant's possession of a loaded firearm just six months after his release from prison demonstrated a disregard of the conditions of his release and supported the court's finding that defendant's pretrial release would pose a danger to the public.

People v. Schulz, 2024 IL App (1st) 240422 Defendant was charged with possessing and disseminating child pornography, and was denied pretrial release after the court found he posed a danger to the community and no conditions could mitigate that risk. He was subsequently charged with two superceding indictments containing over 50 counts involving child pornography. At his next hearing the court continued his pretrial detention. Defendant filed a timely appeal from the initial detention order, arguing the court erred in finding him a threat to the community even though he had no prior criminal history and received a low pretrial assessment score. He also contended the court erred in finding no conditions of release would mitigate the threat he posed to the community. The appellate court affirmed.

The circuit court's finding that defendant poses a real and present threat to the safety of the community was not against the manifest weight of the evidence. The court adequately considered several of the statutory factors of dangerousness. The State's proffer showed that defendant possessed and disseminated pornography involving young children, who are vulnerable members of the community. The circuit court noted the violent nature of the

alleged sex crimes, “which not only revictimized the very young children every time the videos were viewed and shared but also fueled the demand for the production of new videos and thereby caused the ongoing sexual assaults of children.”

Nor did the circuit court abuse its discretion when it found no conditions adequately mitigated the risk defendant posed. Defendant argued that the State’s only argument on this point was that the crimes occurred within defendant’s home, a point on which the State did not elaborate. The circuit court’s ruling, however, adequately explained that it did not believe any conditions could thwart further criminal activity, where defendant’s crime could be committed with a cellphone.

People v. Rodriguez, 2024 IL App (2d) 240077 Charges of Class 4 aggravated unlawful use of a weapon qualified as detainable offenses. While they were not specifically enumerated in **725 ILCS 5/110-6.1(a)(1.5)**, as charged they fit within Section 110-6.1(a)(6) because the charges were non-probationable. The fact that defendant was eligible for the first time weapons offense program under **730 ILCS 5/5-6-3.6** did not render those charges “probationable” because that program is more akin to supervision.

Further, the State met its burden to show by clear and convincing evidence that defendant posed a real and present threat to the community that could not be mitigated by conditions of release. During the charged incident here, defendant shot and killed someone. While there was evidence that the shooting was in defense of another, the evidence remained that defendant was in possession of firearms and ammunition and committed the instant offense while on supervision for a prior offense. That evidence was sufficient to sustain the State’s burden.

People v. Woods, 2024 IL App (4th) 240190 The trial court did not err when it ordered pretrial detention after finding defendant posed a real and present threat to the community. Defendant argued that the trial court’s finding of dangerousness was exclusively and improperly based on the general notion that drug offenses harm society, and not on any particular facts showing defendant posed a threat. The appellate court disagreed. The decisions cited by defendant which held that generalized concern over the danger of drug-dealing is insufficient to meet the State’s burden under the statute, **People v. Norris, 2024 IL App (2d) 230338-U** and **People v. Drew, 2024 IL App (2d) 230606-U**, failed to consider that the legislature has already found drug-dealing threatens the safety of the community, and neither case adequately considered those defendants’ criminal history. The court here found that the Class X drug offense, plus defendant’s multiple prior convictions for drug-dealing, warranted a finding of dangerousness and pretrial detention.

People v. Brown, 2024 IL App (2d) 230489 The trial court’s detention order was sufficient where it checked a box indicating defendant committed a detainable offense – aggravated DUI involving death – and that defendant was a threat to the safety of the community, even though it contained no written findings.

Defendant alleged the order lacked the individual details and findings required by the Act. The appellate court disagreed, holding that while section 110-6.1(h)(1) requires a written summary of the reasons for denying release, courts have held that the order can be supplemented with oral findings. Here, the order, with its pre-printed findings, plus the oral findings, provided an adequate basis for pretrial detention. Defendant drove 79 mph in a residential area, ramming another car and killing two people. He was ticketed and released pending further investigation and, despite being told there would be additional charges, was arrested in Wisconsin shortly thereafter for cocaine possession. The trial court found

defendant's conduct during the offense, his subsequent substance-abusing behavior, and the lack of effective conditions (the court noted that GPS would only allow the authorities to monitor his past movements), required detention. The appellate court found no abuse of discretion in this finding.

The appellate court also pointed out that the lack of statewide forms has resulted in variance among the different counties' pretrial release or detention orders. Some forms lack the necessary blank space with lines for individualized findings. The court encouraged counties to adopt forms with space for specific findings, preferably with pre-printed lines allowing for typed text.

People v. Sorrentino, 2024 IL App (1st) 232363 After spending decades in prison on a murder conviction, defendant was granted a new trial on the basis that his trial judge, Thomas Maloney, had been convicted of bribery charges as part of Operation Greylord, including having taken a bribe from one of the co-defendants in defendant's case. While awaiting retrial, defendant filed a motion for pretrial release, and the State filed a petition to detain. Following a hearing, the trial court ordered defendant detained on the basis that he posed a threat to the safety of any person or the community based on the facts of the case. The court specifically noted that the State's evidence included an identification by one of the victims and defendant's admissions to the offense. The court also found that no conditions could mitigate the threat because defendant was "accused of shooting at two persons in the trunk of [a] vehicle."

The appellate court concluded that the trial court erred in finding defendant posed a threat. The State's proffer at the detention hearing consisted of evidence of defendant's guilt of the charged offense as well as his disciplinary record in prison, consisting mostly of technical violations, none of which were less than 10 years old. This evidence failed to demonstrate that defendant posed a "present" threat to anyone or to the community at large. And, defendant's evidence at the hearing showed that he is seriously ill, suffering from liver cancer and a variety of other ailments. Under these circumstances, the State failed to meet its burden of proving that defendant posed a real and present threat. The matter was remanded for the circuit court to consider conditions for defendant's release.

People v. Vance, 2024 IL App (1st) 232503 Defendant appealed from an order granting the State's petition to deny pretrial release, and the appellate court affirmed. The trial court did not err in finding defendant posed a threat to the community where he was arrested after fleeing from a traffic stop which involved a stolen vehicle and where he was found with a machine gun. The court specifically noted the danger posed by the type of gun involved, as well as the fact that there were two other people in the vehicle at the time of the stop who were also armed. As to conditions of release, the court specifically reviewed options with a representative of pretrial services and concluded that conditions were insufficient to mitigate the threat of dangerousness. That finding was not error where the court clearly considered several options, including electronic monitoring and home detention, and found them wanting because of the delay in communicating any violations to the court.

The appellate court also found that the trial court did not violate the requirement of **725 ILCS 5/110-6.1(h)(1)** that it enter written findings summarizing its reasoning for denying release. The court's written order failed to detail why not set of conditions could mitigate the threat of dangerousness, and instead included only its conclusion on that point. But, the court gave a detailed oral explanation of its findings, and the appellate court found that the oral explanation was adequate here. It would not "serve the ends of justice" to remand for the

court to produce a written order mirroring the transcribed record of its specific and thorough oral findings.

People v. Mancilla, 2024 IL App (2d) 230505 The order granting the State’s petition to deny pretrial release was affirmed. The State’s evidence at the detention hearing, consisting of a police synopsis, was sufficient to sustain the State’s burden. The synopsis contained a lengthy narrative of events, including allegations of violent conduct by defendant and multiple identifications of defendant as the perpetrator. And, many of the dangerousness factors were present here, including that the offense involved a firearm, defendant had a violent criminal history, and one of the victims here suffered great bodily harm and was at least 60 years old.

Defendant’s remaining claims of error were simply checked boxes on the notice of appeal form and were not supported by evidence or argument in the notice. Further, no memorandum was filed on appeal. Accordingly, the court deemed those contentions forfeited, but also went on to conclude they were without merit.

Finally, the court discussed the ethical obligations of defense counsel in appeals under the SAFE-T Act and held that under Rule 3.1 of the Rules of Professional Conduct, defense counsel is required to inform the court “as to whether the defendant’s claims are meritorious and, if not, to withdraw any frivolous claims or even the entire appeal.” While the SAFE-T Act provides a streamlined appeals procedure, it does not obviate defense counsel’s ethical obligations to present only meritorious claims and contentions. Compliance with the **Anders v. California, 386 U.S. 738 (1967)** procedure is not required in appeals under Rule 604(h). Instead, attorneys can withdraw non-meritorious claims by filing an amended notice of appeal or by statement either in counsel’s memorandum or the notice filed in lieu of such a memorandum.

People v. Crawford, 2024 IL App (3d) 230668 Defendant was charged with stalking and criminal damage to property, and the State filed a verified petition to deny pretrial release alleging that he posed a real and present threat to the safety of the victim of those offenses. The acts upon which the charges were based occurred seven months prior and involved allegations that defendant slashed his ex-girlfriend’s tires, attempted to FaceTime her and call her more than 30 times, and had previously followed her to work and yelled at her about sleeping with other men. A pretrial risk assessment indicated defendant was a level 4 risk (out of 6). And, defendant had pending cases for unlawful restraint and interference with the reporting of domestic violence in McHenry County and domestic battery in Lake County, neither of which involved this same victim. He also had prior convictions for assault and murder in Texas. The defense presented evidence that there had been no further contact with the alleged victim in this case, defendant was working two jobs and had moved to another city, and defendant and his new girlfriend were expecting a baby. The court ordered defendant detained, citing defendant’s criminal history and pending cases. Defendant asked to be placed on electronic monitoring so that he could work, and the court denied that request, stating that it was “responsible to answer to the community as well.”

At a subsequent hearing a couple of weeks later, the court asked if there had been any change in circumstances since the original detention order. When counsel indicated that there had not been, the court stated it was standing by its original findings to detain. Defendant filed a notice of appeal from that order.

The appellate court first found that the notice of appeal was sufficient to allow the court to consider both the original detention order and the order continuing detention. Notices of appeal are to be liberally construed and confer jurisdiction over all steps in the “procedural progression” leading to the judgment specified in the notice.

On the merits, the appellate court found that the trial court abused its discretion in detaining defendant. Under the SAFE-T Act, where the defendant is charged with stalking, the State must prove that the defendant's release poses "a real and present threat to the safety of a victim of the alleged offense" and that detention is necessary "to prevent fulfillment of the threat upon which the charge is based." 725 ILCS 5/110-6.1(a)(2). It is not enough to find that defendant is a threat to some other individual or the community as a whole, which the court appeared to have done here. The State's evidence failed to establish that defendant continued to be a threat to the alleged victim of the charged offense or that no conditions would mitigate any threat. Defendant had remained free for more than seven months after the charged conduct occurred. During that time, he abided by the terms of an order of protection which the victim obtained against him, moved away, and seemingly had moved on from that prior relationship. The appellate court reversed the detention order and remanded for the court to determine which conditions to impose and to release defendant.

People v. Reed, 2023 IL App (1st) 231834 Defendant was charged with unlawful possession of a firearm after having his FOID card revoked, a detainable offense under the SAFE-T Act. The State filed a petition to detain, and the court held a hearing and found that the State had met its burden of establishing that defendant was eligible for detention and that he posed a threat to the community, he was a flight risk, and no conditions could mitigate the real and present threat posed. Defendant filed a motion to reconsider, which was denied after the parties presented additional evidence and argument at a hearing.

The appellate court found that the circuit court's findings that defendant was detainable and was a danger to the community were not against the manifest weight of the evidence. Defendant had offered evidence of a possible defense to the charge. But, the viability of the defense was not a certainty, and the State had offered enough evidence to meet its burden regardless. In finding that defendant posed a threat to the community, the circuit court properly relied on the nature of the charge, defendant's background, his possession of multiple weapons, his possession of multiple driver's licenses, and the existence of an order of protection against him.

The appellate court declined to review the circuit court's flight-risk finding, noting that it was unnecessary in light of its affirmance of the court's dangerousness finding. And, with regard to the finding that no conditions could mitigate the safety risk to the community, the appellate court found that the circuit court had not abused its discretion. Defendant was arrested at a hotel in possession of a loaded pistol, two loaded semiautomatic firearms, and multiple magazines of ammunition. He was agitated during his interaction with the police, and had a revoked FOID card. These facts were sufficient to support the court's finding that no conditions could mitigate the threat he posed to the community.

People v. Parker, 2024 IL App (1st) 232164 The trial court granted the State's petition to detain defendant before trial, finding he committed the detainable offense of UUW/felon, and that he posed a threat to the community.

Defendant first argued that the court abused its discretion in failing to adequately consider that the evidence of the charged crime may have been obtained as the result of an unlawful search and seizure. The State's proffer below raised the distinct possibility that the gun was recovered pursuant to an illegal **Terry** frisk. Under section 110-6.1(f)(6), a defendant may argue that the "proof of the charged crime may have been the result of an unlawful search or seizure, or both," and such evidence "is relevant in assessing the weight of the evidence against the defendant." Defendant pointed out that this provision represents a

change from prior law, which deemed the legality of the search or seizure irrelevant. He argued at the detention hearing that the court should consider the likely illegality of the seizure in determining whether the State met its burden of proving defendant committed the offense.

But the appellate court noted that the new provision is contained in the subsection describing the conduct of hearings, not in the subsection listing the factors relevant to any of the requirements upon which the State must meet its burden. And this provision states that the normal rules of admissibility are not applicable to detention hearings. Ultimately, the question is still whether defendant committed the offense. Considering all of the relevant statutory provisions, the appellate court found no error. The circuit court properly considered defendant's fourth amendment argument, which it credited favorably throughout the duration of the hearing, then balanced that argument against the State's proffer. Its ultimate determination that the State had met its burden was not arbitrary or unreasonable.

Defendant also argued that the State failed to meet its burden of proving, by clear and convincing evidence, that he posed a real and present threat to the safety of any person or the community, given that there was no evidence of a threat and he received a low pretrial services assessment score. The appellate court disagreed. The circuit court properly considered the relevant factors outlined in section 110-6.1(g). It found that while possession of a gun is not threatening *per se*, this particular gun was an unsecured, loaded, semiautomatic with an extended magazine, and defendant did not have proper licensing. One of his four prior felonies, which included other crimes of violence, was for this same offense. This history, plus the fact that defendant escaped electronic monitoring in the past, led the appellate court to conclude that the finding was not against the manifest weight of the evidence.

People v. Luna, 2024 IL App (2d) 230568 The order granting the State's petition to deny pretrial release was affirmed. Defendant was charged with aggravated DUI after being found passed out in the driver's seat of a vehicle with an empty bottle of alcohol next to him. The vehicle had sustained significant damage and was found in a parking lot where there was corresponding damage to a utility pole and business sign. Defendant had seven prior DUI convictions and had not had a driver's license since 1989. The trial court did not err in finding the proof evident or the presumption great that defendant committed the charged offense, even in the absence of specific evidence that anyone saw defendant driving, that the keys were in the ignition, or that the vehicle had been recently driven. The evidence required at a detention hearing is less than that required at trial.

Likewise, the court did not err in finding that the State showed by clear and convincing evidence that defendant's release would pose a real and present threat to safety. Defendant had seven prior DUI convictions, and the evidence here demonstrated that defendant's vehicle crashed into two separate objects while trying to exit the parking lot. This was sufficient to make an individualized determination of dangerousness.

Finally, the court did not err in finding that no conditions of release could mitigate the threat to the community. Defendant had not had a valid driver's license for more than 30 years but had continued to violate DUI laws. Thus there was a real and present threat he would continue to drink and drive, and that threat could not be mitigated by a SCRAM device or electronic monitoring where such devices would not actually prevent defendant from drinking and driving.

People v. Lee, 2024 IL App (1st) 232137 The circuit court did not err in ordering defendant detained under the dangerousness standard. Defendant was arrested in possession of a

handgun. And, he had a history of violent offenses, including robbery and multiple offenses involving unlawful firearm possession. While the original call to police referenced an assault weapon, but only a handgun was recovered from defendant, that original report did not render defendant's possession of a handgun any less dangerous. And, where defendant had previously failed to comply with conditions of parole in another case, the trial court did not err in finding that no conditions of release would reasonably ensure the safety of persons or the community.

People v. Saucedo, 2024 IL App (1st) 232020 Witness statements regarding the charged offense are the sort of “reliable evidence” on which the State may rely to establish that the proof is evident or the presumption great that defendant committed the detainable offense of domestic battery. Given that the SAFE-T Act specifically requires the State to tender such statements to the defendant prior to a hearing on a petition to detain, it would be anomalous to then find that such statements were insufficient evidence of defendant's likely commission of the offense. The court held that it was the legislature's intent that such statements would be sufficient proof that defendant committed the offense. Accordingly, where the State relied on the witness's statement describing the offense, the circuit court did not manifestly err in finding that the proof was evident or the presumption great that defendant committed the charged offense.

And, the court did not err in finding that defendant posed a threat to the safety of a person and the community. Defendant, while intoxicated, assaulted a relative by punching and choking him and trying to hit him with a rock. A short time later, defendant physically attacked a passerby without provocation. Additionally, defendant had a history of violent behavior, including cruelty to animals, and had a history of engaging in violent acts while intoxicated.

Finally, the court did not abuse its discretion in finding that no conditions could mitigate the real and present threat to safety. While defendant previously had been compliant with electronic monitoring during a term of parole, he had since chosen to use alcohol and commit the instant offenses. Defendant knew of his propensity to behave violently while using alcohol, yet made the conscious choice to do so here. No conditions would mitigate the danger that he would make the same choice again.

The special concurrence discussed the applicable standard of review at length, arguing that rather than applying a bifurcated manifest-error and abuse-of-discretion standard, detention decisions should be reviewed *de novo*.

People v. Casey, 2024 IL App (3d) 230568 Defendant was arrested for DUI and threatening a public official and detained pursuant to a State motion for pretrial detention. He did not appeal this order. After his indictment he moved for pretrial release. Defendant argued that, although he threatened police officers with violence, he was not a threat as his statements were drunken hyperbole. He also argued he was arrested two days after leaving a sober-living facility and relapsing, and that he had since received permission to rejoin the facility. The trial court denied the motion, finding he committed the alleged offense while on probation for aggravated assault, a condition of which was to avoid alcohol.

An appellate court majority affirmed. The court reviewed the factual findings using the manifest weight of the evidence standard, and reviewed the ultimate decision to grant or deny the petition for an abuse of discretion. It first pointed out that defendant did not appeal the initial detention order, and appealed only a subsequent order. At the initial hearing, the State must prove by clear and convincing evidence that: (1) the proof is evident or presumption great that defendant committed a detainable offense; (2) defendant poses a real

and present threat to any person, persons, or the community or is a flight risk; and (3) no conditions could mitigate this threat or risk of flight. But at subsequent hearings, this standard does not apply. For subsequent hearings the statute only requires the court to find that “continued detention is necessary to 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 to prevent the defendant’s willful flight from prosecution.” The clear and convincing standard no longer applies. See [725 ILCS 5/110-6.1\(i-5\)](#)

Here, the evidence established that defendant made multiple threats, including threatening to bring a pipe bomb to the police department and moving aggressively towards an officer with clenched fists. Defendant was on probation for aggravated assault of a peace officer at the time. His probation required him to refrain from consuming alcohol, which he had failed to do. While defendant argued he could go back to the sober living facility, defendant had just left there days before the DUI and instant offense occurred. In light of these facts, the trial court did not abuse its discretion.

Justice McDade dissented because defendant was intoxicated when he made the threats and he scored low on a risk assessment.

People v. Kurzeja, 2023 IL App (3d) 230434 Defendant was arrested and charged with disorderly conduct for transmitting a threat to a school building or persons, a Class 4 felony. The State alleged defendant was overheard saying “Hey man, if you hear that someone shot at principal at the head, don’t look at me!” The trial court imposed a \$250,000 bond, and defendant remained in custody until the passage of the SAFE-T Act, at which time he petitioned for pretrial release, while the State petitioned for pretrial detention. The trial court ordered defendant detained as a danger to the community.

The appellate court affirmed. It first rejected defendant’s argument that the State was not permitted to move to revoke a previously set bond for a detained defendant. While defendant argued that the motion had to have been filed within 21 days of detention, the various provision of the act pertaining to defendants detained prior to passage of the Act indicate that these defendants may opt to either keep their previously set bond in place, or move for non-monetary conditions of pre-trial release. But in either case, the State may take the position that pretrial detention is warranted, and the court is given the option of requiring pretrial detention. See [725 ILCS 5/110-7.5\(b\)](#); 110-5(e); 110-6; 110-6.1(i).

Nor did the trial court err in requiring pretrial detention. The record shows that the trial court carefully considered the requisite factors listed in sections 110-6.1(g) and 110-5(a) in determining whether defendant posed a real and present threat to the safety of a person or the community, and what factors would mitigate that threat. The defendant had a prior battery conviction and a history of bipolar disorder for which defendant was not taking his prescribed medication. Thus, the trial court did not abuse its discretion.

People v. Johnson, 2023 IL App (5th) 230714 The trial court did not abuse its discretion when it found that the State had proved by clear and convincing evidence that defendant posed a safety threat if released, which no conditions could mitigate, and thus denied pretrial release. Whether defendant poses a threat to safety is not limited to whether he is likely to commit violent criminal acts. Rather, the plain language of the Act is broad enough to encompass the public health risk posed by defendant’s repeated sales of illegal drugs to members of the community. Further, defendant had several prior convictions, including three violent felonies, and he was armed with a loaded firearm and was personally in possession of cocaine at the time of his arrest. Additionally, a small child and other individuals were present in the apartment when defendant was arrested, and there was evidence that

defendant had been dealing drugs from that location. On this record, the court's dangerousness finding was affirmed.

People v. Trottier, 2023 IL App (2d) 230317 Defendant was arrested and charged with three counts of possession of child pornography. The trial court denied pre-trial release after a hearing on the State's petition to detain, which was filed pursuant to [725 ILCS 5/110-6.1](#).

The appellate court affirmed. The trial court's determination that defendant posed a danger to the community was not an abuse of discretion. Although defendant scored only a 2 out of 14 on the Pretrial Risk Assessment, the State provided evidence of defendant's prior conviction for aggravated criminal sexual assault of a victim under 13 years of age, and his recent attempt to adopt a young child from the Philippines with the express intent of sexually assaulting the child.

People v. Battle, 2023 IL App (1st) 231838 The State filed a petition to detain defendant, who was charged with robbery, aggravated vehicular hijacking, and aggravated battery, under the dangerousness standard. Specifically, the State alleged that she posed a real and present threat to the safety of the complaining witness, whom defendant and her girlfriend had allegedly tricked into driving to a location where they beat her and stole her car. Defendant did not contest those allegations but argued that the police had refused her attempt to file a police report against the complainant months earlier. The circuit court found that the State had met its burden of proving by clear and convincing evidence that the proof was evident that defendant had committed the charged detainable offenses, that she was a real and present threat to the complainant's safety, and that no conditions would mitigate that threat. The appellate court affirmed.

On appeal, defendant challenged the State's failure to prove that she was a threat to the community in general. Under Section 110-6.1, however, the State need only prove a threat to any person and is not required to prove a threat to the public at large. Defendant also challenged the State's failure to present witnesses, video evidence, physical evidence, or signed statements. But the statute specifically provides that the State may present evidence by way of proffer, which it did here. And, defendant challenged the court's failure to consider conditions other than detention, but the record showed that the court was presented with options such as electronic monitoring or a no-contact order and rejected those options.

People v. Davis, 2023 IL App (1st) 231856 The State met its burden of proving by clear and convincing evidence that the proof was evidence or the presumption great that defendant committed the detainable offense of unlawful use of a weapon by a felon where the State's proffer showed that defendant was the sole backseat passenger in a vehicle stopped for a traffic violation, defendant was seen reaching toward the floor of the vehicle, and the police subsequently found a firearm inside a bag in the area where defendant had been reaching.

Similarly, the State met its burden of proving defendant posed a real and present threat to the safety of the community. In assessing dangerousness, the court may consider the nature and circumstances of the charged offense and whether it is a violent crime, whether defendant's criminal history is indicative of violence, whether defendant possesses or has access to weapons, the weight of the evidence against defendant, and the nature and seriousness of any threat posed by defendant's release. Here, both the charged offense and defendant's prior conviction of aggravated battery qualify as violent crimes. The gun defendant was alleged to have possessed was a "ghost gun," meaning it had no serial number making it difficult to trace, and untraceable weapons are inherently dangerous. Thus, the trial court did not abuse its discretion in finding that defendant's release posed a threat to the safety of the community.

And, the court did not abuse its discretion in concluding that no conditions could mitigate any threat to the safety of the community. Conditions may include reporting requirements, restrictions on travel, no-contact orders, electronic monitoring and other reasonable conditions. Here, due to the nature of the threat posed by defendant's possession of an untraceable weapon, coupled with his criminal history and his high score on a risk-to-reoffend assessment, no available conditions could mitigate the threat.

Finally, defendant waived any claim of error from the State's failure to tender a copy of his criminal history prior to the detention hearing as required by [725 ILCS 5/110-6.1\(f\)\(1\)](#). Defendant did not raise the issue below. And, the appellate court concluded that he acquiesced to the admission of his criminal history at the detention hearing by not objecting and thus he could not raise the issue as a matter of plain error. Regardless, the court would have found no prejudice where the record showed defense counsel had adequate knowledge of defendant's criminal history and there were no alleged inaccuracies in what was presented to the court.

People v. Horne, 2023 IL App (2d) 230382 Defendant was charged with aggravated battery of a peace officer and domestic battery. The trial court granted the State's petition to detain defendant on dangerousness grounds. Defendant appealed.

Defendant first argued the written synopsis used at the **Gerstein** hearing to establish probable cause was insufficient evidence that he committed an offense that qualified for detention under the Pretrial Fairness Act. He contended that the lack of testimony or physical evidence meant the State did not meet the "clear and convincing evidence" standard. The appellate court disagreed. The written report described how the police encountered the complainant outside of her home, her allegation that defendant punched her, and the officers' encounter with the defendant during which he pushed one of the officers in the forehead. The report was detailed and not inherently incredible, and thus no error occurred in finding clear and convincing evidence that defendant committed the offenses.

Nor did the trial court err in determining that defendant poses a real and present threat to the complainant and the community, specifically the police. The trial court noted that the police synopsis related statements defendant made to the officers while he was restrained, including threats to torture and kill them. Defendant was also on probation for criminal damage to property, evidence that reasonably reflected he does not follow court orders.

Finally, the court did not err in finding no set of pretrial release conditions reasonably ensured the safety of others. The PFA requires the trial court, in a detention order, to make written findings summarizing why a defendant should be denied pretrial release, "including 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." The court did so here, citing the nature of the offense, defendant's history of violence, and the fact that he lived with complainant.

§6-5(f) "Flight Risk"

Illinois Appellate Court

People v. Davis, 2024 IL App (1st) 241747 The April 2024 amendment to Supreme Court Rule 604(h), which removed the 14-day filing requirement for notices of appeal, was a procedural change that applies retroactively. Accordingly, defendant's notice of appeal filed in August 2024 was sufficient to confer jurisdiction over the original

detention order entered in December 2023, as well as the continued detention determination made in July 2024.

When reviewing detention decisions, a two-tiered standard of review is appropriate. Findings of fact are reviewed under the manifest weight of the evidence standard, and the ultimate detention decision is reviewed for an abuse of discretion. Applying that standard, the court affirmed the detention determinations here.

The court did not err in finding that no conditions could mitigate the threat to safety posed by defendant's release based on the violent nature of the alleged offense here, an armed robbery where defendant fired a gun, as well as defendant's history of committing violent crimes involving weapons in the past. And, the court did not err when it found that defendant posed a flight risk based on his post-offense conduct of attempting to flee the scene. That conduct, coupled with the fact that defendant faced a potential life sentence based on his criminal history, was sufficient to support the original flight-risk finding.

Additionally, the court did not err in ordering defendant's continued detention. Defendant offered no new evidence to counter the court's finding that he posed a threat to safety if released. And, while defendant offered evidence that he worked and had a place to live if released on electronic monitoring, the court was free to weigh other factors more heavily, including his flight risk, access to weapons, criminal history, and an out-of-state bench warrant.

People v. Slaten, 2024 IL App (2d) 240015 The trial court erred when it granted the State's motion for pretrial detention. The court found defendant posed a risk of willful flight because he faced 25 criminal counts, the counts stemmed from an incident in which he fled from a traffic stop and led police on a chase across state lines, and he had a failure to appear in his criminal history that was later quashed as cured.

The appellate court agreed with defendant that the trial court erred in relying on these factors. Pursuant to section 110-1(f), the trial court should only consider "intentional conduct with a purpose to thwart the judicial process to avoid prosecution." In **People v. Sims, 2024 IL App (4th) 231335-U**, the appellate court held that while evading arrest could be viewed as obstructing the criminal justice system, it did not reflect a "thwart[ing of] the judicial process to avoid prosecution" within the meaning of section 110-1(f). As for the prior nonappearance warrant, section 110-3(c), states "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 for purposes of willful flight risk assessment." Here, defendant's prior warrant was cured. Finally, the trial court's reliance on the fact that defendant faced 25 counts was erroneous because the statute requires clear and convincing proof of specific articulable facts of the case, not generalities about the nature or number of the criminal charges.

On the other hand, defendant presented considerable evidence to show he was not a flight risk, including his voluntary agreement to be extradited to Illinois, his lengthy criminal history with only the single, cured failure to appear, and the fact that he lived in the county or over 20 years.

Finally, the State failed to prove that there were no conditions or combination of conditions that could mitigate the alleged risk of willful flight, as required by section 110-6.1(e)(1)(3).

A concurring justice disagreed with the majority’s reliance on **Sims** for the proposition that a court may not consider that the crime involved flight from police. The concurring justice believed that defendant’s “egregious” conduct was evidence of both a risk of willful flight and dangerousness. But, the justice agreed with the outcome because the trial court’s findings offered few specifics relating to defendant and were generally insufficient to justify detention.

People v. Vance, 2024 IL App (1st) 232503 Defendant appealed from an order granting the State’s petition to deny pretrial release, and the appellate court affirmed. The trial court did not err in finding defendant posed a threat to the community where he was arrested after fleeing from a traffic stop which involved a stolen vehicle and where he was found with a machine gun. The court specifically noted the danger posed by the type of gun involved, as well as the fact that there were two other people in the vehicle at the time of the stop who were also armed. As to conditions of release, the court specifically reviewed options with a representative of pretrial services and concluded that conditions were insufficient to mitigate the threat of dangerousness. That finding was not error where the court clearly considered several options, including electronic monitoring and home detention, and found them wanting because of the delay in communicating any violations to the court.

The appellate court also found that the trial court did not violate the requirement of **725 ILCS 5/110-6.1(h)(1)** that it enter written findings summarizing its reasoning for denying release. The court’s written order failed to detail why not set of conditions could mitigate the threat of dangerousness, and instead included only its conclusion on that point. But, the court gave a detailed oral explanation of its findings, and the appellate court found that the oral explanation was adequate here. It would not “serve the ends of justice” to remand for the court to produce a written order mirroring the transcribed record of its specific and thorough oral findings.

People v. Rodriguez, 2023 IL App (3d) 230450 For pretrial release to be denied, the State has the burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed a detainable offense, that defendant poses a real and present threat to any person or the community or is a flight risk, and that no conditions could mitigate the threat to safety or risk of flight. The circuit court found that the State met its burden here, and the appellate court affirmed.

First, defendant’s offense of resisting or obstructing a peace officer was a forcible felony, and therefore detainable, because it involved the threat or infliction of great bodily harm or permanent disability or disfigurement. Specifically, the facts presented showed that defendant drove away during a traffic stop while a police officer was partially inside the vehicle. And, this evidence, coupled with the fact that defendant had multiple outstanding warrants for failing to appear in court, demonstrated that defendant was a flight risk and that no conditions would mitigate the risk of flight.

§6-5(g) Conditions of Release

Illinois Supreme Court

People v. Cousins, 2025 IL 130866 After having cash bond set on various weapons offenses in 2021, defendant remained in custody and, after the effective date of the Pretrial Fairness Act, filed motions for pretrial release. The State responded by filing petitions to detain.

The court held a hearing and ultimately denied release. On appeal, defendant argued that the State had failed to meet its burden of proving no conditions could mitigate any risk posed by his release. The appellate court agreed, noting that the State's petition to detain did not even assert that no conditions could mitigate any risk posed by defendant's release. As a remedy, the appellate court remanded the matter for a new detention hearing. In a petition for rehearing, defendant argued that the appropriate remedy was remand for a hearing on conditions of release, not a new detention hearing, given that the State had failed to meet its burden of proof at the original hearing. That petition was denied, and defendant obtained leave to appeal to the supreme court.

The supreme court first agreed that the State had failed to meet its burden. The State presented no evidence or argument on the conditions element at the hearing, and the circuit court did not address that issue. The State was not prevented from putting forth evidence or argument at the detention hearing. The hearing took place on two separate dates, and the State had "multiple opportunities...to make known its reasons to justify pretrial detention." Given the failure to present clear and convincing evidence on the question of conditions, the State failed to meet its burden to detain.

On the question of remedy, the supreme court disagreed with the appellate court's decision to remand for a new detention hearing. Providing a second hearing would present little incentive for the State to meet its burden the first time around, giving the State a "second bite at the apple." Further, it would subvert the purpose of the Pretrial Fairness Act. Instead, the appropriate remedy is remand for a hearing on the conditions of release.

People v. Mikolaitis, 2024 IL 130693 Defendant appealed the circuit court's order denying him pretrial release. He argued the State failed to prove by clear and convincing evidence that no condition or combination of conditions could mitigate any safety threat he posed. The appellate court affirmed, but a dissenting justice would have reversed on the grounds that the State offered no evidence or argument as to why no conditions of release could mitigate the threat to safety.

The supreme court affirmed. To obtain pretrial detention, the State must prove by clear and convincing evidence that: (1) the proof is evident or presumption great that the defendant committed a detainable offense; (2) the defendant poses a real and present threat to safety; and (3) no condition or combination of conditions can mitigate the threat to safety or the defendant's willful flight. Here, the circuit court found the State met that burden, but defendant argued that this finding was improper where he offered evidence that electronic monitoring could mitigate the threat to safety and the State offered no evidence or argument concerning conditions of release.

The court held that a circuit court may review the evidence and come to a conclusion that no conditions of release would suffice, even if the State doesn't explicitly articulate why. While section 110-6.1(e)(3) of the Code places the burden of proof on the State, it doesn't require the State to specifically address every conceivable condition or combination of conditions and argue why each condition does not apply. The State here presented evidence relevant to the statutory factors concerning conditions of release (section 110-5), and the circuit court properly relied on this evidence to conclude that electronic monitoring would be insufficient to mitigate the threat to safety.

Illinois Appellate Court

People v. Badie, 2025 IL App (3d) 250033 Defendant was charged with aggravated battery after a shooting, and the State moved for pretrial detention. The court ordered release with conditions, citing the fact that defendant was 18 at the time of the shooting and there was some evidence of self-defense. The State filed a motion for relief under Rule 604(h)(2). The motion was heard by a new judge, who disagreed with the prior finding that conditions were adequate, and ordered defendant's detention. On appeal, defendant argued that the motion for relief should not have been decided by a new judge, and that regardless, that judge erred in finding no conditions could mitigate the risk to safety posed by defendant's release.

The appellate court affirmed. The relevant language in Rule 604(h)(2) states: "As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall promptly hear and decide the motion for relief." This language is clear and unambiguous in that it does not provide that the motion for relief must be heard in front of the same trial judge who heard the initial petition. Instead, the rule simply states that the motion should be presented "to the trial court." This language encompasses the circuit court as a whole, not a particular judge.

Nor did the second judge err in ordering defendant's detention. The evidence showed that defendant carried an automatic weapon, donned a ski mask, and shot the victim in the chest in the public area of an apartment building. Though the evidence demonstrated that defendant had no criminal history and resided with his parents, the fact remains that defendant carried an automatic firearm for his protection and had issues with the victim. Even the most intense conditions –home confinement and GPS monitoring – would do little to prevent defendant from confronting the victim again, based on the reactive and permissive nature of the programs. See **730 ILCS 5/5-8A-4 (West 2022)** (supervisor verifies compliance or noncompliance after the fact and the participant is permitted at least two days of movement in the community per week).

People v. Lopez, 2025 IL App (2d) 240709 The appellate court affirmed the trial court's denial of the State's petition to detain on charges of possession of a firearm without a FOID card, aggravated unlawful use of a weapon, and resisting or obstructing a police officer. The appellate court reviewed the matter *de novo*, under **People v. Morgan, 2025 IL 130626**, because the detention hearing proceeded solely by proffer and involved no live testimony. And, the court concluded that the trial court had not erred in finding that the State failed to provide clear and convincing evidence that conditions of release could not mitigate the threat posed by defendant. Defendant was an 18-year-old high school graduate, with a job and with no criminal history. He lived at home with his family, and there was no evidence of a history of violence. The public safety assessment ranked defendant as a low risk to re-offend and recommended release without conditions. On these facts, the court did not err in releasing defendant under the maximum available conditions of release. Even though conditions cannot completely eliminate any threat posed by defendant, they were sufficient to mitigate that threat here.

People v. Davis, 2024 IL App (1st) 241747 The April 2024 amendment to Supreme Court Rule 604(h), which removed the 14-day filing requirement for notices of appeal, was a procedural change that applies retroactively. Accordingly, defendant's notice of appeal filed in August 2024 was sufficient to confer jurisdiction over the original detention order entered in December 2023, as well as the continued detention determination made in July 2024.

When reviewing detention decisions, a two-tiered standard of review is appropriate. Findings of fact are reviewed under the manifest weight of the evidence standard, and the ultimate detention decision is reviewed for an abuse of discretion. Applying that standard, the court affirmed the detention determinations here.

The court did not err in finding that no conditions could mitigate the threat to safety posed by defendant's release based on the violent nature of the alleged offense here, an armed robbery where defendant fired a gun, as well as defendant's history of committing violent crimes involving weapons in the past. And, the court did not err when it found that defendant posed a flight risk based on his post-offense conduct of attempting to flee the scene. That conduct, coupled with the fact that defendant faced a potential life sentence based on his criminal history, was sufficient to support the original flight-risk finding.

Additionally, the court did not err in ordering defendant's continued detention. Defendant offered no new evidence to counter the court's finding that he posed a threat to safety if released. And, while defendant offered evidence that he worked and had a place to live if released on electronic monitoring, the court was free to weigh other factors more heavily, including his flight risk, access to weapons, criminal history, and an out-of-state bench warrant.

People v. Vincent, 2024 IL App (4th) 240218 Defendant was on pretrial release when she was charged with aggravated battery of a peace officer in the instant case. The State moved to deny pretrial release on the aggravated battery charge, but it cited 725 ILCS 5/110-6(a), which concerns revocation of pretrial release. The circuit court denied pretrial release. Defendant argued on appeal that the circuit court committed second-prong plain error, or counsel was ineffective, because aggravated battery of a peace officer is not a detainable offense. The appellate court found not error. Defendant conceded she was subject to detention under 110-6(a) on the prior case. Had the State simply changed the case number, the result of the hearing would have been the same. This was a procedural error, not the type of "structural" error that warrants automatic reversal. Had counsel objected, the State would have simply restyled its petition as a petition to revoke in the prior case.

Nor did the circuit court err when it found an ankle bracelet an inadequate method of mitigating the risk of release. Defendant had a history of resisting arrest and battering police officers. Although an ankle monitor would allow the authorities to know where defendant was at any given time, it would not stop her from leaving a residence, as she did in this case, which might then require police intervention.

People v. Johnson, 2024 IL App (3d) 240180 Following the entry of an order for pretrial detention on a charge of aggravated vehicular hijacking, defendant appealed. Defendant challenged only the court's finding that no condition(s) could mitigate the threat posed by defendant's release. The appellate court affirmed.

Defendant argued that the trial court should have granted electronic monitoring as an alternative to detention. But the trial court had before it evidence that defendant, who had been on MSR at the time of the alleged offense here, forced himself into the victim's car, held a gun to her head, forced her to drive a short distance, and then ordered her out of the vehicle and drove away with it. The appellate court concluded that since defendant was on MSR at the time of the charged offense, "it would be entirely unreasonable to conclude he would comply with electronic home monitoring on pretrial release." The dissenting justice

would have found that the State failed to meet its burden where it did not even address the conditions element below.

People v. Hawkins, 2024 IL App (2d) 240279 The State filed a petition to detain defendant, who was charged with predatory criminal sexual assault of a child, aggravated battery, and aggravated criminal sexual abuse involving his girlfriend's seven-year-old daughter. The trial court denied the petition, and ordered as a condition of defendant's release that the alleged victim remain in the custody of her biological father to mitigate any threat posed.

On appeal, the State asserted that the trial court erred in considering only the threat defendant posed to the alleged victim but not the threat he posed to the community, and that the court erred in finding that defendant did not pose a threat to the victim. The State also argued that the court lacked the authority to impose the condition that the alleged victim remain in her father's custody.

The appellate court first found that the State had forfeited its arguments that the court erred in finding that defendant was not a threat to the victim and that conditions of release could mitigate any threat because those claims were not made in the State's notice of appeal. Supreme Court Rule 604(h) requires that a notice of appeal from pretrial detention proceedings include both a description of the relief sought and the grounds for that relief. The only grounds included in the State's notice of appeal had to do with whether defendant posed a threat to the community.

But the court opted to overlook the State's forfeiture "in the interest of justice" because the record showed a clear error of law. Specifically, the trial court exceeded its authority in ordering the alleged victim to remain in her father's custody. The minor and her parents were not parties to defendant's criminal case, and the issue of custody was not before the court. The trial court's order denying detention was based, at least in part, on its determination that defendant was not a threat to the alleged victim if ordered to remain in her father's custody. But, because the court lacked the authority to enter that child custody order, its ruling was an abuse of discretion. The appellate court vacated and remanded for a new detention hearing.

People v. Carter, 2024 IL App (1st) 240259 Defendant was charged with aggravated battery with a firearm and aggravated discharge of a firearm for allegedly shooting into another vehicle traveling alongside him. The State filed a petition to detain, and the court granted that petition finding that no conditions could mitigate the real and present threat posed by defendant's release. In reaching that conclusion, the court specifically mentioned two possible conditions – curfew and electronic monitoring – and stated that they were insufficient to prevent future similar conduct by defendant.

The appellate court reversed and remanded for a new detention hearing based on the court's failure to consider any other available conditions. Possible conditions mentioned by the appellate court included ordering defendant to refrain from possessing a firearm, confiscating his weapons and FOID card, or prohibiting him from driving while on pretrial release. "Before deciding that nothing short of pretrial detention will suffice, the trial court must consider other statutory conditions, which did not occur here."

People v. Chaney, 2024 IL App (2d) 230563 Prior to the effective date of the Pretrial Fairness Act ("PFA"), defendant was being held in pretrial custody on two separate cases, having had a \$500,000 bail set in one case and his bond revoked in the other. After the PFA took effect, defendant filed motions to "reduce bond" in both cases. He did not reference the PFA in those motions and did not request release without monetary bond, but instead asked

the court to reconsider the amount of bond and to reestablish bond in the case where it had been revoked. At a hearing on the motions, counsel argued that defendant was not a flight risk and should be released. The State argued that under the recently amended version of [725 ILCS 5/110-6](#), revocation of release was appropriate because defendant was charged with two Class X felonies while released on a Class 1. The court ultimately denied defendant's motions, making no reference to the PFA, and stating only that the court found no basis to set a bond here and would stand on its prior rulings as to bond in these matters.

The appellate court held that while defendant's motions did not state they were being brought under the PFA, it was clear that defendant was seeking reconsideration of his pretrial release where the motions were filed shortly after the effective date of the PFA, counsel orally argued for defendant's release under the PFA, and the State's responsive arguments also addressed the PFA. Thus, the court construed defendant's motions as having been brought pursuant to [725 ILCS 5/110-7.5\(b\)](#).

Section 110-7.5(b) provides that a person who remains in pretrial detention who remains in custody after being ordered released with conditions, including monetary bond, is entitled to a hearing under Section 110-5(e) to determine the reason for his continued detention. As to the case where defendant had a monetary bond set, however, defendant's argument below could not be construed as an argument under Section 110-5(e). Likewise, his argument on appeal failed to address Section 110-5(e). So, the court affirmed the order denying his motion in that case.

As to the case where defendant's bond had been revoked, he was entitled to a hearing to reconsider pretrial release conditions pursuant to Section 110-7.5(b)(1). Such a hearing could focus on Section 110-6 or Section 110-6.1, or both, depending on the circumstances. Under Section 110-6, a defendant whose pretrial release in one case was revoked due to another case, might be entitled to pretrial release in that first case due to a change in circumstances on the second case, such as dismissal, a finding of not guilty, or completing the sentence. Alternatively, under Section 110-6.1(e) and (i), a defendant may be entitled to pretrial release after 90 days. Here, because the trial court did not specify under which section it was proceeding or the basis for defendant's continued detention, there was error. The appellate court vacated the order denying defendant's motion to reconsider and remanded the matter for a new hearing.

People v. Harris, 2024 IL App (2d) 240070 Defendant was initially ordered detained on the State's petition, but then subsequently appeared before a different judge who ordered him released with conditions. The State appealed that later order, and the appellate court vacated the release order and remanded for the court to provide a record of its findings supporting release, including the basis for its decision to impose electronic monitoring as a condition of release.

While not addressed by the parties in their memoranda, the appellate court first addressed the question of what is required in determining and ordering a defendant's pretrial release where that defendant has previously been ordered detained in the matter. To warrant continued detention, the State is not held to the same burden as at the original detention hearing. Instead, the court must find only that detention remains necessary to avoid a real and present threat under [725 ILCS 5/110-6.1\(i-5\)](#). Where the court finds that continued detention is not necessary, however, the court must consider those matters outlined in Section 110-5(a)(1)-(7) in determining the appropriate conditions of release. And, if the trial court imposes electronic monitoring, it must set for the basis for its decision to do so pursuant to Section 110-5(h). Here, the appellate court concluded that the trial court's "cursory oral

ruling” failed to provide an adequate record of its findings as to conditions of release, thus requiring a remand.

People v. Schulz, 2024 IL App (1st) 240422 Defendant was charged with possessing and disseminating child pornography, and was denied pretrial release after the court found he posed a danger to the community and no conditions could mitigate that risk. He was subsequently charged with two superceding indictments containing over 50 counts involving child pornography. At his next hearing the court continued his pretrial detention. Defendant filed a timely appeal from the initial detention order, arguing the court erred in finding him a threat to the community even though he had no prior criminal history and received a low pretrial assessment score. He also contended the court erred in finding no conditions of release would mitigate the threat he posed to the community. The appellate court affirmed.

The circuit court’s finding that defendant poses a real and present threat to the safety of the community was not against the manifest weight of the evidence. The court adequately considered several of the statutory factors of dangerousness. The State’s proffer showed that defendant possessed and disseminated pornography involving young children, who are vulnerable members of the community. The circuit court noted the violent nature of the alleged sex crimes, “which not only revictimized the very young children every time the videos were viewed and shared but also fueled the demand for the production of new videos and thereby caused the ongoing sexual assaults of children.”

Nor did the circuit court abuse its discretion when it found no conditions adequately mitigated the risk defendant posed. Defendant argued that the State’s only argument on this point was that the crimes occurred within defendant’s home, a point on which the State did not elaborate. The circuit court’s ruling, however, adequately explained that it did not believe any conditions could thwart further criminal activity, where defendant’s crime could be committed with a cellphone.

People v. Thomas, 2024 IL App (4th) 240248 Defendant was charged with unlawful possession of a weapon by a felon after he broke into his mother’s house, broke into a safe containing a rifle, and fired several rounds in the house. The trial court ordered pretrial detention after finding no conditions of release could mitigate defendant’s dangerousness. Defendant alleged on appeal that the court’s written findings lacked sufficient explanation as required by 725 ILCS 5/110-6.1(h)(1). The appellate court held that the requirements of section 110-6.1(h)(1) can be met by looking at the court’s oral pronouncements in conjunction with the written findings, and here, those findings together showed adequate consideration of relevant factors.

Defendant also argued that the court failed to consider certain potential conditions of release, such as electronic monitoring. Section 110-6.1(h) does not require courts to specifically address each potential condition of release. In this case, there was no abuse of discretion for failing to address electronic monitoring. The offense suggested a strong threat of violence coupled with possible mental health issues. Electronic monitoring cannot address every defendant’s potential dangerousness, because it merely provides defendant’s location. If coupled with home confinement, E.M. might alert police to a potential violation of that confinement. But “[k]nowing that electronic monitoring might detect a failure to comply with conditions of release does not diminish concerns that a particular defendant appears to present a greater risk of noncompliance, especially if the consequences of noncompliance may be grave.”

People v. Young, 2024 IL App (3d) 240046 The trial court did not abuse its discretion in finding that no conditions could mitigate the threat of harm posed by defendant’s pre-trial release and ordering defendant detained. Defendant was charged with aggravated battery and armed robbery. He had a prior conviction for attempt armed robbery and had committed another offense while on MSR for that prior conviction. The court considered GPS monitoring and other conditions and reviewed the statutory factors on the record before ordering defendant detained.

The dissenting justice would have found that the State failed to meet its burden to prove that defendant should be detained. Specifically, the State failed to explain at the detention hearing why no conditions could mitigate the safety threat posed by release. In fact, the State “never even uttered the word ‘condition’” at that hearing. The State cannot meet its burden of proving that no conditions could mitigate release under [725 ILCS 5/110-6.1\(e\)](#) by instead presenting evidence related to factors the court must consider when imposing conditions of release under Section 110-5.

People v. Morgan, 2024 IL App (4th) 240103 Defendant appealed the order that he be detained pretrial, asserting that the trial court’s ruling should be reviewed *de novo* and that the court erred in denying release because the State failed to establish by clear and convincing evidence that no conditions of release would mitigate the real and present threat he posed to the community.

Regarding the standard of review, the court held that the abuse-of-discretion standard applies to detention decisions under the act. While many cases have applied the manifest-weight standard, that standard is typically reserved for findings based on evidence. In pretrial detention proceedings, however, the evidence consists primarily, if not wholly, of proffers, making it difficult if not impossible to determine the “weight” to be accorded to them. Because the circuit court judge reviews the proffered information and makes a judgment on the question of detention, the abuse-of-discretion standard is the better fit. With regard to *de novo* review, the appellate court found that it would diminish the significance of the circuit court’s decision-making authority and would be unworkable in practice, essentially allowing a second bite at the apple for every aspect of every detention decision.

On the question of conditions of release, defendant argued that the State failed to present evidence that his proposed condition ordering treatment for a recent bipolar diagnosis would not mitigate defendant’s dangerousness. But, the State’s proffer was made before defendant even suggested his bipolar diagnosis, making it unreasonable to expect the State to present such evidence. The State is not required to raise and argue against every possible condition of release in every single case. Instead, the State may meet its burden by addressing conditions related to the charged conduct, defendant’s criminal history and risk assessment scores, and other relevant considerations about the defendant that are known to the State at the hearing. Here, at the detention hearing, the State focused on defendant’s history of misconduct, and defendant focused on his recent mental health diagnosis. And, the court acted within its discretion in finding that defendant’s history of non-compliance with conditions was more probative on the issue of conditions of release.

People v. Green, 2024 IL App (1st) 240211 While on pretrial release for a charge of child endangerment, defendant was arrested for armed violence. The State argued defendant’s release should be revoked because no condition or combination of conditions would reasonably prevent him from being charged with a subsequent felony or Class A misdemeanor. See [725 ILCS 5/110-6\(a\)](#). Defendant argued that he should not be detained because “less restrictive means” such as electronic monitoring would reasonably prevent him

from committing subsequent offenses. The court granted the State's motion to revoke pretrial release, finding no condition or combination of conditions of release would reasonably prevent the defendant from being charged with a subsequent felony or misdemeanor. The court stated that it based this finding in part on the fact that both cases involved firearms, reasoning that "[e]ven if I were to give [defendant] electronic monitoring that would not prevent him from getting another gun."

The appellate court affirmed the decision to revoke pretrial release, finding the circuit court's assessment was reasonable under any standard of review. Defendant's original offense occurred when he passed out and left his gun in reach of his young child, who shot himself, and his second offense involved a domestic disturbance in a motel room during which police found him in possession of a gun and drugs. No conditions could prevent him from obtaining another firearm or endangering others with his predilection for mixing firearms and illegal substances, as these offenses could easily re-occur inside his home.

People v. Mikolaitis, 2024 IL App (3d) 230791 Defendant had a history of mental health issues, and he refused to cooperate in the preparation of the pretrial risk assessment. At the hearing on the State's petition to detain, the court learned that defendant not been taking the medication prescribed for his mental health issues. On those bases, the appellate court concluded that the circuit court did not err in finding that defendant's failure to abide by his doctor's directives indicated that he would not follow any conditions placed upon him by the court. Thus, the court did not err in granting the State's petition to detain.

People v. McDonald, 2024 IL App (1st) 232414 At the time of the passage of the SAFE-T Act, defendant was in custody awaiting trial for murder, unable to pay his \$1,000,000 bond. After the passage of the Act, defendant moved for pretrial release, and the State moved to detain him. The trial court ordered detention, finding defendant posed a threat to others and that no conditions could mitigate the threat that he posed to others.

The appellate court reversed. The trial court's decision to deny defendant pretrial release was based on the nature and circumstances of the charged offenses; namely, that the death of defendant's infant son was caused by "severe shaking," and that defendant was alone with his son at the time. But the record also showed that defendant is 40 years-old, has no criminal background, has been continuously employed since graduating high school, lived next door to his mother and brother, and served as a church deacon. He has no other children, and there was no indication defendant will be exposed to or responsible for the care of other children. Finally, at the initial bond hearing, under less lenient laws than those that exist now, the trial court found defendant sufficiently safe for release on bond with conditions.

Thus, the trial court's finding that no conditions or combination of conditions could mitigate the threat to safety that defendant posed towards others, was against the weight of the evidence, and the decision to deny pretrial release an abuse of discretion. The court remanded for the trial court to determine the detention alternatives and conditions that will mitigate any alleged threat.

People v. Morales, 2024 IL App (2d) 230597 Defendant challenged the imposition of drug testing as a condition of his pretrial release. He argued that the legislature removed drug testing as a potential condition when it passed the SAFE-T Act. The appellate court disagreed and affirmed.

Defendant was charged with Class 4 possession of a controlled substance, a non-detainable offense. When a defendant is charged with a non-detainable offense, the court

must determine which pretrial release conditions, “if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release.” 725 ILCS 5/110-5(a). In addition, the court must impose mandatory conditions under subsection (a) of Section 110-10, and may impose any conditions that are permissible under subsection (b) of Section 110-10.

Defendant argued that drug testing is not listed as either a mandatory condition or a permissible condition. However, the court noted that drug testing is also not one of the prohibited conditions listed in 110-10, and 110-10(b) has a residual clause which states that the court may impose “other reasonable conditions. . . so long as these conditions are the least restrictive means to achieve the goals listed in subsection (b), are individualized, and are in accordance with national best practices as detailed in the Pretrial Supervision Standards of the Supreme Court.”

Here, the circuit court did not abuse its discretion when it found the State met its burden of establishing that drug testing fell into the residual clause. Defendant had multiple prior convictions for drug offenses and DUI, and a prior failure to appear. He was prohibited from using drugs as a condition of release. Thus, it was reasonable for the court to deem it necessary to impose drug testing as an additional condition that would serve to ensure his compliance.

People v. Castillo, 2024 IL App (1st) 232315 At her pretrial detention hearing, defendant presented evidence that she had secured a residential placement at Haymarket Treatment Center if released and that she could be placed on electronic monitoring while there to ensure she did not leave the facility. She also offered that she could be released to her mother’s home on continued monitoring once she completed treatment at Haymarket. The State’s evidence at the hearing was focused on the facts of the offense but failed to address whether the proposed conditions would mitigate any threat or risk of flight. Because it is the State’s burden to prove that no conditions could mitigate any danger to the victims or flight risk posed by defendant’s release, and the State offered no evidence on this point, the court’s factual findings were against the manifest weight of the evidence.

Further, the court abused its discretion in ordering defendant detained. In concluding that no conditions could mitigate the risk of danger or flight, the court cited defendant’s flight from the scene of the offense, the presence of a minor during the incident, and the fact that it was defendant who escalated the confrontation with her former boyfriend resulting in the charges. The appellate court found that while these facts support a finding that defendant poses a risk of harm, they do not indicate why conditions could not mitigate any threat or possibility of willful flight. To the contrary, defendant had no criminal history, scored low on pretrial risk assessments, and had already begun participating in jail programs to improve herself. The matter was remanded for the circuit court to consider alternatives to detention, including those proposed by defendant at the original detention hearing.

People v. Herrera, 2023 IL App (1st) 231801 Defendant was arrested for her fourth DUI before the SAFE-T Act went into effect and had her bond set at \$50,000, with the condition that she be placed on electronic monitoring if released on bond. She did not post bond and subsequently petitioned the court for pretrial release under the Act after its effective date. The court held a hearing, concluded that defendant was a danger to the community and no set of conditions could mitigate that danger, and ordered defendant detained. The court specifically rejected defendant’s request to be released with a SCRAM (Secure Continuous Remote Alcohol Monitor) bracelet, stating that it did not have the “authority” to do so under

the Act, and rejected her request for electronic monitoring on the basis that the court “could not find that electronic monitoring would be the magic wand that all of a sudden [would] allow her to conform to the law.”

The appellate court concluded that the trial judge erred. Under the Act, a court has the ability to impose an electronic monitoring device designed to monitor defendant’s consumption of alcohol, i.e., SCRAM, as a condition of release. See [725 ILCS 5/110-10\(b\)\(5\)](#); [730 ILCS 5/5-8A-2\(A\)](#). The trial court appeared to be under the mistaken impression that it could not require SCRAM under the Act and thus failed to consider “the full constellation of conditions at its disposal.” Accordingly, the appellate court vacated the detention order and remanded for a new hearing where the trial court should at least consider the option of SCRAM monitoring as a condition. In the meantime, defendant’s original monetary bond was reinstated.

The appellate court acknowledged the possibility that the court’s statement that it lacked the “authority” to order SCRAM may have meant that it was not an available resource in the county, but the record was not clear in that regard. If SCRAM is not available, the court on remand should make a record explaining as much.

People v. Willenborg, 2023 IL App (5th) 230727 The State appealed the order granting defendant pretrial release, arguing that the court erred in finding that certain conditions were sufficient to mitigate the threat to safety of any person or the community. Defendant was charged with multiple counts of aggravated criminal sexual abuse and criminal sexual assault against two minor victims with regard to whom he held a position of trust, authority, or supervision. Specifically, defendant worked as a foreman at his family’s dairy farm, the teenage victims were employed on the farm, and the offenses were alleged to have been committed during the course of that employment.

Prior to the effective date of the SAFE-T Act, defendant had been held in custody, having been unable to post 10% of the \$400,000 bond that originally was set. He subsequently sought a hearing on conditions of release after the Act went into effect, and the State filed a petition to detain.

At the conclusion of the detention hearing, the court found that the State had proved that the offenses were detainable but concluded that detention was not necessary. The court noted that pretrial services had found defendant to be a low risk, and he had no criminal history. As conditions of release, the court ordered that defendant be subject to home confinement and GPS monitoring and that he have no unsupervised contact with anyone under 18 years of age. Defendant was instructed not to be within 500 feet of any minors working at the family’s dairy farm. The State objected on the basis that there was no way to monitor whether defendant violated those distance restrictions.

On appeal, the State argued that the 500-foot restriction was inadequate to mitigate the threat defendant posed to minors working at the family farm. The appellate court agreed and held that the circuit court abused its discretion in finding that the conditions were sufficient to mitigate the threat of safety. Electronic monitoring could not show defendant’s proximity to any minor, and there was no way to ensure his compliance with the 500-foot restriction. Under the conditions imposed, defendant would have been allowed to return to the same circumstances which allowed the alleged offenses to be committed in the first instance. Accordingly, the appellate court reversed the order granting release and remanded for further proceedings to determine appropriate conditions for release, if any.

People v. Stock, 2023 IL App (1st) 231753 Defendant was charged with aggravated battery with a firearm and denied pretrial release on the State’s petition pursuant to 725 ILCS 5/110-6.1. He appealed, and the appellate court reversed and remanded finding that the State failed to prove that no condition or combination of conditions could mitigate any threat of safety posed by defendant’s release.

Section 110-6.1(e) provides that all defendants are presumed to be eligible for pretrial release and places the burden on the State to justify pretrial detention. Specifically, the State has the burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed a detainable offense, that defendant poses a real and present threat to the safety of any person or the community or is a flight risk, and that no conditions could mitigate the safety threat or risk of flight.

Here, the State failed to meet its burden on the last element where the State presented no evidence regarding available conditions of release and instead simply stated that no conditions or combination thereof could mitigate the threat posed by defendant. The bare allegation that defendant has committed a violent offense is insufficient to establish this element, especially given that even those accused of violence are presumed eligible for release. And, here, the court’s order denying release offered no explanation as to why less restrictive conditions would not avoid a real and present threat to safety [725 ILCS 5/110-6.1(h)(1)], and instead referenced only the allegation underlying the charge – that defendant shot a firearm at the complainant. On this record, the court’s finding that no conditions of pretrial release could mitigate the threat was against the manifest weight of the evidence. Accordingly, the matter was remanded for further proceedings on the issue of pretrial release.

§6-5(h) Subsequent Hearings

§6-5(h)(1) Continued Detention Hearings

Illinois Appellate Court

People v. Patterson, 2025 IL App (1st) 250510 Defendant’s pretrial detention appeal was dismissed for failure to comply with Supreme Court Rule 604(h)(2). Several months after defendant was ordered detained, counsel filed a “petition for pretrial detention relief,” arguing that defendant was not a threat or a flight risk and that sufficient conditions existed to protect the community if released. Defendant did not identify any errors in previous detention rulings or cite Rule 604 in his motion. Rather, the motion served as a written argument for release during the statutorily-required ongoing review of detention at a subsequent hearing. The circuit court even commented to defense counsel that the motion was not sufficient to satisfy the requirements to appeal, and counsel acknowledged as much. Because a motion for relief is a prerequisite to appeal under Rule 604(h)(2), and because defendant failed to file such a motion, dismissal of the appeal was warranted.

People v. Walton, 2024 IL App (4th) 240541 After releasing defendant before his felony trial with conditions, the circuit court revoked that release, finding defendant violated his conditions when he was charged with six felonies and misdemeanors, such that his detention was necessary to prevent the commission of additional felonies or Class A misdemeanors. See 725 ILCS 5/110-6(j). At a subsequent hearing, defendant requested release and the trial court found continued detention necessary to ensure defendant’s presence and to prevent his commission of subsequent felonies or Class A misdemeanors. Defendant appealed, arguing

that changes in circumstances since the revocation of release warranted re-release with conditions. The appellate court affirmed.

Because defendant was in custody due to revocation of release, the question is whether continued detention was necessary under section 110-6(j). Unlike section 110-5(f-5), which governs subsequent hearings while defendant is released with conditions, and specifically states that removal of conditions does not require “new information or a change in circumstance,” section 110-6(j) lacks this language. The appellate court therefore inferred that a defendant seeking release under 110-6(j) must provide new information or a change in circumstances.

Here, defendant asserted that new information arose since the revocation of his pretrial release: the mental health issues which contributed to his offenses had stabilized; his CPAP machine used to treat his sleep apnea was not functioning in jail; and he could not obtain necessary mental health services in jail. The appellate court found no abuse of discretion in the circuit court’s determination that detention was necessary despite these changes. Defendant offered no evidence to corroborate the status of his mental health, or to demonstrate why release was required to fix his CPAP machine. Given that his prior release was revoked for violating two core conditions of release and committing multiple felonies, the new information cited by defendant “provide a weak basis to depart from the original detention decisions.”

People v. Rivera, 2024 IL App (1st) 240520 A trial court’s refusal to consider whether continued detention is necessary under [725 ILCS 5/110-6.1\(i-5\)](#), based on the court’s belief that it lacked jurisdiction to do so while defendant’s appeal of the detention order was pending, was an appealable order under Supreme Court Rule 604(h). The court’s refusal had the effect of “denying pretrial release” even though it was not a merits-based ruling. Accordingly, the appellate court had jurisdiction over defendant’s interlocutory appeal.

The trial court’s conclusion that it lacked jurisdiction to consider whether defendant’s continued detention was necessary while his appeal challenging the initial detention order was pending was erroneous. Rule 604(h) provides that the circuit court retains jurisdiction to proceed with the case during the appeal of a detention order. And Section 110-6.1(i-5) imposes on the circuit court a continuing obligation to reevaluate whether detention remains necessary at each subsequent appearance. Read together, the appellate court found that these two provisions provide the circuit court with jurisdiction. While Rule 604(h) has since been amended to preclude multiple appeals from detention orders, it places no limit on circuit court proceedings to reevaluate the need for continued detention.

People v. Thomas, 2024 IL App (1st) 240479 The trial court did not err in continuing defendant’s pretrial detention, even though it incorrectly used the standard outlined in section 110-6.1(e)(1)-(3), which applies to initial detention hearings, rather than section 110-6.1(i-5), which applies to subsequent hearings. Defendant was arrested for armed habitual criminal and possession of a stolen motor vehicle while on parole. The trial court granted the State’s initial petition for pretrial detention, finding under section 110-6.1(e) that he posed a threat to safety that could not be mitigated by conditions of release. When defendant’s parole period ended, he moved for pretrial release based on this change in circumstances. The court denied his request, again employing section 110-6.1(e).

The appellate court affirmed. Although the trial court should have reviewed the petition under section 110-6.1(i-5), detention would be warranted under either standard. Section 110-6.1(i-5) asks whether “continued detention is necessary to 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....” It therefore is “effectively subsumed” by section 110-6.1(e), in that it carries a lower burden – it no longer requires proof of the commission of the offense by clear and convincing evidence, it starts from the premise that detention was necessary due to defendant’s threat to safety, and it contains no standard of proof.

Given the lack of a standard of proof within section 110-6.1(i-5), the appellate court reviewed the trial court’s judgment for an abuse of discretion, rather than determining whether the judgment was against the manifest weight of the evidence, as it would on appeal from an initial detention hearing. In this case, defendant had multiple prior convictions for UUW by a felon, and had been prohibited by law from carrying a firearm for over 10 years. Defendant was on parole for his last UUW by a felon conviction when he was again charged with a gun offense, and with stealing a motor vehicle that resulted in a crash. His discharge from parole did not change the fact that he continued to present a threat to safety. Thus, the trial court did not abuse its discretion in ordering his detention.

People v. Salas-Pineda, 2024 IL App (2d) 240124 At an initial detention hearing, the trial court heard a detailed account of an hours-long incident of violence and sexual assault committed by defendant against his girlfriend, M.M. The trial court granted the State’s petition to detain, finding the proof evident or presumption great that defendant committed aggravated criminal sexual assault and other offenses against M.M., and that he was a danger to her and the community given her extensive injuries. It further found conditions such as GPS or EHM insufficient to protect M.M. The detention order was affirmed on appeal.

At a subsequent hearing on defendant’s continued detention, M.M. testified that defendant did not in fact rape her, that they did have a drunken argument but that she consented to the sexual intercourse. She also testified that she did not fear defendant, and characterized the night in question as an “alcohol-fueled fight that just really got out of hand.” She admitted that she did send a text message to her brother-in-law asking for “help” and that defendant caused bruises shown in a photo taken of her the night of the incident. The trial court ordered detention to continue, citing the fact that while M.M. recanted her rape allegation, she did not dispute the extensive injuries visible on the photos or her statements to the police describing defendant’s various physical attacks, including strangling her and holding a knife to her throat.

The appellate court affirmed. To order continued detention, the court must find the detention “necessary to 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 to prevent the defendant’s willful flight from prosecution.” There is no quantum of evidence or burden of proof associated with this finding, unlike at an initial detention hearing. Here, the court did not abuse its discretion when, in considering all of the evidence, it found that defendant continued to pose a threat to M.M. Even though M.M. testified she consented to sexual intercourse, she also conceded she had been beaten, corroborating her statements to the police.

People v. Harris, 2024 IL App (2d) 240070 Defendant was initially ordered detained on the State’s petition, but then subsequently appeared before a different judge who ordered him released with conditions. The State appealed that later order, and the appellate court vacated the release order and remanded for the court to provide a record of its findings supporting release, including the basis for its decision to impose electronic monitoring as a condition of release.

While not addressed by the parties in their memoranda, the appellate court first addressed the question of what is required in determining and ordering a defendant’s pretrial

release where that defendant has previously been ordered detained in the matter. To warrant continued detention, the State is not held to the same burden as at the original detention hearing. Instead, the court must find only that detention remains necessary to avoid a real and present threat under [725 ILCS 5/110-6.1\(i-5\)](#). Where the court finds that continued detention is not necessary, however, the court must consider those matters outlined in Section 110-5(a)(1)-(7) in determining the appropriate conditions of release. And, if the trial court imposes electronic monitoring, it must set for the basis for its decision to do so pursuant to Section 110-5(h). Here, the appellate court concluded that the trial court’s “cursory oral ruling” failed to provide an adequate record of its findings as to conditions of release, thus requiring a remand.

People v. Mansoori, 2024 IL App (1st) 232351 Where a defendant is in custody with a set bond, or, having posted bond is in custody due to revocation of bond, the SAFE-T Act does not permit the State to file a petition for detention if more than 21 days have passed since the original bond hearing. See [725 ILCS 5/110-6.1\(c\)](#). Rather, at defendant’s next court date, the trial court is to determine whether “continued detention is necessary to 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 to prevent the defendant’s willful flight from prosecution.” [725 ILCS 5/110-6.1\(i-5\)](#). Unlike original petitions for pretrial detention under section 110-6.1(a)(1), which are governed by the “clear and convincing” standard, section 110-6.1(i-5) does not impose a standard.

Here, the trial court granted the State’s section 110-6.1(a)(1) petition for pretrial detention, despite the fact that defendant had been in custody for years on a revoked bond. The appellate court majority found error because the State’s petition was untimely. The trial court should have considered defendant’s detention under section 110-6.1(i-5). The appellate court remanded for a new hearing.

The dissent, pointing to section 110-7.5(b), argued that defendants who are previously released on bond are entitled to hearings pursuant to subsection 110-5(e), which the dissent interpreted as a 110-6.1 hearing. But the majority noted that 110-5(e) does not specify the type of hearing, and a common sense reading makes it more likely that the intent was to order a continued detention hearing under 110-6.1(i-5). The dissent also noted that remand is unnecessary because the State’s burden under section 110-6.1(c) is higher than under section 110-6.1(i-5). The majority didn’t disagree, but concluded that the use of an improper procedure still required a remand, particularly where no judicial economy concerns were present, as the trial court would be required to hold a section 110-6.1(i-5) hearing at the next court date regardless.

People v. Hongo, 2024 IL App (1st) 232482 Where defendant did not file a notice of appeal from the initial order of detention, and instead filed a notice of appeal from a subsequent order for continued detention, the appellate court concluded that it lacked jurisdiction to consider the propriety of the court’s findings upon which the initial detention order was based or the timeliness of the State’s petition to detain. And, with regard to the continued detention order over which it did have jurisdiction, the court found no error where the record showed defendant had a considerable criminal history including violent offenses, where defendant was armed with a firearm with an extended-capacity magazine at the time of his arrest, and where defendant was on parole at the time of the new offenses here.

People v. Casey, 2024 IL App (3d) 230568 Defendant was arrested for DUI and threatening a public official and detained pursuant to a State motion for pretrial detention. He did not

appeal this order. After his indictment he moved for pretrial release. Defendant argued that, although he threatened police officers with violence, he was not a threat as his statements were drunken hyperbole. He also argued he was arrested two days after leaving a sober-living facility and relapsing, and that he had since received permission to rejoin the facility. The trial court denied the motion, finding he committed the alleged offense while on probation for aggravated assault, a condition of which was to avoid alcohol.

An appellate court majority affirmed. The court reviewed the factual findings using the manifest weight of the evidence standard, and reviewed the ultimate decision to grant or deny the petition for an abuse of discretion. It first pointed out that defendant did not appeal the initial detention order, and appealed only a subsequent order. At the initial hearing, the State must prove by clear and convincing evidence that: (1) the proof is evident or presumption great that defendant committed a detainable offense; (2) defendant poses a real and present threat to any person, persons, or the community or is a flight risk; and (3) no conditions could mitigate this threat or risk of flight. But at subsequent hearings, this standard does not apply. For subsequent hearings the statute only requires the court to find that “continued detention is necessary to 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 to prevent the defendant’s willful flight from prosecution.” The clear and convincing standard no longer applies. See [725 ILCS 5/110-6.1\(i-5\)](#)

Here, the evidence established that defendant made multiple threats, including threatening to bring a pipe bomb to the police department and moving aggressively towards an officer with clenched fists. Defendant was on probation for aggravated assault of a peace officer at the time. His probation required him to refrain from consuming alcohol, which he had failed to do. While defendant argued he could go back to the sober living facility, defendant had just left there days before the DUI and instant offense occurred. In light of these facts, the trial court did not abuse its discretion.

Justice McDade dissented because defendant was intoxicated when he made the threats and he scored low on a risk assessment.

People v. Long, 2023 IL App (5th) 230881 Defendant was arrested and charged with criminal sexual assault. The State petitioned to deny pretrial release based on the fact that defendant was a threat to the complainant, who was underage, and his cousin. The State noted that defendant had a pending charge for possession of child pornography. Defendant in response submitted a letter from the complainant, in which she stated that she did not feel threatened by defendant and would not object to his release on bond. The trial court ordered defendant detained. Defendant did not appeal.

At the next hearing date defendant renewed his motion for pretrial release, making the same arguments as before, but with an additional piece of evidence in the form of a letter from the complainant’s father, stating he did not believe defendant posed a threat to his daughter. The court found the defendant’s letters to be mere opinions, and again ordered defendant detained for posing a real and present threat to the complainant.

In affirming the trial court’s detention order, the appellate court noted that defendant appealed only the second order. Pursuant to 110-6.1(i-5), once detention has been ordered, “[a]t each subsequent appearance of the defendant before the court, the judge must find that continued detention is necessary to 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 to prevent the defendant’s willful flight from prosecution.” Here, the trial court heard the arguments and considered the one new piece of evidence – the letter from the complainant’s father – and

determined that continued detention was necessary. The appellate court found no abuse of discretion in this finding.

§6-5(h)(2) Revocations

Illinois Appellate Court

People v. Miller, 2025 IL App (1st) 250438 Defendant was charged with murder and released on electronic monitoring. The State filed a motion to revoke pretrial release, stating that defendant had been accused of sexual assault by a minor. The defense pointed out that under section 110-6(a) of the Pretrial Fairness Act, revocation is allowed “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. . .” 725 ILCS 5/110- 6(a). The trial court confirmed with the State that no charges had been filed in connection with the alleged sexual assault, and that the case remained under investigation. The court ordered revocation, citing the safety of the minor and other minors who lived in defendant’s household.

The appellate court reversed. The plain language of section 5/110-6(a) allows for revocation only when charges are filed. “By concluding that defendant’s pretrial release could be revoked based on the allegations here, the trial court effectively added its own language to the statute – that pretrial detention may also be revoked when a person is under investigation for committing an offense.” Nor did the trial court have authority under section, 5/110-5(f-5), which allows the court to reassess and remove conditions, but says nothing about revoking release.

People v. Hill, 2025 IL App (4th) 250010 Following revocation of pretrial release, defendant filed a “motion to reconsider.” While that motion did not specifically reference Supreme Court Rule 604(h), it was determined to be a motion for relief in substance where it set forth the procedural history of the case, requested the court reconsider its ruling, and included supporting arguments for that request. Thus, the requirements of Rule 604(h) were satisfied, and appellate review was proper.

The appellate court went on to hold that the trial court did not err in revoking defendant’s pretrial release. First, defendant was subject to the Pretrial Fairness Act pursuant to [725 ILCS 5/110-7.5\(a\)](#), which specifically allows the State to file a petition to revoke where a defendant was previously released on cash bond. Here, defendant had posted cash bond on a charge of aggravated fleeing and eluding and was subsequently charged with a new felony, which properly formed the basis for the petition to revoke. And, the State was not required to prove that no conditions could be imposed to mitigate any threat defendant posed in order to obtain revocation. That standard applies to petitions to deny release, not petitions to revoke, and thus was not applicable here.

People v. Coe, 2024 IL App (5th) 240976 The circuit court did not err when it revoked defendant’s pre-trial release. Section 110-6(a) provides for revocation when “a defendant has previously been granted pretrial release under this Section for a felony or Class A misdemeanor” and “is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant’s pretrial release.” The State here alleged that defendant committed a Class A misdemeanor, criminal trespass to public land, while on pre-trial release for another Class A misdemeanor. Defendant argued that the evidence failed to show by clear and convincing evidence that the land was public, meaning the State proved only a Class B misdemeanor.

The appellate court rejected this argument after finding that the State is not required to prove the new offense by “clear and convincing” evidence. Section 110-6(a) requires proof only that defendant was charged with a felony or Class A misdemeanor. The “clear and convincing” language applies only to the question of whether conditions would suffice.

People v. Hammerand, 2024 IL App (2d) 240500 Section 110-6(a) of the Code of Criminal procedure provides that when a defendant has previously been granted pretrial release for a felony or a Class A misdemeanor, release may be revoked if defendant is charged with a new felony or a Class A misdemeanor alleged to have occurred during pretrial release. 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.

Further, the court reasonably concluded that no conditions would prevent defendant from being charged with a subsequent felony or Class A misdemeanor. The evidence at the revocation hearing showed that defendant had ignored a no-contact order while on pretrial release, indicating his disregard of court-imposed conditions. And his behavior at the revocation hearing resulted in his removal from the courtroom, demonstrating that he was unable to abide by the court’s instructions even while present before the judge. The revocation of defendant’s pretrial release was affirmed.

People v. Farris, 2024 IL App (5th) 240745 The State filed a petition to revoke pretrial detention, alleging defendant violated conditions of release. The court granted the motion, and defendant filed a motion to reconsider, arguing that under section 110-6, revocation of pretrial release is permissible only if the State alleges defendant committed a new felony or Class A misdemeanor. The circuit court disagreed, noting that section 110-6(i) states that nothing in this section limits the State’s ability to file a petition for denial of pretrial release under section 110-6.1. Under 110-6.1(d)(2), the State may seek a subsequent petition for pretrial detention based on new facts. The circuit court released defendant but invited the State to file a subsequent petition for pretrial detention, which it did, alleging the violation of conditions as a new fact warranting detention. The circuit court found the new fact of violating conditions warranted detention.

On appeal, defendant argued that the circuit court misconstrued section 110-6, and that the only trigger for revocation of release is commission of a new felony or Class A misdemeanor. Section 110-6.1(d)(2) applies only when the State has discovered new facts relating to the initial detention ruling. Violation of conditions has its own remedy in section 110-6(c)(4), which is sanctions. The appellate court agreed. There is no indication that the legislature intended to create a rule in 110-6 (revocation only permissible if defendant commits new offense) and then create an implicit exception to that rule in section 110-6.1(d)(2). Such a reading would render 110-6(a) superfluous, as 110-6.1(d)(2) would cover a scenario where defendant committed a new felony or Class A misdemeanor. Plus, the wording “new facts not known or obtainable” indicates the provision is referring to those facts related to the filing of the previous petition and not new facts arising out of subsequent actions, such as violating conditions. The appellate court ordered defendant’s release with or without modifications of conditions.

People v. Green, 2024 IL App (1st) 240211 Defendant argued that he was denied a timely hearing on the State’s petition to revoke his previously granted pretrial release. The petition was filed 1/12/24, and hearing was scheduled for 1/16/24, but not held until 1/17/24. Defendant alleged this violated the 72-hour hearing deadline of **725 ILCS 5/110-6(a)**.

The appellate court agreed. However, the court disagreed with defendant’s argument that the remedy for this violation is release from custody. Defendant failed to provide a sufficient legal basis in support of that remedy. A remedy is required only if a statutory requirement is mandatory, rather than merely directory. The 72-hour deadline was directory rather than mandatory, as it lacked negative language prohibiting further action in the event of a violation, or any specific consequences for a failure to act within that time frame. Moreover, a strict mandatory construction of the 72-hour deadline would not achieve the purpose of the statute to determine whether revocation of previously granted release is warranted, particularly where, for purposes of efficiency, the hearing must be before the same judge who ordered release, which may make it difficult to comply with the deadline.

People v. Perez, 2024 IL App (2d) 230504 Defendant was released pretrial, subsequently arrested on a new charge of battery, and had his release revoked on the State’s petition. Under **725 ILCS 5/110-6(a)**, a defendant’s pretrial release may be revoked if he or she is charged with a felony or Class A misdemeanor while on pretrial release. In such cases, the State bears the burden to prove by clear and convincing evidence that no condition or combination of conditions would reasonably ensure defendant’s appearance for future hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor. The circuit court’s finding that the State had met that burden here was not against the manifest weight of the evidence where defendant had a history of committing violent crimes, as well as other offenses, and was charged with battering a minor in the instant case only twelve days after being released pretrial in a separate case.

§6-5(h)(3) Other

Illinois Appellate Court

People v. Jones, 2025 IL App (2d) 250003 Defendant was charged with multiple offenses in three separate cases. Initially, cash bail was set but defendant was unable to post. After the effective date of the PFA, defendant moved to reconsider release, the State petitioned to deny release, and the court ordered defendant detained.

Subsequently, defendant was convicted in one of the cases and sentenced to five years in prison. The court did not move forward with trial on the remaining two cases but rather opted to hold those cases until defendant finished serving his prison sentence. Defendant then filed various motions, *pro se*, including requests for counsel and for a speedy trial, prompting the court to set both cases for a status hearing. In doing so, the court ordered both cases continued “on the motion of defendant,” but also noted that defendant was not present.

Counsel was appointed, and defendant moved for immediate release pursuant to **725 ILCS 5/110-6.1(I)**, noting that he had been paroled on the first case. That section mandates release if the defendant is not tried within 90 days of being detained. At a hearing on the motion, counsel argued that defendant had moved for a speedy trial and had not agreed to any continuances before 90 days had expired. The trial court denied the motion.

The appellate court reversed and remanded, ordering a hearing to determine whether the continuance in question was attributable to defendant. Under section 110-6.1(I), the 90-day requirement can only be tolled if defendant requests a continuance or if the State does

so "upon a showing of good cause." If the continuance was not attributable to defendant, he was not tried within 90 days and release is required.

People v. Roa, 2024 IL App (4th) 241051 Defendant was charged with predatory criminal sexual assault of a child, and the State's petition to detain was granted. Defendant's counsel subsequently filed a motion for pretrial release pursuant to 725 ILCS 5/110-6.1(I) when his trial date was set more than 90 days after he was denied release. The court denied that motion, finding that there was delay attributable to defendant. The appellate court affirmed.

In addition to stating that a defendant who is detained shall be brought to trial within 90 days, section 110-6.1(I) provides that "[i]n computing the 90-day period, the court shall omit any period of delay resulting from a continuance granted at the request of the defendant...". The delay need not specifically delay the trial date because the statute refers to "any period of delay." Thus, even if the delay of defendant's trial date was not attributable to the agreed continuances in question, those continuances served to toll the statutory 90-day period under the plain language of the statute.

People v. Milner, 2024 IL App (1st) 241284 The State's petition for pretrial detention was timely even though it was not filed on the date of defendant's first appearance. Defendant had been detained with bond set prior to the passage of the SAFE-T Act. Defendant moved for pretrial release once the Act went into effect. The motion was heard several weeks later, at which time the State filed a petition to detain under section 110-6.1(a). The court ordered pretrial detention.

The appellate court found the State's petition timely and affirmed the detention order. While an initial petition for pretrial detention must be filed within the time limits of section 110-6.1(c)(1) (at first appearance before a judge, or within 21 days of arrest and release), the instant case began as a proceeding under section 110-5(e), whereby defendant requested review of his pretrial detention. See 725 ILCS 5/110-7.5(b) (allowing those in pretrial detention with bond set to challenge their detention under section 110-5(e)). Once defendant made this request, the State had a right to respond by arguing that continued detention was required for the reasons set out in section 110-6.1. But because the proceeding was initiated by defendant under section 110-5(e), the time limits applicable to an initial petition under section 110-6.1(c)(1) did not apply, even if a section 110-6.1 petition was the proper mechanism for the State's response.

People v. Williams, 2024 IL App (1st) 241013 Defendant was charged with aggravated criminal sexual assault and the circuit court granted the State's petition for pretrial detention. After an amendment to Rule 604(h), defendant moved under 604(h)(2) for a motion for relief. The circuit court allowed defendant to present new witnesses at this hearing, and while those witnesses testified on defendant's behalf, the circuit court upheld its detention ruling.

On appeal, the defendant challenged the circuit court's findings as to whether the State proved that (1) the proof is evident or the presumption great that the defendant has committed a detainable offense, (2) the defendant poses a real and present threat to the safety of any person or the community based on the specific facts of the case, and (3) no conditions or combination of conditions exist that can mitigate this threat or defendant's willful flight. The appellate court upheld the circuit court's findings. Defendant allegedly took advantage of an intoxicated 17 year-old girl and forcefully assaulted her. While defendant argued the case for detention rested entirely on the fact of the offense itself, the circuit court pointed to other considerations, such as the inadequacy of conditions to prevent this type of behavior.

The authoring justice reviewed the first two questions using the manifest weight of the evidence standard and the third question using an abuse of discretion standard. One concurring justice would have upheld the circuit court using the manifest weight of the evidence standard for all three questions as well as for the ruling on the motion for relief. A third justice would have applied the abuse of discretion standard to all three questions and for the motion for relief.

The State also argued that the defendant should not have been able to call new witnesses at the hearing on the motion for relief under 604(h)(2), because these hearings are meant to reconsider the original detention hearing, and are not new detention hearings. The appellate court agreed, holding that the parties should not present new evidence at a hearing on the motion for relief. But it found the error harmless because the circuit court's ruling on the motion for relief was correct. A concurring justice went further and cautioned lower courts not to allow a defendant a "redo" at the motion for relief. This justice urged defendants who intend to call witnesses to request a continuance of the original detention hearing instead.

People v. Haisley, 2024 IL App (1st) 232163 Defendant was arrested and had cash bail set prior to the effective date of the SAFE-T Act. He did not post bail and remained in custody. After the Act went into effect, defendant filed a petition seeking removal of the monetary security condition. The State countered with a petition to detain. At the conclusion of a detention hearing, the court ordered defendant detained under the Act's dangerousness standard.

Defendant filed a notice of appeal, checking the box indicating his contention that the State failed to meet its burden to prove he posed a threat to safety. In the appellate court, defendant abandoned that argument and instead asserted that the court should not have held a detention hearing because the State's petition was untimely and unverified. The appellate court found that neither issue amounted to plain error.

The lack of verification was "troubling." The court held that "[v]erification is not a mere formality – it is an important safeguard that helps to ensure that the accused is afforded due process before being held in pretrial custody." But, defendant's failure to preserve the error proved fatal. Lack of verification did not necessarily mean the petition included false allegations and was not so serious as to affect the fairness of the detention proceedings.

And, the State's petition was not untimely. Defendant had cash bail set prior to the effective date of the SAFE-T Act but never posted bail. Accordingly, because defendant had not been released from custody, the 21-day period set out in **725 ILCS 5/110-6.1(c)(1)** had not yet expired, and the State's petition was properly filed.

§6-5(i) Timeliness/Forfeiture/Plain Error

Illinois Supreme Court

People v. Watkins-Romaine, 2025 IL 130618 Prior to the effective date of the SAFE-T Act, defendant was arrested and had monetary bail set. He was unable to post the required amount and remained in custody. After the Act took effect, defendant petitioned for release without bail. In response, the State filed a petition to detain, which the circuit court granted.

On appeal, defendant challenged the propriety of the State's detention petition, arguing that it was unauthorized under the Act. The Supreme Court first found that defendant failed to preserve the question for review by not objecting to the State's petition to detain and not including the issue in his notice of appeal. Thus, the issue was forfeited and could only be addressed if the plain error test was satisfied. The first component of plain error review is to determine whether "clear or obvious" error occurred.

There was no clear or obvious error here. Under the provisions of the SAFE-T Act, the State may file a petition to detain in a qualifying case either at the first appearance or within 21 days after a defendant's arrest and release, pursuant to [725 ILCS 5/110-6.1\(c\)](#). Here, however, where defendant had cash bail set prior to the effective date of the Act, the State could not have filed a petition within the time established in Section 110-6.1(c). But, defendant was authorized to seek a hearing under [725 ILCS 5/110-5\(e\)](#) once the Act went into effect, and that action allowed the State to respond by seeking his detention. Section 110-5(e) is applicable to individuals who were ordered released on cash bail but remained in custody, via [725 ILCS 5/110-7.5\(b\)](#). Under Section 110-5(e), a defendant who remains detained due to the inability to satisfy a condition of release is entitled to have the conditions-of-release hearing re-opened to determine what available conditions will reasonably ensure the defendant's appearance and the safety of others.

Here, defendant sought and received a hearing under Section 110-5(e), and it was proper for the State to participate in that hearing and object to defendant's release. Section 110-5(e) requires the court to "reopen" the conditions hearing, and the court is entitled to consider which conditions, "if any," are appropriate. Because a condition that the court had previously set – a substantial cash bail – was no longer available, the court could properly conclude that no other condition existed that could ensure the safety of the community. Further, allowing the State to file a petition to detain at this stage, while not specifically provided for in the Code, was "the most practical approach, and the only one not leading to absurd and unexpected results."

Thus, where a defendant who previously had cash bail established prior to the effective date of the SAFE-T Act, seeks a continued detention hearing under Section 110-5(e), the State may petition to detain.

Illinois Appellate Court

[People v. Schwedler, 2025 IL App \(1st\) 242157](#) The State's petition for pretrial detention filed on September 26, 2024, was not untimely. While defendant argued that the petition was filed more than 21 days after his initial arrest for reckless conduct on August 6, 2024, the State had filed a superceding manslaughter indictment on September 3, after it learned the victim died. This created a new case that relied on previously unknown facts. Defendant's first appearance on the new case was on September 17, 2024. Applying section 110-6.1(c)(1), the State had 21 days from that date to file a petition for pre-trial detention.

Although section 110-6.1(c)(1) does not discuss the deadline in terms of superceding indictments, section 110-6.1(d)(2) supports the conclusion that the clock should restart. Under that section, the State may seek to file a second or subsequent petition for pretrial detention if it can demonstrate it learned of "new facts not known or obtainable at the time of the filing of the previous petition." The appellate court took this provision to mean that the legislature intended to allow for the fact that the State might not have all relevant information at an initial hearing.

However, the appellate court remanded the case because the circuit court failed to conduct a proper detention hearing. While the court purported to rely on a written proffer consisting of a 2-page summary of the facts, the court never gave the defense an opportunity to challenge the proffer. The court rejected the State's argument that a violation of this unequivocal and basic requirement of section 110-6.1(f) could be harmless, and remanded for a new detention hearing.

People v. Tolliver, 2024 IL App (4th) 241131 Defendant argued that the court erred in denying him pretrial release, because his revocation hearing was not held within 72 hours of the State’s petition to revoke, as required by section 110-6(a). The appellate court affirmed, finding the clock did not start until defendant was transported back to the county.

On April 1, 2024, defendant was indicted in Cook County while on pretrial release in Boone County. On April 16, 2024, the Boone County State’s attorney filed a petition to revoke pretrial release based on the Cook County indictment, and a warrant issued. On April 24, 2024, defendant was arrested in Cook County, and five days later, the Boone County Sheriff took him into custody. The revocation hearing was set for May 1, 2024, but defendant’s attorney requested a continuance to May 3, on which date the court granted the State’s petition.

Under section 109-2, upon the arrest of a defendant with a warrant outstanding in another county, the county with the warrant has five days to either transport the defendant to its county for a hearing under 110-6 or 110-6.1, or quash the warrant. 725 ILCS 5/109-2. Section 110-6(a), however, requires the hearing take place within 72 hours of the filing of the petition to revoke pretrial release. Defendant argued that the latter provision applies, and that here, the State’s petition was filed on April 16, starting the 72-hour clock. The court declined to adopt this interpretation because it would result in the necessity of *ex parte* hearings in cases where the defendant isn’t arrested, or where the defendant hasn’t been transported back to the county yet. Also, if section 110-6(a) applied when a defendant is arrested in another county, it would effectively reduce the five-day rule of section 109-2 to three days. These are absurd results that undermine the purpose of the statute. To avoid this result, the court held that after the State files its petition, the time for holding a revocation hearing does not begin to run until the sheriff has completed the transfer. While the transfer was completed on April 29, and defendant’s hearing wasn’t held until May 3, defendant invited this error by rejecting the original May 1 hearing date and asking for May 3.

People v. Nettles, 2024 IL App (4th) 240962 The appellate court dismissed defendant’s appeal from a pretrial detention order. Illinois Supreme Court Rule 604(h)(2) provides that, “[a]s a prerequisite to appeal” from an order denying pretrial release, “the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief.” The rule also provides that, “[u]pon 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.”

Here, after being denied pretrial release, defendant filed a “Motion to Reconsider Pretrial Release.” The motion failed to reference Rule 604(h)(2) and instead cited section 110-5(f-5), which allows defendants to ask for reconsideration of conditions at subsequent appearances. Because defendant explicitly filed his motion under section 110-5(f-5) the motion could not be considered a proper motion under Rule 604(h)(2).

Furthermore, because the issues raised on appeal were not raised in the motion, those issues were waived under Rule 604(h)(2). While Rule 604(h)(7) allows appellate counsel to “supplement” the motion for relief, it does not give *carte blanche* to appellate counsel to present additional arguments. Nor does the plain error doctrine apply, as the supreme court explicitly chose to use the term “waiver” rather than “forfeiture.”

Although the failure to file a proper 604(h)(2) motion is not a jurisdictional bar, it does require dismissal of the appeal. Citing **People v. Cooksey**, 2024 IL App (1st) 240932, the court likened this situation to a guilty plea appeal that lacks a proper 604(d) motion; both are prerequisites to appeal and their absence requires dismissal. Defendant also argued that counsel was ineffective for failing to file the proper motion. But the court held that he could

not show prejudice because the detention order remains subject to attack in the trial court and in the appellate court. Detention orders must be revisited at every appearance, and, because there is no time limit on appeals, defendant can file a new 604(h)(2) motion and appeal, either from the instant detention order or from any subsequent decisions. See [Ill. S. Ct. Rule 604\(h\)\(3\)](#).

People v. Milner, 2024 IL App (1st) 241284 The State’s petition for pretrial detention was timely even though it was not filed on the date of defendant’s first appearance. Defendant had been detained with bond set prior to the passage of the SAFE-T Act. Defendant moved for pretrial release once the Act went into effect. The motion was heard several weeks later, at which time the State filed a petition to detain under section 110-6.1(a). The court ordered pretrial detention.

The appellate court found the State’s petition timely and affirmed the detention order. While an initial petition for pretrial detention must be filed within the time limits of section 110-6.1(c)(1) (at first appearance before a judge, or within 21 days of arrest and release), the instant case began as a proceeding under section 110-5(e), whereby defendant requested review of his pretrial detention. See [725 ILCS 5/110-7.5\(b\)](#) (allowing those in pretrial detention with bond set to challenge their detention under section 110-5(e)). Once defendant made this request, the State had a right to respond by arguing that continued detention was required for the reasons set out in section 110-6.1. But because the proceeding was initiated by defendant under section 110-5(e), the time limits applicable to an initial petition under section 110-6.1(c)(1) did not apply, even if a section 110-6.1 petition was the proper mechanism for the State’s response.

People v. Vincent, 2024 IL App (4th) 240218 Defendant was on pretrial release when she was charged with aggravated battery of a peace officer in the instant case. The State moved to deny pretrial release on the aggravated battery charge, but it cited [725 ILCS 5/110-6\(a\)](#), which concerns revocation of pretrial release. The circuit court denied pretrial release. Defendant argued on appeal that the circuit court committed second-prong plain error, or counsel was ineffective, because aggravated battery of a peace officer is not a detainable offense. The appellate court found not error. Defendant conceded she was subject to detention under 110-6(a) on the prior case. Had the State simply changed the case number, the result of the hearing would have been the same. This was a procedural error, not the type of “structural” error that warrants automatic reversal. Had counsel objected, the State would have simply restyled its petition as a petition to revoke in the prior case.

Nor did the circuit court err when it found an ankle bracelet an inadequate method of mitigating the risk of release. Defendant had a history of resisting arrest and battering police officers. Although an ankle monitor would allow the authorities to know where defendant was at any given time, it would not stop her from leaving a residence, as she did in this case, which might then require police intervention.

People v. Clark, 2024 IL 130364 Pursuant to [725 ILCS 5/110-6.1\(c\)\(1\)](#), petitions for pretrial detention must be filed at “the first appearance before a judge.” Defendant argued that, because the State appeared before a judge at an *ex parte* hearing to obtain a warrant three weeks before filing its petition, the petition was untimely. The supreme court disagreed.

The laws governing pretrial detention and release do not contemplate the filing of a petition at an *ex parte* hearing. Under [725 ILCS 5/109-1](#), arrestees must be brought before a judge, provided an attorney if indigent, and given a hearing on pretrial detention or release. Under Article 110, once a petition for pretrial detention is filed, the court must hold a hearing

“immediately.” [725 ILCS 5/110-6.1\(c\)\(2\)](#). These hearings involve several layers of due process, including the presence of defendant, counsel, the right to confer with counsel, discovery, and the rights to testify, to cross-examination, and to present evidence. Read together, these provisions make clear that the legislature envisioned a petition would be filed at *defendant’s* first appearance before a judge, not the State’s.

Although section 110-6.1(c)(1) did not use the phrase “defendant’s first appearance,” as did another provision in the Act, the supreme court held that this distinction was not meaningful in light of the totality of the various laws governing pretrial detention. Given the above procedures required for detention hearings, requiring the State to file its detention petition at an *ex parte* hearing on an arrest warrant would lead to absurd results.

People v. Milner, 2024 IL App (1st) 241284 Defendant was in pretrial detention with a bond set prior to the enactment of the SAFE-T Act. After the Act went into effect, he petitioned for pretrial release. A hearing date was set, on which the State filed a petition for pretrial detention. The court granted the State’s petition over defendant’s objection that it was untimely. Defendant did not appeal, but raised the same timeliness issue in subsequent motions for pretrial release, including the motion from which the instant appeal was taken.

On appeal he raised the timeliness issue, but the State argued the appellate court lacked jurisdiction as no appeal was taken from the initial detention order. The appellate court agreed that it lost jurisdiction to review the original detention order, despite the amendment to Rule 604(h) that allowed for appellate review at any time prior to conviction. That amendment was not retroactive. However, because defendant raised the timeliness issue in his latest motion for release, the court would reach the issue on the merits.

Subsection (c) of section 110-6.1 provides that a petition for pretrial detention must be filed “at the first appearance before a judge” or within 21 days of the defendant’s arrest and release. [725 ILCS 5/110-6.1\(c\)\(1\)](#). There is a split of authority as to when this deadline occurs if as here, bail was set, the defendant remained in custody when the Act took effect, and the State petitioned for pretrial detention in response to the defendant’s petition for pretrial release.

The appellate court sided with those decisions finding such petitions timely, albeit for a different reason. Citing Section 110-7.5(b), the court held that defendants ordered released on bond but remaining in custody when the Act takes effect “shall be entitled to a hearing under subsection (e) of Section 110-5.” Section 110-5(e) allows for the court to reopen a conditions for release hearing. One option at a conditions for release hearing is that the court finds no conditions will mitigate the risk of release. Nothing in section 110-5 forbids the State from arguing in favor of detention. This is essentially what occurred here. The State’s petition for detention was part of its argument at the 110-5(e) hearing, and these petitions are not subject to the time limitations of section 110-6.1(c)(1).

People v. Drew, 2024 IL App (5th) 240697 After being ordered detained, defendant filed a motion for relief presenting issues of whether he committed a qualifying offense, whether the State proved he was a safety threat, whether the State proved that no conditions could mitigate any safety threat, and whether the court erred in determining he was unlikely to appear for future court dates or not be charged with a subsequent offense. That motion was denied, and defendant appealed.

In his memorandum on appeal, defendant first argued that the trial court violated [725 ILCS 5/110-6.1\(c\)\(2\)](#) by failing to hold the detention hearing within 48 hours of his first appearance. Because this issue that was not raised in defendant’s motion for relief, defendant sought plain error review on appeal. The appellate court declined to find any error, let alone

plain error, however, because the hearing had been delayed at defense counsel's request due to counsel's own scheduling issues. The doctrines of waiver and invited error thus precluded the court from considering the issue as second-prong plain error.

The court went on to reject defendant's claim that counsel was ineffective for occasioning the delay in the detention hearing, concluding that defendant failed to establish prejudice. In assessing prejudice, courts look to whether defendant has shown a reasonable probability that the end result of the criminal process would have been more favorable but for the alleged deficient performance. Because defendant's case was still at the pretrial stage, he could not show that the delay in his detention hearing had any effect on the ultimate outcome of the criminal proceedings and thus could not demonstrate prejudice.

Finally, the court declined to consider the merits of defendant's argument that the State failed to prove by clear and convincing evidence that no conditions of release could mitigate any threat to safety. In defendant's motion for relief in the trial court, he listed this as an issue for consideration, but he presented no argument in support of this issue or any others raised in that motion. This is insufficient to meet the requirement of Rule 604(h)(2) that the motion provide "the grounds for such relief" and the requirement of Rule 604(h)(7) that the motion "contain sufficient detail to enable meaningful review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities." Thus, the court found the issue waived and affirmed the detention order.

People v. Davidson, 2024 IL App (1st) 240762 At the time the SAFE-T Act went into effect, defendant was in custody pursuant to a no-bail order on charges of first degree murder, attempt murder, and aggravated battery with a firearm. Although defendant had originally been released on cash bail, his bail was revoked prior to the effective date of the Act, and thus he did not qualify for treatment under the Act as a person on pretrial release under [725 ILCS 5/110-7.5\(a\)](#). Instead, once the Act went into effect, defendant was entitled to a hearing on conditions of release, but only by filing a motion for reconsideration of conditions. [725 ILCS 5/110-7.5\(b\)\(3\)](#). Because defendant was facing a murder charge, such a hearing had to be held within 90 days of the defendant's filing of such a motion, and the State was allowed to file a verified petition to detain in return. Here, the court heard both defendant's motion and the State's petition within the 90-day time frame required by the Act, and thus the State's petition was not untimely.

Additionally, the court did not err in considering evidence that defendant had twice been found in possession of a firearm after being released on bail, even though the unlawful use of a weapon charges were subsequently dismissed when the firearm evidence was ordered suppressed. The rules on admissibility of evidence at criminal trials do not apply to detention hearings, and a defendant may not move to suppress evidence in detention proceedings. A court may consider any factors having a reasonable bearing on defendant's propensity for violence, including whether he is known to possess or have access to weapons. Further, defendant's possession of firearms while he was on bail demonstrated non-compliance with conditions of release, which is a relevant consideration in determining whether any conditions could mitigate the safety threat posed by his release.

People v. Davis, 2024 IL App (3d) 240244 The circuit court's pretrial detention order was vacated because defendant was not charged with a detainable offense. Defendant made a bomb threat. He was charged with disorderly conduct based on knowingly transmitting a false report that a crime would be committed. [720 ILCS 5/26-1\(a\)\(4\), \(b\)](#). Under section 110-6.1(a)(1.5), only forcible felonies are detainable. These include: (1) several enumerated

offenses; and (2) any felony which involves the threat or infliction of great bodily harm or permanent disability or disfigurement. The disorderly conduct charge in this case was neither. Although defendant threatened to blow up a Social Security Administration office, the charge itself alleged he knew his threat to be false. Thus, there was no actual threat of harm.

Defendant failed to include this issue in his notice of appeal, but the appellate court excused defendant's forfeiture. Forfeiture is a limitation on the parties, not the court, and the court may overlook forfeiture to maintain a sound body of precedent or to reach a just result. These considerations warranted reaching the merits in this case, because the issue was one of first impression and, if defendant's argument had merit, he would remain in pretrial detention despite having not committed a detainable offense.

People v. Hawkins, 2024 IL App (2d) 240279 The State filed a petition to detain defendant, who was charged with predatory criminal sexual assault of a child, aggravated battery, and aggravated criminal sexual abuse involving his girlfriend's seven-year-old daughter. The trial court denied the petition, and ordered as a condition of defendant's release that the alleged victim remain in the custody of her biological father to mitigate any threat posed.

On appeal, the State asserted that the trial court erred in considering only the threat defendant posed to the alleged victim but not the threat he posed to the community, and that the court erred in finding that defendant did not pose a threat to the victim. The State also argued that the court lacked the authority to impose the condition that the alleged victim remain in her father's custody.

The appellate court first found that the State had forfeited its arguments that the court erred in finding that defendant was not a threat to the victim and that conditions of release could mitigate any threat because those claims were not made in the State's notice of appeal. Supreme Court Rule 604(h) requires that a notice of appeal from pretrial detention proceedings include both a description of the relief sought and the grounds for that relief. The only grounds included in the State's notice of appeal had to do with whether defendant posed a threat to the community.

But the court opted to overlook the State's forfeiture "in the interest of justice" because the record showed a clear error of law. Specifically, the trial court exceeded its authority in ordering the alleged victim to remain in her father's custody. The minor and her parents were not parties to defendant's criminal case, and the issue of custody was not before the court. The trial court's order denying detention was based, at least in part, on its determination that defendant was not a threat to the alleged victim if ordered to remain in her father's custody. But, because the court lacked the authority to enter that child custody order, its ruling was an abuse of discretion. The appellate court vacated and remanded for a new detention hearing.

People v. Silva, 2024 IL App (2d) 240118 The appellate court reversed a detention order because it was untimely. Defendant was in pretrial custody, with bond set, when the SAFE-T Act went into effect. Under these circumstances, section 110-7.5(b) allows a defendant to move for pretrial release under section 110-5(e). Defendant filed a motion for a 110-5(e) hearing, and the State filed a responsive section 110-6.1 petition to deny pretrial release, but neither filing was heard for at least 28 days, and neither was ruled on for another 100 days. The court determined there was no explicit timeframe for a hearing or ruling in the Act: the 48-hour time limit for the 110-6.1 petition must not apply in cases where the defendant is already in custody, because it is triggered by defendant's "first appearance," the Act is silent as to when a court must hear a 110-5(e) motion. But the appellate court noted the Act "shall

be liberally construed to effectuate [its] purpose,” [725 ILCS 5/110-2\(e\)](#), and there is a clear policy throughout the Act disfavoring lengthy detention. See, e.g., [725 ILCS 5/110-6\(a\)](#) (“the revocation hearing shall occur within 72 hours of the filing of the State’s petition or the court’s motion for revocation”).

Based on this legislative intent, the appellate court concluded that a trial court must hold a hearing and issue its ruling on these petitions “within a reasonable amount of time.” After analyzing other provisions of the Act, the court determined that the upper limit for a ruling would be seven days. Because the untimely ruling in this case constituted a clear abuse of discretion, it was reversed. Consistent with caselaw reversing other pretrial detention orders for untimeliness, the court determined the appropriate remedy was to remand for a hearing to determine conditions of pretrial release.

The court also held that it could reach this issue despite the fact that it was not raised in the defendant’s appellate memorandum. Courts have held that when issues are raised in a notice of appeal, as this issue was, the failure to include the issue in the memorandum constitutes forfeiture or abandonment of the issue. But forfeiture is a limitation on the parties, not the court, and the appellate court chose to overlook forfeiture, citing its ability to do so in order to maintain a sound and uniform body of precedent or where the interests of justice so require.

People v. Andres, 2024 IL App (4th) 240250 The State charged defendant with violating an order of protection, then moved to deny pretrial release. Its written petition checked a box next to pre-printed allegations that he committed a detainable offense and posed a threat to safety, without further written explanation. At a hearing on the petition, the State proffered that defendant contacted the complainant via Facebook, that he had several prior convictions, and that the complainant feared for her life. The trial court granted the State’s request for pretrial detention. On appeal, defendant argued the State’s petition to deny pretrial release was insufficient.

The appellate court found the claim forfeited. Although defendant argued that he was never admonished that his failure to include the claim in the notice of appeal would result in forfeiture, the appellate court held that both Rule 604(h) and the notice of appeal form itself inform defendants of the need to include all grounds for relief in the notice of appeal. Regardless, defendant also has a duty to object during the proceedings in order to preserve claims for appeal, and he failed to do so here.

Nor did the plain error doctrine apply, as the appellate court found no clear error. Pursuant to [725 ILCS 5/110-6.1\(d\)\(1\)](#), the State’s petition to deny pretrial release must “state the grounds upon which it contends the defendant should be denied pretrial release, including the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts or flight risk, as appropriate.” Defendant alleged that the State’s petition lacked articulable facts. The appellate court found “no explicit requirement” that the State’s petition include a factual basis or written proffer.

Defendant pointed out that appellate courts often dismiss appeals from pretrial detention orders when the notice of appeal lacks detail as required by Rule 604(h). The appellate court disagreed with this comparison because in the context of the State’s petition, the parties present evidence and provide argument before the court. When a blank notice of appeal form is filed, with no memorandum on appeal, the case lacks reasoned argument on which to decide the appeal.

Finally, the court held it would not review other claims defendant included in the notice of appeal but did not raise in his appellate memorandum. The memorandum, if filed,

becomes the “controlling document for identifying the issues or claims on appeal,” and any claims not raised therein are considered abandoned.

People v. Samuels, 2024 IL App (3d) 230782 The State filed petitions for pretrial detention in three different cases, and the circuit court granted all three petitions, finding in the first case that defendant posed a flight risk, while in the latter two cases he posed a threat to safety.

Defendant argued as to the first case – a violation of probation – the pretrial detention order should be vacated because defendant had already pled guilty to the offense and received a sentence of probation. The State argued forfeiture, noting the issue was not raised below. The appellate court agreed.

The majority went on to find that the claim lacked merit. When the State files a petition to revoke probation, and the court has not held a hearing on the petition, a defendant is entitled to pretrial release “unless the alleged violation is itself a criminal offense in which case the offender shall be admitted to pretrial release on such terms as are provided in the Code....” 730 ILCS 5/5-6-4(b). Here, the VOP was based on the criminal charge which formed the basis for the State’s petition for detention in Case 3 (armed habitual criminal). Defendant admitted the State proffered specific articulable facts as to that charge and did not challenge this proof on appeal. Thus, defendant effectively conceded the charge was a qualifying detainable offense.

The dissent disagreed, noting a VOP is not a criminal charge in and of itself, and that section 5-6-4(b) states a defendant “shall be admitted to pretrial release on such terms as are provided in the Code.” The statute does not, as it does in other sections, merely state that such defendants are eligible for release.

While defendant also argued that the detention order in Case 2 should be vacated because the drug charges in that case were probationable and non-detainable, the appellate court disagreed. Defendant was charged with two counts of Class-1-felony delivery of a controlled substance, which is non-probationable if defendant had been convicted of a Class 1 or greater felony within 10 years. The State proffered that defendant had been convicted of the same offense in 2017. This information was also included in his criminal history as listed in the pretrial risk assessment. Accordingly, the two offenses with which defendant was charged in Case 2 were not probationable.

People v. Palomar, 2024 IL App (2d) 230476 Rule 604(h)(2) requires a defendant appealing a pretrial detention order to describe the relief requested or the grounds for that relief. In this case, the notice of appeal was deficient because the defendant checked boxes next to the pre-printed grounds for relief, but did not include additional argument in the lines provided beneath. The deficient notice did not, however, justify dismissal of the appeal. Failure to comply with Rule 604(h)(2) is not a jurisdictional bar to appellate review, but instead presents a question of forfeiture. Thus, the appellate court denied the State’s motion to dismiss.

Even though appellate counsel chose not to file a legal memorandum in support of defendant’s claims, the appellate court reviewed the detention order on the merits. The court explained that appellate courts are empowered to review the merits as part of their “responsibility to ensure the orderly administration of justice.” In such cases, appellate courts should examine the record to ensure that the proceedings and the circuit court’s order complied with the statutory authority, nothing more. The court should not serve as defendant’s advocate, but simply evaluate the record and defer to the circuit court, presuming

that it knew the law and properly applied it. Unless the record shows that the circuit court made a clear error of law, the appellate court has no option but to affirm.

Here, defendant was charged with domestic violence and had a lengthy history of prior domestic violence cases, and therefore the appellate court saw no clear error in the circuit court's decision to grant the State petition for detention.

People v. Woods, 2024 IL App (3d) 230592 Defendant was ordered detained until his trial for first-degree murder. He filed a notice of appeal from the trial court's pretrial detention order. His notice of appeal checked boxes next to the pre-printed grounds for appeal, but defendant did not use the lines beneath these boxes to elaborate. Defendant did not file an appellate memorandum. The appellate court dismissed the appeal, citing the fact that defendant failed to provide any argument. In a rehearing petition, defendant argued dismissal was inappropriate and that the filing of a valid NOA under Rule 604(h) required a ruling on the merits.

The appellate court granted rehearing and issued an opinion affirming the detention order on the merits. Before doing so, the court stressed the importance of party presentation in appeals. It acknowledged that Rule 604(h) appeals are unique, but found they are still subject to Rule 341, which requires coherent argument and analysis supported by proper record citations and legal authorities if available. The court noted that appellants have the burden of persuasion on appeal, and this burden cannot be met with bare assertions of error.

The court also acknowledged that dismissal was not the appropriate remedy for a 341 violation. Instead, the court held that when a defendant merely checks boxes on the NOA and does not provide additional argument, either on the pre-printed lines or in an appellate memorandum, the appellate court should: (1) review the record against defendant's bare contentions; and (2) declare a forfeiture and affirm if the evidence supported the court's findings. Here, the record supported the trial court's conclusion that defendant posed a threat to the community and that no conditions of release could mitigate the risk. Thus, he forfeited his claims and the pretrial detention order was affirmed.

People v. Mitchell, 2024 IL App (3d) 230758 Defendant filed a notice of appeal under Rule 604(h), in which he alleged four grounds for relief. He subsequently filed a memorandum in which he presented argument on only two of the grounds. The appellate court found defendant had forfeited the issues raised in the notice of appeal but not argued in the memorandum, following **People v. Forthenberry, 2024 IL App (5th) 231002**.

People v. Lyons, 2024 IL App (5th) 231180 The appellate court dismissed defendant's appeal under Supreme Court Rule 604(h). Defendant's form notice of appeal included checked boxes indicating that the State failed to meet its burden of proof that defendant committed the charged offense, that defendant posed a threat to any person or the community, and that no conditions could mitigate defendant's dangerousness. He also checked the box indicating that the court erred in finding that no conditions could ensure defendant's appearance for future hearings or mitigate the risk of his being charged with subsequent offenses. Defendant did not elaborate on any of these claims in the space provided.

The Office of the State Appellate Defender (OSAD) was appointed on appeal and ultimately filed a notice stating that it would not be filing a supporting memorandum. The State responded with a memorandum arguing that defendant's failure to provide argument in his notice of appeal required dismissal and, alternatively, that the detention order should be affirmed.

The appellate court concluded that defendant's failure to provide supporting argument either in the notice of appeal or in a memorandum acted as a waiver. And, because contentions without argument or citation to authority do not merit consideration on appeal, the appellate court ordered the appeal dismissed. In doing so, the court acknowledged that defendant had complied with the requirement of Rule 604(h)(2) that he indicate in his notice of appeal the relief requested and the grounds therefore. The court concluded, however, that counsel's failure to provide any argument in support of his appeal would require the court to speculate as to what those arguments might be, which would infringe on the attorney-client relationship.

People v. Mancilla, 2024 IL App (2d) 230505 The order granting the State's petition to deny pretrial release was affirmed. The State's evidence at the detention hearing, consisting of a police synopsis, was sufficient to sustain the State's burden. The synopsis contained a lengthy narrative of events, including allegations of violent conduct by defendant and multiple identifications of defendant as the perpetrator. And, many of the dangerousness factors were present here, including that the offense involved a firearm, defendant had a violent criminal history, and one of the victims here suffered great bodily harm and was at least 60 years old.

Defendant's remaining claims of error were simply checked boxes on the notice of appeal form and were not supported by evidence or argument in the notice. Further, no memorandum was filed on appeal. Accordingly, the court deemed those contentions forfeited, but also went on to conclude they were without merit.

Finally, the court discussed the ethical obligations of defense counsel in appeals under the SAFE-T Act and held that under Rule 3.1 of the Rules of Professional Conduct, defense counsel is required to inform the court "as to whether the defendant's claims are meritorious and, if not, to withdraw any frivolous claims or even the entire appeal." While the SAFE-T Act provides a streamlined appeals procedure, it does not obviate defense counsel's ethical obligations to present only meritorious claims and contentions. Compliance with the **Anders v. California**, 386 U.S. 738 (1967) procedure is not required in appeals under Rule 604(h). Instead, attorneys can withdraw non-meritorious claims by filing an amended notice of appeal or by statement either in counsel's memorandum or the notice filed in lieu of such a memorandum.

People v. Robinson, 2024 IL App (5th) 231099 On appeal, defendant argued that the State's petition to detain was unauthorized under the timing requirements of 725 ILCS 5/110-6.1(c)(1) because it was not filed at defendant's first appearance in court or within 21 days of defendant's release. Defendant had been arrested and had cash bail set prior to the effective date of the SAFE-T Act and remained in custody when the Act went into effect.

The court found the issue forfeited because defendant had not objected to the filing of the petition and had not raised the issue in his notice of appeal. The court rejected defendant's argument that forfeiture should not apply to appeals under Supreme Court Rule 604(h) because there is no corresponding admonishment required under Rule 605 to inform defendants that issues they do not include in the 604(h) notice of appeal will be deemed forfeited. But the court elected to overlook forfeiture here because the SAFE-T Act was only recently enacted, and case law interpreting the Act was still developing.

On the merits, the court found that the State's petition was permissible where a docket entry indicated that defendant had requested that the court reconsider his conditions of release at a previous hearing. When a defendant requests reconsideration of his conditions of release, the State, in response, may seek to deny pretrial release. A dissenting justice would have held that the State's opportunity to seek detention is not renewed by defendant's

request to modify the conditions of release after the statutory time for a petition to deny release has expired.

People v. Shannon, 2024 IL App (5th) 231051 Where defendant was arrested almost a year prior to the effective date of the SAFE-T Act and had cash bail set but did not post, the State's petition to detain filed after the effective date of the SAFE-T Act was untimely where it was not filed at defendant's first appearance before a judge or within 21 days of his arrest and release, as required by [725 ILCS 5/110-6.1\(c\)\(1\)](#). The court relied on its prior decision in **People v. Rios, 2023 IL App (5th) 230724**, in deciding this case, and reached the issue as a matter of second-prong plain error because defendant's fundamental right to liberty is affected by a hearing to detain him prior to trial where such a hearing was not authorized by statute.

A dissenting justice would not have reached the issue as plain error and would have rejected defendant's claim of ineffective assistance of counsel on prejudice grounds, concluding that defendant could not show that the "result of the proceedings" would have been different because the "result of the proceedings" is the ultimate outcome of the criminal case which has not yet been determined.

People v. Vojensky, 2024 IL App (3d) 230728 The pretrial detention order was vacated where the State's petition to detain was not timely filed. The State failed to file its petition at defendant's first appearance in court or within 21 days of his arrest and release and thus failed to comply with [725 ILCS 5/110-6.1\(c\)\(1\)](#). This issue was reached as a matter of second-prong plain error despite defendant's failure to include it in his notice of appeal.

People v. Watkins-Romaine, 2024 IL App (1st) 232479 Prior to the effective date of the SAFE-T Act, defendant was arrested on attempt murder charges, and bail was set at \$350,000. The court specifically denied the State's request for a "no bail" order at that time, noting the highly circumstantial nature of the evidence. After the Act took effect, defendant filed a petition for release from detention, citing [725 ILCS 5/110-5 and 110-7.5\(b\)](#). The State countered by filing a petition to detain. The court held a hearing and granted the State's petition to detain, noting that the prior \$350,000 bail order actually "operated as a no-bail in this case."

On appeal, defendant argued both that the State failed to meet its burden to justify pretrial detention and also that the State's petition to detain was untimely and therefore unauthorized. The appellate court agreed with defendant on the timeliness issue. Section 110-6.1(c) sets out the time limitations for the filing of a petition to detain; the State may file such a petition either at defendant's first appearance or within 21 days after defendant's arrest and release. Neither condition was met here, and a petition to detain was not an available option.

Instead, the State's options were limited to seeking either revocation or sanctions, each of which is available only under limited circumstances. The original cash bail setting was based on the court's decision that defendant was eligible for pretrial release. Under such circumstances, the State does not get "a second bite at the detention apple" just because defendant was not able to post the monetary bond that was set.

People v. O'Neal, 2024 IL App (5th) 231111 Prior to the effective date of the SAFE-T Act, defendant was charged with murder and aggravated battery with a firearm, had monetary bond set at \$1 million and then reduced to \$500,000, and remained in custody. Subsequently,

defendant sought to modify the conditions of his release pursuant to [725 ILCS 5/110-7.5\(b\) and 110-5\(e\)](#), and the State filed a verified petition to detain defendant under the Act. The circuit court held a hearing and determined that the proof was evident and the presumption great that defendant committed the detainable offenses, that he posed a threat to persons in the community, and that no conditions could mitigate the real and present danger posed by defendant. Defendant was ordered detained.

On appeal, defendant argued that the State's petition to detain was untimely because it was not filed at his first appearance before a judge or within 21 days of his arrest and release, as required by [725 ILCS 5/110-6.1\(c\)\(1\)](#). The appellate court observed, however, that section 110-6.1(c)(1) provides an exception to those time requirements "as provided in Section 110-6." Under section 110-6(g), the court may modify the conditions of release at any time, either on its own motion or on motion of either party, provided that the court may only add or increase conditions of release at a hearing. Thus, the State's request to detain was timely under the Act. And, the court did not abuse its discretion when it ordered defendant detained under the dangerousness standard of the Act.

People v. Rollins, 2024 IL App (2d) 230372 Defendant appealed a pretrial detention order. He first argued that the State's petition for pretrial detention should have been dismissed on timeliness grounds because defendant was arrested over 21 days earlier and the petition was not filed at his first appearance. The appellate court held defendant forfeited this claim by not including it in his notice of appeal. It also rejected defendant's plain error and ineffectiveness arguments, because it was not clear or obvious error that the State's petition was untimely where it was filed four days after the SAFE-T Act took effect. See **People v. Martin, 2023 IL App (4th) 230826**.

Although defendant raised additional claims in his notice of appeal, defendant did not include these claims in his appellate memorandum. The appellate court interpreted this omission as an abandonment of the claims raised in the notice of appeal and refused to reach them.

People v. Triplett, 2024 IL App (2d) 230388 The State's petition to detain defendant pretrial was untimely where defendant was arrested, arraigned, and posted cash bail prior to the effective date of the SAFE-T Act. Similar to the timing requirements under the SAFE-T Act, the version of the law in effect at the time of defendant's arrest allowed the State to seek to detain defendant without cash bail by filing a no-bail petition either at his first appearance before a judge or within 21 calendar days after his arrest and release. Here, the State's petition was not filed until more than two months after defendant posted bail and was released and thus it was untimely.

Further, while defendant's notice of appeal was not filed within 14 days of the court's initial detention order, it was timely-filed with regard to a subsequent order continuing defendant's detention. The trial court based its order to continue detention on its original findings in support of its original detention order, thus the appellate court could reach that original order on review. The appellate court also noted that "it is plain that, if the State's petition to detain was untimely and thus lacked a legal basis, the justification for the [] order continuing the defendant's pretrial detention pursuant to that petition is also questionable." Accordingly, the court found it had jurisdiction to consider the timeliness of the State's petition to detain. And, because that petition was untimely, defendant was required to be released on previously-set conditions.

People v. Cline, 2023 IL App (5th) 230849 While on bond, defendant committed aggravated battery of a peace officer. The State moved to revoke pretrial release on September 18, 2023, the effective date of the newly enacted SAFE-T, or Pretrial Fairness, Act (“PFA”). Defendant moved to strike the State’s petition, arguing that it was untimely. The circuit court granted the motion to strike. The State filed an amended petition, but the court again struck the motion on defendant’s motion, finding that 725 ILCS 5/110-6.1(c) requires the State to file a detention petition at the time of the first appearance before a judge if the defendant has been detained. The defense then moved to remove monetary conditions of bail, and the court released defendant with conditions.

The State filed a notice of appeal challenging the decision to strike the State’s motion to deny pretrial release. The appellate court dismissed the appeal for lack of jurisdiction. The decision to strike the State’s motion is not a ground for appeal. Pursuant to Rule 604(a)(1), the State can appeal only from (1) an order imposing conditions of pretrial release; (2) an order denying a petition to deny pretrial release; or (3) an order denying a petition to revoke pretrial release. Rule 604(h)(1) also limits the types of appeals available under PFA, and describes orders granting or denying pretrial release, granting or denying revocation of pretrial release, or conditions of pretrial release. The granting of the defendant’s motion to strike the State’s amended petition for detention is not one of the three orders identified in Rule 604(a) or (h) that the State may appeal from.

People v. Jones, 2023 IL App (4th) 230837 In July 2023, defendant was charged with attempt armed robbery, home invasion, and aggravated kidnaping and had bond set at \$100,000. She did not post bond and remained in detention. On September 11, 2023, defendant filed a motion for pretrial release, and two days later the State filed a verified petition to deny release under section 110-6.1 of the SAFE-T, or Pretrial Fairness, Act (725 ILCS 5/110-6.1), which became effective on September 18, 2023. The State’s petition alleged that defendant qualified for detention under the dangerousness provision of the Act, specifically that her release posed a real and present threat to the safety of persons or the community.

The court held a detention hearing and found that the proof was evident and the presumption great that defendant committed the alleged offenses. During the incident, a gun discharged and the victim sustained bodily harm. Thus, the court found that the dangerousness standard was met and that no condition(s) could mitigate the real and present threat to the safety of persons or the community and thereby denied pretrial release.

On appeal, defendant argued that the State was not permitted to file a verified petition for detention where defendant remained in custody after previously having monetary bail set. Here, where defendant had filed a motion for release, however, the appellate court held that the State was permitted to seek to modify pretrial release conditions, citing 725 ILCS 5/110-6(g), (i), and 110-6.1(a). This includes a request to deny pretrial release; such a request “operates as a motion to increase the pretrial release conditions to the furthest extent.” In reaching this conclusion, the court specifically disagreed with the decisions in **People v. Vingara**, 2023 IL App (5th) 230698, and **People v. Rios**, 2023 IL App (5th) 230724.

Defendant also challenged the detention order on its merits. The appellate court found that the court had not abused its discretion. Defendant was charged with detainable offenses. The State’s proffer demonstrated that defendant used a firearm during the offense and inflicted injuries on the victim during a physical altercation. On these facts, the court’s dangerousness finding was not arbitrary, fanciful, or unreasonable or one with which no reasonable person would agree. The detention order was affirmed.

People v. Vingara, 2023 IL App (5th) 230698 In July of 2023, defendant was charged with various felonies and given a \$50,000 bond. He did not pay the bond and remained in custody. On September 18, 2023, pursuant to the newly effective SAFE-T, or Pretrial Fairness, Act (“PFA”), the State filed a petition to deny pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure. The court granted the petition, finding defendant posed a threat to safety.

On appeal, defendant claimed that the State did not have the authority to file a petition to deny pretrial release due to the timing requirements of section 110-6.1(c)(1), as amended by the PFA. Under the plain language of this subsection, the State may file a petition to detain at the time of the defendant’s first appearance before a judge or within 21 calendar days after the arrest and release of the defendant. The petition in this case was therefore untimely.

While the State alleged that section 110-6(i) contained a provision allowing it to file a petition to detain irrespective of these timing requirements, the appellate court found that section 110-6 applies only in cases where defendant has been previously granted pretrial release and has committed another crime warranting revocation.

Section 110-7.5(b), on the other hand, speaks directly to those who, like defendant, remained in custody after bond was set. This provision grants these defendants a right to move for a new detention hearing pursuant to section 110-5. If defendant shows he remained in detention due to an inability to post bond, the trial court must “reopen” the conditions-of-release hearing. But a defendant may choose not to file such a motion, avoiding a finding of dangerousness and leaving the previously set bond in place. Thus, the court vacated the detention order due to the untimeliness of the State’s petition, and remanded to allow defendant to either stand on the terms of his original bond, or move for a new conditions-of-release hearing.

People v. Rios, 2023 IL App (5th) 230724 Defendant was arrested and had cash bond set prior to the effective date of the Pretrial Fairness Act. He did not post bond and remained in custody. On September 18, 2023, the day the PFA took effect, the State filed a petition to deny pretrial release pursuant to [725 ILCS 5/110-6.1](#). The circuit court held a hearing and entered an order for detention. Defendant appealed.

The appellate court held that the State’s petition was untimely. The plain language of the Act requires that a petition be filed either at defendant’s first appearance or within 21 calendar days after defendant’s arrest and release. The State’s petition was not filed within those time limits. Nor did any of the exceptions set forth in [725 ILCS 5/110-6](#) apply because defendant had not been released following his arrest and no new offense had been alleged in the State’s petition.

Given that defendant remained in custody at the time the PFA took effect, the situation was governed by [725 ILCS 5/110-7.5\(b\)](#), which would permit defendant, but not the State, to request a hearing under [725 ILCS 5/110-5](#) to determine whether his detention remained necessary. Alternatively, defendant could post cash bail in the amount previously set because, while the PFA eliminated the requirement of cash bail, it did not eliminate the option of posting the previously ordered cash bail.

The appellate court vacated the detention order and remanded to the circuit court where defendant could either request a hearing under Section 110-5 or could elect to take no action, in which case the original bond would stand and could be posted in the event defendant was financially able.

People v. Brown, 2023 IL App (1st) 231890 In June 2023, defendant was arrested and granted release on bond with electronic monitoring as a condition. Defendant posted the monetary bond but was not released due to lack of a suitable electronic monitoring host site. After the SAFE-T Act went into effect, defendant filed a petition to remove or modify the electronic monitoring condition under Section 110-5(i) of the Act, and the State countered with a petition to detain pursuant to Section 110-6.1. The court held a hearing and ordered that defendant be detained.

The appellate court reversed and remanded for further proceedings. The State's petition to detain under 110-6.1 was untimely where it was not filed at defendant's first appearance before a judge or within 21 days after his arrest and release. Because defendant had been ordered released with pretrial conditions but remained in detention at the time the Act went into effect, he was entitled to a hearing under Sections 110-7.5(b) and 110-5(e). Under section 110-5(e), the court should have reopened the issue of conditions of release to determine what conditions would reasonably assure defendant's appearance at future court dates and ensure the safety of others. Defendant was not even required to request such a hearing; Section 110-5(e) automatically entitles him to one.

People v. Presley, 2023 IL App (5th) 230970 The appellate court rejected the State's motion to dismiss defendant's appeal from a pre-trial detention order. The State argued that the appellate court lacked jurisdiction because defendant's notice of appeal failed to specify the relief requested and grounds for relief, as required by Rule 604(h)(2). The court held that despite these deficiencies, the notice of appeal clearly identified the trial court's pre-trial detention order as the basis of the appeal. Rules 604(a)(1) and (h)(1) confer jurisdiction in the appellate court when an appeal is taken from such an order. Rule 606(a) states that, "Appeals shall be perfected by filing a notice of appeal with the clerk of the trial court. *** No step in the perfection of the appeal other than the filing of the notice of the appeal is jurisdictional." Thus, the failure to include relief requested or grounds for relief in a notice of appeal is not a jurisdictional defect.

A majority of the court held, however, that defendant's claim was forfeited. Defendant argued that the State's detention petition was untimely because the Pre-Trial Fairness Act requires the State to file a petition to deny release at the defendant's first appearance or shortly thereafter, and here defendant was arrested months before the PFA went into effect. Though this was clear and obvious error under the plain language of the statute, it was not second-prong plain error. Defendant attempted to compare the issue to one of sentencing error, but while both involve the "fundamental right to liberty," the comparison fell short. In the pre-trial context, a probable cause hearing protects the federal constitutional right to liberty. Absent a finding of no probable cause, defendant's detention could not be a constitutional violation. For purposes of the Illinois Constitution, a detention hearing sufficiently protects the right to liberty. The hearing in this case established that defendant had several prior convictions, some while on bond, and that he planned and attempted to escape the jurisdiction. Thus, his pre-trial detention comported with due process despite the fact that the State's petition was untimely, and no plain error occurred.

A dissenting justice would have found the error sufficiently impacted the right to liberty so as to be reached under the second prong of the plain error rule.

People v. Davis, 2023 IL App (1st) 231856 The State met its burden of proving by clear and convincing evidence that the proof was evidence or the presumption great that defendant committed the detainable offense of unlawful use of a weapon by a felon where the State's proffer showed that defendant was the sole backseat passenger in a vehicle stopped for a

traffic violation, defendant was seen reaching toward the floor of the vehicle, and the police subsequently found a firearm inside a bag in the area where defendant had been reaching.

Similarly, the State met its burden of proving defendant posed a real and present threat to the safety of the community. In assessing dangerousness, the court may consider the nature and circumstances of the charged offense and whether it is a violent crime, whether defendant's criminal history is indicative of violence, whether defendant possesses or has access to weapons, the weight of the evidence against defendant, and the nature and seriousness of any threat posed by defendant's release. Here, both the charged offense and defendant's prior conviction of aggravated battery qualify as violent crimes. The gun defendant was alleged to have possessed was a "ghost gun," meaning it had no serial number making it difficult to trace, and untraceable weapons are inherently dangerous. Thus, the trial court did not abuse its discretion in finding that defendant's release posed a threat to the safety of the community.

And, the court did not abuse its discretion in concluding that no conditions could mitigate any threat to the safety of the community. Conditions may include reporting requirements, restrictions on travel, no-contact orders, electronic monitoring and other reasonable conditions. Here, due to the nature of the threat posed by defendant's possession of an untraceable weapon, coupled with his criminal history and his high score on a risk-to-reoffend assessment, no available conditions could mitigate the threat.

Finally, defendant waived any claim of error from the State's failure to tender a copy of his criminal history prior to the detention hearing as required by [725 ILCS 5/110-6.1\(f\)\(1\)](#). Defendant did not raise the issue below. And, the appellate court concluded that he acquiesced to the admission of his criminal history at the detention hearing by not objecting and thus he could not raise the issue as a matter of plain error. Regardless, the court would have found no prejudice where the record showed defense counsel had adequate knowledge of defendant's criminal history and there were no alleged inaccuracies in what was presented to the court.

People v. Clark, 2023 IL App (1st) 231770 The Cook County State's Attorney charged defendant with aggravated vehicular hijacking and obtained an arrest warrant along with a bail amount of \$100,000, although defendant was in custody in McHenry County at the time. Three weeks later, he was arrested and detained on the Cook County warrant. Two days after that, the SAFE-T Act went into effect, and the State filed a petition to detain. The trial court denied pretrial release.

The appellate court majority reversed, finding that the Act does not allow the State to file a petition to detain. Under section 110-6.1(c), the State must file the petition at the first appearance before a judge. Here, the State's first appearance before a judge involved the filing of the complaint, the application for the arrest warrant, and the bond order. The State did not file a petition to detain at this time, and therefore it could not do so at the subsequent appearance. Defendant remained entitled to the original conditions of bail.

§6-5(j) Notice of Appeal

Illinois Appellate Court

People v. Badie, 2025 IL App (3d) 250033 Defendant was charged with aggravated battery after a shooting, and the State moved for pretrial detention. The court ordered release with conditions, citing the fact that defendant was 18 at the time of the shooting and there was some evidence of self-defense. The State filed a motion for relief under Rule 604(h)(2). The

motion was heard by a new judge, who disagreed with the prior finding that conditions were adequate, and ordered defendant's detention. On appeal, defendant argued that the motion for relief should not have been decided by a new judge, and that regardless, that judge erred in finding no conditions could mitigate the risk to safety posed by defendant's release.

The appellate court affirmed. The relevant language in Rule 604(h)(2) states: "As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall promptly hear and decide the motion for relief." This language is clear and unambiguous in that it does not provide that the motion for relief must be heard in front of the same trial judge who heard the initial petition. Instead, the rule simply states that the motion should be presented "to the trial court." This language encompasses the circuit court as a whole, not a particular judge.

Nor did the second judge err in ordering defendant's detention. The evidence showed that defendant carried an automatic weapon, donned a ski mask, and shot the victim in the chest in the public area of an apartment building. Though the evidence demonstrated that defendant had no criminal history and resided with his parents, the fact remains that defendant carried an automatic firearm for his protection and had issues with the victim. Even the most intense conditions –home confinement and GPS monitoring – would do little to prevent defendant from confronting the victim again, based on the reactive and permissive nature of the programs. See [730 ILCS 5/5-8A-4 \(West 2022\)](#) (supervisor verifies compliance or noncompliance after the fact and the participant is permitted at least two days of movement in the community per week).

People v. Burries, 2025 IL App (5th) 241033 The standardized notice of appeal form prescribed by the Illinois Supreme Court in Rule 604(h) does not require that an appellant list the date of the order being appealed or the relief sought. Thus, defendant's notice of appeal listing the date of the circuit court's order denying his purported motion for relief, as required by the standardized form, did not limit the court's jurisdiction to consider a previous order continuing detention. The order continuing detention was the order cited and challenged in defendant's motion.

But, the appellate court found deficiencies in defendant's motion for relief. The motion was labeled as a motion to reconsider, and the prayer for relief asked the court to reconsider its original detention order, not the continued detention order it cited. The motion did not reference Supreme Court Rule 604(h)(2). And, it alleged no error in any hearing and included no new evidence or information regarding pretrial release. The appellate court held that the motion was not a proper motion under Rule 604(h)(2).

A motion for relief is a procedural prerequisite to reaching the merits of a pretrial detention appeal. Such a motion is required to provide the grounds for the relief requested and to contain sufficient detail to enable meaningful review. But, defendant's motion here did not raise the claims that defendant asserted on appeal and failed to cite any law or other legal authority. Without a proper Rule 604(h)(2) motion, the appellate court was precluded from considering the merits of the appeal. Accordingly, defendant's appeal was dismissed.

The dissenting justice would have either dismissed based on a lack of jurisdiction or would have affirmed on the basis of waiver. Specifically, the dissent would have held that the failure to identify the original detention order and the continued detention order on the notice of appeal meant that the appellate court had no jurisdiction over the appeal under Rule 604(h). Alternatively, the failure to identify the original detention order in the motion to reconsider rendered defendant's arguments as to that order waived under **People v. Ratliff**, 2024 IL 129356.

People v. Davis, 2024 IL App (1st) 241747 The April 2024 amendment to Supreme Court Rule 604(h), which removed the 14-day filing requirement for notices of appeal, was a procedural change that applies retroactively. Accordingly, defendant's notice of appeal filed in August 2024 was sufficient to confer jurisdiction over the original detention order entered in December 2023, as well as the continued detention determination made in July 2024.

When reviewing detention decisions, a two-tiered standard of review is appropriate. Findings of fact are reviewed under the manifest weight of the evidence standard, and the ultimate detention decision is reviewed for an abuse of discretion. Applying that standard, the court affirmed the detention determinations here.

The court did not err in finding that no conditions could mitigate the threat to safety posed by defendant's release based on the violent nature of the alleged offense here, an armed robbery where defendant fired a gun, as well as defendant's history of committing violent crimes involving weapons in the past. And, the court did not err when it found that defendant posed a flight risk based on his post-offense conduct of attempting to flee the scene. That conduct, coupled with the fact that defendant faced a potential life sentence based on his criminal history, was sufficient to support the original flight-risk finding.

Additionally, the court did not err in ordering defendant's continued detention. Defendant offered no new evidence to counter the court's finding that he posed a threat to safety if released. And, while defendant offered evidence that he worked and had a place to live if released on electronic monitoring, the court was free to weigh other factors more heavily, including his flight risk, access to weapons, criminal history, and an out-of-state bench warrant.

People v. Drew, 2024 IL App (5th) 240697 After being ordered detained, defendant filed a motion for relief presenting issues of whether he committed a qualifying offense, whether the State proved he was a safety threat, whether the State proved that no conditions could mitigate any safety threat, and whether the court erred in determining he was unlikely to appear for future court dates or not be charged with a subsequent offense. That motion was denied, and defendant appealed.

In his memorandum on appeal, defendant first argued that the trial court violated **725 ILCS 5/110-6.1(c)(2)** by failing to hold the detention hearing within 48 hours of his first appearance. Because this issue that was not raised in defendant's motion for relief, defendant sought plain error review on appeal. The appellate court declined to find any error, let alone plain error, however, because the hearing had been delayed at defense counsel's request due to counsel's own scheduling issues. The doctrines of waiver and invited error thus precluded the court from considering the issue as second-prong plain error.

The court went on to reject defendant's claim that counsel was ineffective for occasioning the delay in the detention hearing, concluding that defendant failed to establish prejudice. In assessing prejudice, courts look to whether defendant has shown a reasonable probability that the end result of the criminal process would have been more favorable but for the alleged deficient performance. Because defendant's case was still at the pretrial stage, he could not show that the delay in his detention hearing had any effect on the ultimate outcome of the criminal proceedings and thus could not demonstrate prejudice.

Finally, the court declined to consider the merits of defendant's argument that the State failed to prove by clear and convincing evidence that no conditions of release could mitigate any threat to safety. In defendant's motion for relief in the trial court, he listed this as an issue for consideration, but he presented no argument in support of this issue or any others raised in that motion. This is insufficient to meet the requirement of Rule 604(h)(2) that the motion provide "the grounds for such relief" and the requirement of Rule 604(h)(7) that the motion "contain sufficient detail to enable meaningful review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities." Thus, the court found the issue waived and affirmed the detention order.

People v. Cooksey, 2024 IL App (1st) 240932 Defendant was ordered detained pretrial and subsequently requested a hearing to review his detention under [725 ILCS 5/110-6.1\(i-5\)](#). The trial court held the requested hearing and denied defendant's request for release. Defendant filed a notice of appeal. Because defendant's notice of appeal was filed two days *after* [Illinois Supreme Court Rule 604\(h\)](#) was amended to require that a party first file a motion for relief in the trial court before appealing a detention order, and because defendant had not filed such a motion, the appellate court concluded that it could not reach the merits of defendant's appeal. While [Rule 604\(h\)\(2\)](#) is not jurisdictional, a motion for relief is a procedural prerequisite to deciding the merits of a detention appeal. Defendant's appeal was dismissed without prejudice.

People v. Davis, 2024 IL App (5th) 240120 The defendant appealed an order revoking pretrial release after he was charged with additional offenses. His notice of appeal checked the box next to the pre-printed ground for relief stating that the court erred in its determination that no condition, or combination of conditions, would reasonably ensure defendant's appearance at later hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor. The lines under the box quoted from section 110-2(e). Defendant did not check any other grounds for relief, though he did supplement some of these grounds with references to "black letter law."

Appellate counsel informed the court that she conducted a thorough review of the record and arguments contained in the NOA, and concluded that the optional appellate memorandum authorized under Rule 604(h) was "not necessary" in this case.

The appellate court found it a "gross misrepresentation" to characterize the statements in the NOA as "argument." Rather, the NOA contained irrelevant and inappropriate statements, which the court concluded were frivolous and patently without merit. The court held that it would not consider any of the statements written under the pre-printed issues whose boxes were not checked. As for the checked issue, the supporting statements failed to address any of the relevant facts, namely, that defendant was on pretrial release when he committed additional offenses, and had previously violated release conditions multiple times within a matter of days of receiving them.

The court reminded trial and appellate counsel of its professional obligation to not bring frivolous arguments before the court, citing [Illinois Rule of Professional Conduct 3.1](#) and [Illinois Supreme Court Rule 137\(a\)](#), though it did not address a quoted portion of 3.1 which contains a separate rule for defense attorneys in criminal proceedings, who "may nevertheless so defend the proceeding as to require that every element of the case be established." The court suggested, citing [People v. Mancilla, 2024 IL App \(2d\) 230505](#), that appellate attorneys should withdraw claims they find to be frivolous. It further suggested,

citing [**Anders v. California**, 386 U.S. 738 \(1967\)](#), that if a client wants to pursue a frivolous appeal from a pretrial detention order, trial or appellate counsel should move to withdraw.

A concurring justice would have reached all of the claims that were supplemented with writing, whether the boxes were checked or not, though the justice agreed all of the claims lacked merit.

[**People v. Palomar**, 2024 IL App \(2d\) 230476](#) Rule 604(h)(2) requires a defendant appealing a pretrial detention order to describe the relief requested or the grounds for that relief. In this case, the notice of appeal was deficient because the defendant checked boxes next to the pre-printed grounds for relief, but did not include additional argument in the lines provided beneath. The deficient notice did not, however, justify dismissal of the appeal. Failure to comply with Rule 604(h)(2) is not a jurisdictional bar to appellate review, but instead presents a question of forfeiture. Thus, the appellate court denied the State’s motion to dismiss.

Even though appellate counsel chose not to file a legal memorandum in support of defendant’s claims, the appellate court reviewed the detention order on the merits. The court explained that appellate courts are empowered to review the merits as part of their “responsibility to ensure the orderly administration of justice.” In such cases, appellate courts should examine the record to ensure that the proceedings and the circuit court’s order complied with the statutory authority, nothing more. The court should not serve as defendant’s advocate, but simply evaluate the record and defer to the circuit court, presuming that it knew the law and properly applied it. Unless the record shows that the circuit court made a clear error of law, the appellate court has no option but to affirm.

Here, defendant was charged with domestic violence and had a lengthy history of prior domestic violence cases, and therefore the appellate court saw no clear error in the circuit court’s decision to grant the State petition for detention.

[**People v. Woods**, 2024 IL App \(3d\) 230592](#) Defendant was ordered detained until his trial for first-degree murder. He filed a notice of appeal from the trial court’s pretrial detention order. His notice of appeal checked boxes next to the pre-printed grounds for appeal, but defendant did not use the lines beneath these boxes to elaborate. Defendant did not file an appellate memorandum. The appellate court dismissed the appeal, citing the fact that defendant failed to provide any argument. In a rehearing petition, defendant argued dismissal was inappropriate and that the filing of a valid NOA under Rule 604(h) required a ruling on the merits.

The appellate court granted rehearing and issued an opinion affirming the detention order on the merits. Before doing so, the court stressed the importance of party presentation in appeals. It acknowledged that Rule 604(h) appeals are unique, but found they are still subject to Rule 341, which requires coherent argument and analysis supported by proper record citations and legal authorities if available. The court noted that appellants have the burden of persuasion on appeal, and this burden cannot be met with bare assertions of error.

The court also acknowledged that dismissal was not the appropriate remedy for a 341 violation. Instead, the court held that when a defendant merely checks boxes on the NOA and does not provide additional argument, either on the pre-printed lines or in an appellate memorandum, the appellate court should: (1) review the record against defendant’s bare contentions; and (2) declare a forfeiture and affirm if the evidence supported the court’s findings. Here, the record supported the trial court’s conclusion that defendant posed a threat to the community and that no conditions of release could mitigate the risk. Thus, he forfeited his claims and the pretrial detention order was affirmed.

People v. Mitchell, 2024 IL App (3d) 230758 Defendant filed a notice of appeal under Rule 604(h), in which he alleged four grounds for relief. He subsequently filed a memorandum in which he presented argument on only two of the grounds. The appellate court found defendant had forfeited the issues raised in the notice of appeal but not argued in the memorandum, following **People v. Forthenberry**, 2024 IL App (5th) 231002.

People v. Duckworth, 2024 IL App (5th) 230911 Defendant appealed the court's decision to detain him under the SAFE-T Act. His notice of appeal "checked the boxes" on the form next to the following pre-printed reasons for the appeal: insufficient evidence he committed the offense, error in finding him a danger to the community, error in finding no conditions could mitigate the threat, and error in finding no conditions could mitigate the risk of flight. However, nothing was written on the lines provided underneath these boxes to explain the grounds for relief. The State moved to dismiss the appeal.

The appellate court rejected the State's motion, finding it did have jurisdiction over the appeal. Agreeing with **People v. Presley**, 2023 IL App (5th) 230970, the court held that under Rule 606(a), a timely filed notice of appeal is all that is required to confer jurisdiction. The court also held, however, that the notice of appeal was insufficient to merit substantive review under Rule 604(h). Rule 604(h) requires appellants to state the grounds for relief in the notice of appeal. As the court held in **People v. Inman**, 2023 IL App (4th) 230864, this requirement requires a defendant to explain why relief is warranted, along with justification for relief in the form of, for example, references to the record, the evidence presented, or, if possible, legal authority. Here, neither the notice of appeal nor counsel on appeal, who chose not to file a memorandum, provided any grounds for relief. The appellate court granted the State's motion to dismiss.

People v. Acosta, 2024 IL App (2d) 230475 Defendant was charged in separate indictments with domestic battery and home invasion. The State alleged he battered the mother of his children, then went to her family's house, forced his way in, and battered a resident. The State filed a petition to detain in each case. The trial court granted both, finding defendant a threat to safety. The court also entered a no contact order.

Defendant appealed, checking boxes on the notice of appeal which asserted that the State failed to prove that he posed a threat to safety and that no conditions of release could mitigate this threat. The State moved to dismiss, arguing the notice of appeal was deficient for failing to specify grounds for relief. The appellate court took the motion with the case. In a memorandum, the defendant argued that the trial court erred in finding defendant committed home invasion without proof of injury, erred in allowing the State to file two detention orders, and erred in ordering no contact despite ordering detention.

The appellate court refused to dismiss the appeal, finding any deficiencies in the notice of appeal were not jurisdictional. The court found that defendant forfeited the two issues included in the notice of appeal because defendant failed to provide adequate grounds for relief and did not raise these claims in the memorandum. **People v. Forthenberry**, 2024 IL App (5th) 231002. (A concurring justice wrote to clarify that **Forthenberry** does not preclude the appellate court from reaching these issues, and it may do so by overlooking forfeiture in the interests of justice.)

While the issues raised in the memorandum were forfeited, the appellate court would reach them given the appeal was filed in the wake of a recently enacted law with a developing body of precedent. The appellate court found no error, however. The State's proffer proved home invasion by introducing police summaries describing eyewitness accounts of

defendant's forceful entry and battery of one of the occupants, pushing him down the stairs and causing him to vomit, a symptom of a concussion. As for the filing of two petitions to detain, the appellate court held the Act contemplates the filing of one initial petition to detain per case, not per defendant. Finally, the Act specifically allows for the entering of a no-contact order along with a detention order. [725 ILCS 5/110-6.1\(m\)\(2\)](#).

People v. Forthenberry, 2024 IL App (5th) 231002 Defendant was arrested in July 2023, had monetary bond set, and remained in custody without posting bond. After the SAFE-T Act went into effect, defendant filed a motion to reconsider his conditions of pretrial release pursuant to Section 110-7.5 of the Act. The State subsequently filed a petition to detain under the Act's dangerousness standard. The court held a hearing and ultimately ordered defendant detained, finding that the proof was evident or the presumption great that defendant committed the offense of aggravated discharge of a firearm, that defendant posed a threat to safety, and that no conditions could mitigate that threat. In support, the court cited the nature and circumstances of the offense here, including that defendant had originally left the scene and then returned with a gun, and defendant's criminal history. The court acknowledged that defendant may have a viable suppression issue with regard to evidence (including the weapon) obtained during the traffic stop resulting in his arrest, but noted that suppression was not an issue to be resolved at the detention hearing.

The appellate court affirmed the detention order. First, the court rejected defendant's argument that the State's petition to detain was untimely. Where a defendant moves to modify the conditions of his pretrial release, the State may file a responsive petition, including a request to detain. And, on the merits, the court found that the trial court's decision to detain was not against the manifest weight of the evidence or an abuse of discretion. The trial court did not ignore the potential for suppression of evidence, but instead considered that potential while properly noting that it could not resolve the ultimate issue during detention proceedings.

Finally, the appellate court noted that where a memorandum is filed in a SAFE-T Act appeal under [Illinois Supreme Court Rule 604\(h\)](#), the memorandum must contain some argument on each issue presented. The memorandum cannot simply direct the court to the notice of appeal. Where defendant's memorandum contained argument on one issue but "rested" on the notice of appeal with respect to a second issue, that second issue was deemed forfeited.

People v. Burke, 2024 IL App (5th) 231167 Defendant appealed a pretrial detention order. On his notice of appeal, he checked four boxes on the pre-printed form stating his various grounds for appeal. Defendant did not provide further argument or explanation on the lines provided on the NOA. The Office of the State Appellate Defender was appointed, and filed a notice in the appellate court indicating that it would not be filing a memorandum.

The appellate court dismissed the appeal. Relying on decisions involving appeals from criminal convictions, the court cited the principle of party presentation. Absent argument or citation to authority, any merits ruling by the appellate court would be *sua sponte*, transforming the court from a neutral arbiter to an advocate. Quoting OSAD's website, the court noted that OSAD's "principal function . . . is to represent indigent persons on appeal in criminal cases." By requesting a merits ruling without a memorandum, OSAD attempts "to transfer its legally stated function to this court."

The court acknowledged that Rule 604(h) allows but does not require a memorandum. But the appellate court interpreted this to mean that no memorandum is required when the

defendant instead uses the boxes and lines on the notice of appeal to provide a thorough argument. When the NOA lacks argument, and appellate counsel files notice of its decision to not file a memorandum, appellate courts should view the act as an intentional waiver of the issues below, requiring dismissal. The court also found that, were it to speculate as to which arguments defendant intended to make, it would infringe on the attorney-client relationship between defendant and appellate counsel.

The appellate court further found defendant's petition for rehearing "inappropriate." In the petition, defendant pointed out that in two other cases, the appellate court dismissed for the same reason as the instant case, and in both cases the supreme court issued supervisory orders directing the appellate court to review the issues on the merits. The appellate court refused to elevate supervisory orders in other cases over controlling supreme court precedent, and a supreme court rule, governing party presentation. This would be particularly inappropriate given the supreme court has held that supervisory orders are non-precedential and should not be cited as authority.

People v. Davis, 2024 IL App (2d) 230557 Defendant's notice of appeal, filed on the date the court orally denied his petition for pretrial release, was premature where the court did not enter its written judgment order until four days later. Rule 604(h)(2) provides that notice of appeal must be filed "within 14 days of the entry or denial of the order from which review is being sought." Under Rule 271, a judgment order must be in writing, and under **725 ILCS 5/110-6.1(h)(1)**, the court is to "make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release." Accordingly, the appellate court held that the 14-day window under Rule 604(h)(2) begins to run with entry of the written order, not the oral pronouncement of judgment. Defendant's premature notice of appeal did not confer jurisdiction on the appellate court, and defendant's appeal was dismissed. A dissenting justice would have found that the same-day "minute record" memorializing, in writing, the oral judgment denying pretrial release was a written order sufficient to render the notice of appeal timely. The dissenting justice would have gone on to reverse the detention order and remand for a hearing on appropriate conditions of pretrial release.

People v. Lyons, 2024 IL App (5th) 231180 The appellate court dismissed defendant's appeal under Supreme Court Rule 604(h). Defendant's form notice of appeal included checked boxes indicating that the State failed to meet its burden of proof that defendant committed the charged offense, that defendant posed a threat to any person or the community, and that no conditions could mitigate defendant's dangerousness. He also checked the box indicating that the court erred in finding that no conditions could ensure defendant's appearance for future hearings or mitigate the risk of his being charged with subsequent offenses. Defendant did not elaborate on any of these claims in the space provided.

The Office of the State Appellate Defender (OSAD) was appointed on appeal and ultimately filed a notice stating that it would not be filing a supporting memorandum. The State responded with a memorandum arguing that defendant's failure to provide argument in his notice of appeal required dismissal and, alternatively, that the detention order should be affirmed.

The appellate court concluded that defendant's failure to provide supporting argument either in the notice of appeal or in a memorandum acted as a waiver. And, because contentions without argument or citation to authority do not merit consideration on appeal, the appellate court ordered the appeal dismissed. In doing so, the court acknowledged that

defendant had complied with the requirement of Rule 604(h)(2) that he indicate in his notice of appeal the relief requested and the grounds therefore. The court concluded, however, that counsel's failure to provide any argument in support of his appeal would require the court to speculate as to what those arguments might be, which would infringe on the attorney-client relationship.

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