



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/06/04, by Michael J. Madigan

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6.5

Amends the Code of Criminal Procedure of 1963. Makes a technical change in the Section that permits the Chief Judge of a circuit to establish a drug testing program in any county in the circuit if the county board has approved the establishment of the program and the county probation department or pretrial services agency has consented to administer it.

LRB093 17151 RLC 42817 b

1 AN ACT in relation to criminal procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 110-6.5 as follows:

6 (725 ILCS 5/110-6.5)

7 Sec. 110-6.5. Drug testing program. The Chief Judge of the
8 circuit may establish a drug testing program as provided by
9 this Section in any county in the circuit if the county board
10 has approved the establishment of the program and the county
11 probation department or pretrial services agency has consented
12 to administer it. The drug testing program must ~~shall~~ be
13 conducted under the following provisions:

14 (a) The court, in the case of a defendant charged with a
15 felony offense or any offense involving the possession or
16 delivery of cannabis or a controlled substance, shall:

17 (1) not consider the release of the defendant on his or
18 her own recognizance, unless the defendant consents to
19 periodic drug testing during the period of release on his
20 or her own recognizance, in accordance with this Section;

21 (2) consider the consent of the defendant to periodic
22 drug testing during the period of release on bail in
23 accordance with this Section as a favorable factor for the
24 defendant in determining the amount of bail, the conditions
25 of release or in considering the defendant's motion to
26 reduce the amount of bail.

27 (b) The drug testing shall be conducted by the pretrial
28 services agency or under the direction of the probation
29 department when a pretrial services agency does not exist in
30 accordance with this Section.

31 (c) A defendant who consents to periodic drug testing as
32 set forth in this Section shall sign an agreement with the

1 court that, during the period of release, the defendant shall
2 refrain from using illegal drugs and that the defendant will
3 comply with the conditions of the testing program. The
4 agreement shall be on a form prescribed by the court and shall
5 be executed at the time of the bail hearing. This agreement
6 shall be made a specific condition of bail.

7 (d) The drug testing program shall be conducted as follows:

8 (1) The testing shall be done by urinalysis for the
9 detection of phencyclidine, heroin, cocaine, methadone and
10 amphetamines.

11 (2) The collection of samples shall be performed under
12 reasonable and sanitary conditions.

13 (3) Samples shall be collected and tested with due
14 regard for the privacy of the individual being tested and
15 in a manner reasonably calculated to prevent substitutions
16 or interference with the collection or testing of reliable
17 samples.

18 (4) Sample collection shall be documented, and the
19 documentation procedures shall include:

20 (i) Labeling of samples so as to reasonably
21 preclude the probability of erroneous identification
22 of test results; and

23 (ii) An opportunity for the defendant to provide
24 information on the identification of prescription or
25 nonprescription drugs used in connection with a
26 medical condition.

27 (5) Sample collection, storage, and transportation to
28 the place of testing shall be performed so as to reasonably
29 preclude the probability of sample contamination or
30 adulteration.

31 (6) Sample testing shall conform to scientifically
32 accepted analytical methods and procedures. Testing shall
33 include verification or confirmation of any positive test
34 result by a reliable analytical method before the result of
35 any test may be used as a basis for any action by the
36 court.

1 (e) The initial sample shall be collected before the
2 defendant's release on bail. Thereafter, the defendant shall
3 report to the pretrial services agency or probation department
4 as required by the agency or department. The pretrial services
5 agency or probation department shall immediately notify the
6 court of any defendant who fails to report for testing.

7 (f) After the initial test, a subsequent confirmed positive
8 test result indicative of continued drug use shall result in
9 the following:

10 (1) Upon the first confirmed positive test result, the
11 pretrial services agency or probation department, shall
12 place the defendant on a more frequent testing schedule and
13 shall warn the defendant of the consequences of continued
14 drug use.

15 (2) A second confirmed positive test result shall be
16 grounds for a hearing before the judge who authorized the
17 release of the defendant in accordance with the provisions
18 of subsection (g) of this Section.

19 (g) The court shall, upon motion of the State or upon its
20 own motion, conduct a hearing in connection with any defendant
21 who fails to appear for testing, fails to cooperate with the
22 persons conducting the testing program, attempts to submit a
23 sample not his or her own or has had a confirmed positive test
24 result indicative of continued drug use for the second or
25 subsequent time after the initial test. The hearing shall be
26 conducted in accordance with the procedures of Section 110-6.

27 Upon a finding by the court that the State has established
28 by clear and convincing evidence that the defendant has
29 violated the drug testing conditions of bail, the court may
30 consider any of the following sanctions:

31 (1) increase the amount of the defendant's bail or
32 conditions of release;

33 (2) impose a jail sentence of up to 5 days;

34 (3) revoke the defendant's bail; or

35 (4) enter such other orders which are within the power
36 of the court as deemed appropriate.

1 (h) The results of any drug testing conducted under this
2 Section shall not be admissible on the issue of the defendant's
3 guilt in connection with any criminal charge.

4 (i) The court may require that the defendant pay for the
5 cost of drug testing.

6 (Source: P.A. 88-677, eff. 12-15-94.)