

Updated DETAINABLE OFFENSES
and DETENTION STANDARDS
under the Pretrial Fairness Act

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

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What qualifies as a detainable offense?

725 ILCS 5/110-6.1(a):

- Qualifying offense categories:
 - Dangerousness (AKA “threat of safety” or “safety”) Standard (110-6.1(a)(1-7)); AND
 - Willful Flight Standard – (110-6.1(a)(8))

Standard of proof for detention under dangerousness standard

725 ILCS 5/110-6.1(e)

- State must show by **clear and convincing evidence** that:
 - The proof is evident or the presumption great that the defendant has committed a detainable offense; **AND**
 - The defendant poses a real and present threat to the safety of any person(s) or to the community based on the specific articulable facts of the case; **AND**
 - No condition or combination of conditions can mitigate the real and present threat to any person(s) or the community.
- Applies to every offense* under 110-6.1(a)(1)-(1.5) and (3)-(7), **but not (a)(2)**
- *other than non-probationable delivery/PWID in drug free zone

Dangerousness Considerations

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

- Whether a defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined in the Illinois Domestic Violence Act of 1986 (defined below).
 - "Abuse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person *in loco parentis*. 750 ILCS 60/103(1)

Factors in considering “dangerousness”

725 ILCS 5/110-6.1(g)

- Considerations include, but not limited to, the following:
 - Nature & circumstances of offense (Violent? Sex? Weapon?)
 - History & characteristics of defendant – May consider defendant’s prior criminal or psychological history of violent, abusive or assaultive behavior, or a lack of such history. May consider evidence from any juvenile, family, quasi-criminal and civil proceedings.
 - The identity of the person(s) at risk if defendant released
 - Statements by defendant and surrounding circumstances
 - Defendant’s age and physical condition and victim/complaining witness’ age and physical condition
 - Any history of weapon possession or access to weapons
 - Whether defendant on state or federal probation, MSR, or on release pending trial, sentencing, appeal, etc.
 - Anything else with reasonable bearing on propensity for violent, assaultive or abusive behavior, or a lack of it

Detainable offenses under dangerousness standard

- 110-6.1(a)(1) – All **non-probationable felonies** (other than forcible felonies – see (a)(1.5) for those)
- 110-6.1(a)(1.5) – **Forcible felonies** (as defined in the PFA)
- 110-6.1(a)(2) - **Stalking/Aggravated Stalking**
- 110-6.1(a)(3) – **Violation of order of protection, stalking/no contact order or civil no contact order**
- 110-6.1(a)(4) – **Domestic Battery/Aggravated Domestic Battery**
- 110-6.1(a)(5) – most **Sex offenses** under Article 11
- 110-6.1(a)(6) – certain enumerated offenses including **Gun, Reckless Homicide & Human Trafficking** offenses
- 110-6.1(a)(6.5) – Certain enumerated offenses including **animal cruelty/abuse and Agg DUI**
- 110-6.1(a)(7) – an **attempt** of any offense in (a)(1) through (a)(6.5)

Non-probationable felonies

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

- This section is limited to offenses which are not forcible felonies
- Any Class X is detainable
- Any lower class offense that is also non-probationable is detainable

Forcible felonies

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

- All forcible felonies are detainable
- Use the PFA definition of forcible felony under the code of criminal procedure (chapter 725), not under the criminal code (Chapter 720)

PFA-specific definition of forcible felony

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

- Treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.

Differences between the two definitions

- PFA definition
 - Enumerates additional specific offenses (armed robbery, aggravated robbery, home invasion, vehicular invasion)
 - Limits burglary to “where there is use of force against another person”
 - Different, more restrictive residual clause: “any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement” (rather than “any other felony which involves *the use or threat of physical force or violence* against any individual”).

Violations of Protective Orders

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

- Any violation of order of protection of any protective order
 - Violations of orders of protection
 - Violations of stalking/no contact orders
 - Violations of civil/no contact orders

Domestic Battery & Agg Dom Batt

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

- Detainable whether charged as a felony or misdemeanor

Sex offenses

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

- Includes every sex offense listed in Article 11 *except*:
 - public indecency
 - adultery
 - fornication
 - bigamy
 - prostitution
 - solicitation of a sexual act
 - patronizing a prostitute
 - obscenity

Enumerated Offenses including Guns and/or Human Trafficking offenses

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

- List of specifically enumerated offenses
- Many are gun- or human trafficking-related including, but not limited to:
 - Agg discharge of a firearm
 - Reckless discharge of a firearm
 - Armed habitual criminal
 - Unlawful use/possession of a weapon by a felon
 - Involuntary servitude

Enumerated Gun Offenses

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

- Includes only non-probationable versions of:
 - Aggravated unlawful use/possession of a weapon (720 ILCS 5/24-1.6)
 - Aggravated possession of a stolen firearm (720 ILCS 5/24-3.9)

110(a)(6) – additional enumerated offenses

- Also included within this section as detainable offenses:
 - reckless homicide
 - aggravated battery with a deadly weapon (other than the discharge of a firearm)
 - involuntary manslaughter
 - residential burglary
 - child abduction
 - **felony** child endangerment
 - hate crime
 - aggravated unlawful restraint
 - threatening a public official

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

- Particular enumerated offenses involving felony cruelty/abuse of animals and *certain* Aggravated DUIs
- Agg DUI while:
 - operating a school bus with passengers
 - causing great bodily harm
 - after a previous reckless homicide conviction
 - leading to death
 - resulting in bodily harm to a child under 16

725 ILCS 5/110-6.1(a)(7)

- Any attempt of any offense in 110-6.1(a)(1) – (a)(6.5)

Stalking & Aggravated Stalking

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

- Unique standard for stalking and agg stalking cases
- A judge can order detention only if:
 - The proof is evident or the presumption great that the defendant committed stalking or agg stalking; AND
 - The defendant poses a real and present threat to the safety of the victim; AND
 - Denial of release is necessary to prevent fulfillment of the threat upon which the charged is based.

Standard for certain drug free zone cases (570/407(b)) 725 ILCS 5/110-6.1(e)(4)

- State must show by **clear and convincing evidence** that:
 - The proof is evident or the presumption great that the defendant has committed a detainable offense; **AND**
 - The defendant poses a real and present threat to the safety of any person(s) or to the community based on the specific articulable facts of the case; **AND**
 - No condition or combination of conditions can mitigate the real and present threat to the safety of any person(s) or the community, based on the specific articulable facts of the case; **AND**
 - The defendant poses a serious risk to not appear in court as required.

How is the drug free zone standard different than other cases?

- A flight component is added to the dangerousness prong
- For these charges only (non-probationable delivery and PWID in a drug free zone)

Willful Flight Standard

725 ILCS 5/110-6.1(a)(8)

- Judge can order detention of a defendant charged with any **felony** listed in **(a)(1)-(a)(7) OR any Class 3 or greater felony** who has a high likelihood of willful flight to avoid prosecution.
 - Any felony, including Class 4s which are listed in or covered by (a)(1)-(a)(7), but **NOT** misdemeanors

Willful Flight defined

725 ILCS 5/110-1(f)

- “Willful flight” means intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of non-appearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.

Standard of Proof for Willful Flight

725 ILCS 5/110-6.1(e)

- State must show by **clear and convincing** evidence that:
 - The proof is evident or the presumption great that the defendant has committed a felony offense listed in subsection (a) or a Class 3 or greater felony; **AND**
 - No condition or combination of conditions can mitigate the risk of defendant's willful flight.