

	ELGIN POLICE DEPARTMENT 151 Douglas Avenue Elgin, Illinois 60120	
Effective Date: 05/20/02	STANDARD OPERATING PROCEDURE	Revised Date: 5/24/24
Chief of Police: 	HOLDING FACILITY: Detainee Rights and Supervision, 72.5	
Cross Reference: 72.4 Holding Facility: Detainee Processing & Health Care Services 72.6 Temporary Detention/Interview & Interrogation Rooms 725 ILCS 5/103-3 725 ILCS 225 725 ILCS 5/110-6.1	Policy Sections: 72.5.1 24 Hour Supervision 72.5.2 Audio/Video Monitoring 72.5.3 Opposite Sex Monitoring 72.5.4 Detainee Mail and Packages 72.5.5 Visiting Detainees 72.5.6 Detainee Rights Appendix A: Pretrial Fairness Act Detainable Offenses	

PURPOSE

The purpose of this policy is to establish guidelines for the rights of people detained within the Holding Facility.

POLICY STATEMENT

It is the policy of the department to provide 24-hour supervision of all detainees, maintain security, safety, and to ensure all rights afforded to detainees under the Illinois Compiled Statutes and the United States Constitution are respected while they are in custody.

DEFINITIONS

Custody: The restriction of a person's freedom of movement by a law enforcement officer's exercise of his or her lawful authority.

Gender Non-Conforming: A term used for individuals whose gender expression, gender characteristics, and/or gender identity does not conform to gender norms.

Intersex: A general term used for a variety of conditions in which a person is born with reproductive or sexual anatomy that is atypical.

Jailer: Community Service Officer assigned to the Holding Facility and responsible for all Holding Facility operations and assists police officers with the in-take of detainees into the Holding Facility.

Lead Jailer: Community Service Officer whose primary responsibilities pertain to the Holding Facility while ensuring the overall safe operation of the Holding Facility and completes special reports and inspections as required by department Standard Operating Procedures and other applicable directives.

Pretrial Release: Pretrial release refers to the conditions of release from custody to which defendants must adhere during the time period between the filing of charges by law enforcement and the court process.

Reasonable Accommodation: Actions taken to accommodate a person that does not jeopardize the safety of the officer or pose undue hardship. Accommodations can be religious, physical, mental, or emotional, academic or are employment related.

TIGN: Acronym for individuals who are transgender, intersex or gender non-conforming.

Transgender: Person whose gender identity differs from birth sex.

PROCEDURES

72.5.1 24 HOUR SUPERVISION

- A. All detainees held within the Holding Facility shall undergo 24-hour supervision. A jailer or officer shall be present in the Holding Facility at all times when detainees are in custody. For observation periods of detainees held in temporary detention, cross reference with Standard Operating Procedure 72.6, Temporary Detention/Interview & Interrogation Rooms.
 - 1. Jailers shall conduct a physical security and wellbeing check of detainees every 30 minutes.
 - 2. A physical security and wellbeing check of detainees determined or suspected to be “at risk” shall be conducted every 15 minutes. Cross reference with Standard Operating Procedure 72.4, Holding Facility: Detainee Processing and Health Care Services.
 - 3. The physical security and wellbeing checks are documented within the corrections activity log located in the department’s records management system. Information such as the observation time, observing jailer/officer’s badge number and comments, if any, are included.
- B. The number of detainees processed in the Holding Facility shall be documented. At least once per shift, the jailer shall perform a documented head count of the detainee population. This information shall be maintained within the corrections activity log, along with the name of the person who conducted the head count and the time it was conducted.

72.5.2 AUDIO/VIDEO MONITORING

- A. The booking area, exterior cell areas and exits are video recorded.
- B. Holding cells are monitored by electronic video and audio equipment.
 - 1. The retention period for these recordings are 90 days unless a preservation request has been made to the Systems Technology Unit supervisor.
 - 2. Signs shall be posted in each holding cell informing the detainee as to the audio and video recording.
 - 3. Holding cell video shall not be monitored in real time. Only the Chief of Police or their designee shall have administrative access to holding cell audio and video footage.
 - 4. The Chief of Police or their designee shall make holding cell audio and video footage available pursuant to any authorized investigation or legal request.
 - 5. At the time of intake, detainees shall be informed that the holding cells are monitored and how to obtain assistance through the holding cell speakers.
- C. Telephones located inside the holding cells record automatically. An audible signal on the phone lines will inform callers and those who receive calls that the line is being recorded.
- D. Audio and video recording equipment shall not be used in ways that violate the detainee’s right to privacy. Signs shall be posted alerting the detainee to audio monitoring.

72.5.3 OPPOSITE SEX MONITORING

- A. General supervision of detainees can be conducted by employees of either sex.
- B. When monitoring the cells of opposite sex detainees, a verbal warning should be given to ensure the privacy of the detainees.

- C. During periods of personal hygiene, such as showers, an employee of the same sex shall be present. In instances where the detainee has self-disclosed that they are transgender, intersex or gender non-conforming, referred to as TIGN, reasonable accommodations should be made.
- D. Emergency situations may necessitate an employee of the opposite sex to respond immediately.

72.5.4 DETAINEE MAIL AND PACKAGES

Detainees shall not be permitted to receive mail or packages while in the custody of the Elgin Police Department; however, required medications or in some circumstances a change of clothing may be permissible.

72.5.5 VISITING DETAINEES

- A. All visitors must present proper identification.
- B. Visitors are allowed a maximum of 15 minutes per visit.
- C. During the visitation, two employees must be present in the Holding Facility.
- D. Visitation by immediate family members of detainees is permissible daily between 3:00pm – 4:00pm.
 - 1. Immediate family includes the detainee's parent, sibling, spouse, or children at the age of 14 or older.
 - 2. The visitation occurs in the visitor's room located outside the Holding Facility where family members can communicate with the detainee via a visitor's partition window and telephone contact.
- E. Clergy and attorneys may visit outside the above hours.
 - 1. These visitations occur in the interview rooms located inside the Holding Facility. However, attorneys have the option to speak with their client while they remain in the cell or in the visitation area. Refer to Section 72.5.6 (C) for information on the right to communicate by phone, free of charge, with an attorney.
 - 2. Detainees and visitors are subject to a search before and after visitation.
 - 3. Purses, packages, mail, or other containers not essential to the visit are not permitted in the interview rooms. These items should be placed in the Lead Jailer's office or secured in their vehicles.
 - 4. Disruptive or combative detainees or those posing escape risks may not be allowed to see visitors in the interview room. Telephone contact in the visitor room may be considered as an alternative.
 - 5. Anytime personal contact is made, the detainee will be searched prior to being placed back in their cell.
- F. Special exceptions may be granted by supervisory personnel.

72.5.6 DETAINEE RIGHTS

While a detainee is in custody, department personnel shall ensure that the following conditions are met:

- A. Regarding new charges, Class A misdemeanors and specified felonies, which may be determined by the state's attorney's office, the detainee may be released from custody in

accordance with the Pretrial Fairness Act. However, in instances of misdemeanors such as domestic battery and specified felonies, which may be determined by the state's attorney's office, the detainee shall be transported to either Cook or Kane County for a pretrial detention hearing in accordance with the Pretrial Fairness Act. Refer to Appendix A to view the Pretrial Fairness Act Detainable Offenses. Delays may occur in situations when:

1. Detectives are actively pursuing an investigation in order to obtain charges, usually within 72 hours or at the direction of the respective state's attorney's office. In these instances, an Investigative Hold form is completed.
 2. The detainee is admitted to a medical facility for treatment.
 3. The detainee refuses to provide any information or identification and/or refuses processing. In these instances, the case is reviewed by a judge and the department may obtain a court order for identification and processing.
 4. When an issuing agency is contacted by an out-of-state agency of a person arrested for any offense, or when an arresting agency is contacted by or contacts an out-of-state issuing agency, the Uniform Criminal Extradition Act shall govern; refer to 725 ILCS 225.
- B. A detainee arrested with or without a warrant for an offense for which pretrial release may be denied under 725 ILCS 5/110.6.1 shall be taken without unnecessary delay before the nearest and most accessible judge in that county. To view the circumstances where the court will hold a hearing and may deny a pre-trial release, refer to the above-mentioned statute.
- C. Certain counties continue to accept bond for a warrant and in those instances, the detainee's opportunity for posting bond shall not be impeded. The department accepts the following forms of bond for the warrant:
1. Cash bond. Otherwise, charges may be subject to the protocol established in 725 ILCS 5/110-6.1 as it pertains to the denial of pretrial release.
 2. Approved credit card.
 3. Released on their signature.
- D. Persons in police custody have the right to communicate with attorney and family.
1. Persons who are in police custody have the right to communicate free of charge with an attorney of their choice and members of their family as soon as possible upon being taken into police custody, but no later than three hours after arrival at the first place of detention. For purposes of this section, place of detention means a building or police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency, other than a courthouse, that is owned or operated by a law enforcement agency, or other building, such as a school or hospital, where persons are held in detention in connection with criminal charges against those persons.
 - a. In the event a person who is in custody is transferred to a new place of custody, his or her right to make three telephone calls within three hours of arrival is renewed.
 - b. The three hours requirement shall not apply while the person in police custody is asleep, unconscious, or otherwise incapacitated or an exigent circumstance prevents the officers from timely complying with this section. If this occurs, it must be documented in the police report detailing the exigent circumstances. Once the exigent circumstances ends, the right to make three phone calls within three hours resumes.

1. In accordance with this section, the following records shall be maintained: (1) the number of phone calls the person made while in custody; (2) the time or times the person made phone calls; and, (3) if the person did not make any phone calls, a statement of the reason or reasons why no calls were made.
2. Persons in police custody must be given:
 - a. Access to use a telephone via a land line or cellular phone to make three phone calls.
 - b. The ability to retrieve phone numbers contained in his or her contact list on his or her cellular phone prior to the phone being placed into inventory. The detective or officer shall facilitate this process to ensure potential evidence that is stored on the cellular phone is not destroyed.
3. Those charged with a domestic battery or have an active order of protection may not call the victims.
4. At every facility where a person is in police custody, a sign containing, at minimum, the following information in bold block type and must be posted in a conspicuous place:
 - a. A short statement notifying persons who are in police custody of their right to have access to a phone within three hours after being taken into police custody.
 - b. Persons who are in police custody have the right to make three phone calls within three hours of being taken into custody, at no charge.
 - c. If the place of custody is in a jurisdiction where the court has appointed the public defender or other attorney to represent persons who are in police custody, the telephone number to the public defender or appointed attorney's office must also be displayed. The telephone call to the public defender or other attorney must not be monitored, eavesdropped upon, or recorded.
5. Statements made by a person who is detained in custody in violation of this section are presumed inadmissible in court as evidence. The presumption of inadmissibility may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based upon totality of the circumstances. As used in this section, totality of the circumstances includes, but is not limited to, evidence that law enforcement knowingly prevented or delayed a person's right to communicate or failed to comply with the requirements of this section.
6. Nothing in covered in this section, Section C, shall interfere with a person's rights or override procedures required in the Bill of Rights of the Illinois and US Constitutions, including but not limited to Fourth Amendment search and seizure rights, Fifth Amendment due process rights and rights to be free from self-incrimination and Six Amendment right to counsel.
- E. Foreign national detainees are informed of their right to consular notification and access in accordance with federal mandates.
- F. Three meals a day shall be provided to all in-custody detainees during a 24-hour period. Special diets, as prescribed by a doctor or for religious purposes.
 1. Only department purchased food and beverages will be provided to the detainee.
 2. Care should be taken to ensure meals are served within ½ hour of pick-up or delivery.

3. All meals served and those offered but rejected by detainees are to be documented.
- G. For more information on medical assistance, refer to Standard Operating Procedure 72.4, Holding Facility: Detainee Processing and Health Care Services.

APPENDIX A: PRETRIAL FAIRNESS ACT DETAINABLE OFFENSES

PFA DETAINABLE OFFENSES

725 ILCS 5/110-6.1

(1) Defendant is charged with **Felony other than Forcible Felony** and based on charge or criminal history, a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge is required upon conviction

(1.5) Defendant is charged with **Forcible Felony** offense for which sentence of imprisonment is required upon conviction; and

- Forcible Felony: **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 involving use of force against another person, Residential Burglary, Home Invasion, Vehicular Invasion, Aggravated Arson, Arson, Aggravated Kidnapping, Kidnapping, Aggravated Battery resulting in great bodily harm or permanent disability or Disfigurement and any other Felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.**

(2) Defendant is charged with **Stalking or Aggravated Stalking**; and

- **Pretrial release poses a real and present threat to the safety of the victim; AND**
- **Denial of release is necessary to prevent fulfillment of the threat alleged in the charges.**

(3) Defendant is charged with **Violation of Order of Protection** (Section 112A-14 or 214), **Stalking No Contact Order** (Section 80) or **Civil No Contact Order** (Section 213).

(4) Defendant is charged with **Domestic Battery or Aggravated Domestic Battery**.

(5) Defendant is charged with any **Sex Crime** except Prostitution, Solicitation of a Sexual Act, Patronizing a Prostitute, Obscenity, Public Indecency, Adultery, Fornication or Bigamy; and

(6) Defendant is charged with:

- A. **Aggravated Discharge of a Firearm** (Section 24-1.2)
- B. **Aggravated Discharge of a Machine Gun or Firearm equipped with silencer**(Section 24-2.5)
- C. **Reckless Discharge of a Firearm** (Section 24-1.5)
- D. **Armed Habitual Criminal** (section 24-1.7)
- E. **Manufacturing, sale or transfer of bullets represented to be armor piercing, dragon's breath shotgun shells, bolo shells or flechette shells** (Section 24-2.2 2)
- F. **Unlawful Sale or Delivery of Firearms** (Section 24-3)
- G. **Unlawful Sale or Delivery of Firearms on school premises** (Section 24-3.3)

- H. **Unlawful Sale of Firearm by liquor license** (Section 24-34)
- I. **Unlawful Purchase of a Firearm** (Section 24-3.5)
- J. **Gunrunning** (Section 24-3A)
- K. **Firearms Trafficking** (Section 24-3B)
- L. **Involuntary Servitude** (Section 10-9 (b))
- M. **Involuntary Servitude of a Minor** (Section 10-9 (c))
- N. **Trafficking in Persons** (Section 10-9 (d))
- O. Non-probationable violations:
 - ✓ **Unlawful Possession of Weapons by felons or person in DOC custody** (Section 24-1.1) **Aggravated Unlawful Use of a Weapon** (Section 24-1.6) **Aggravated Possession of Stolen Firearm** (Section 24-3.9)
- P. **Reckless Homicide and Involuntary Manslaughter** (Section 9-3)
- Q. **Residential Burglary** (Section 19-3)
- R. **Child Abduction** (Section 10-5)
- S. **Felony Child Endangerment** (Section 12C-5)
- T. **Hate Crime** (Section 12-7.1)
- U. **Aggravated Unlawful Restraint** (Section 10-3.1)
- V. **Threatening a Public Official** (Section 12-9)
- W. **Aggravated Battery Deadly Weapon Other than discharge of firearm** (Section 12-3.05 (f)(1))

(6.5) Defendant is charged with:

- A. **Felony Cruel Treatment, Aggravated Cruelty or Animal Torture** under Humane Care for Animals Act (Sections 3.01, 3.02 or 3.03)
- B. **Aggravated DUI School Bus with Passengers** (Section 11-501(d)(1)(b))
- C. **Aggravated DUI Causing Great Bodily Harm** (Section 11-501(d)(1)(c))
- D. **Aggravated DUI with Prior Reckless Homicide Conviction** (Section 11-501(d)(1)(D))
- E. **Aggravated DUI Leading to Death** (Section 11-501(d)(1)(F))
- F. **Aggravated DUI resulting in Bodily Harm to Child Under 16** (Section 11-501(d)(1)(J))

(7) Defendant is charged with Attempt to Commit any charge in paragraphs (1) through (6.5)

(8) Defendant has High Likelihood of Willful Flight to Avoid Prosecution and is charged with

- A. Any Felony in paragraphs (a)(1) through (a)(7); or
- B. A Felony other than a class 4 offense.