



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB2358

Introduced 2/16/2005, by Rep. Marlow H. Colvin

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-7

from Ch. 38, par. 110-7

Amends the Code of Criminal Procedure of 1963. Requires that the Administrative Office of the Illinois Courts adopt rules providing for the forfeiture of cash bail posted by a defendant who is in arrears on his or her child support payments. Provides that, beginning January 1, 2006, an accused who posts bail and who is in arrears in the payment of child support shall forfeit the deposit of his or her bail pursuant to the rules. Provides that the forfeiture of bail shall not apply in criminal cases where the complainant is the person to whom the child support payments are owed.

LRB094 07681 LCB 37857 b

1 AN ACT concerning bail.

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 110-7 as follows:

6 (725 ILCS 5/110-7) (from Ch. 38, par. 110-7)

7 Sec. 110-7. Deposit of Bail Security.

8 (a) The person for whom bail has been set shall execute the  
9 bail bond and deposit with the clerk of the court before which  
10 the proceeding is pending a sum of money equal to 10% of the  
11 bail, but in no event shall such deposit be less than \$25. The  
12 clerk of the court shall provide a space on each form for a  
13 person other than the accused who has provided the money for  
14 the posting of bail to so indicate and a space signed by an  
15 accused who has executed the bail bond indicating whether a  
16 person other than the accused has provided the money for the  
17 posting of bail. The form shall also include a written notice  
18 to such person who has provided the defendant with the money  
19 for the posting of bail indicating that the bail may be used to  
20 pay costs, attorney's fees, fines, or other purposes authorized  
21 by the court and if the defendant fails to comply with the  
22 conditions of the bail bond, the court shall enter an order  
23 declaring the bail to be forfeited. The written notice must be:  
24 (1) distinguishable from the surrounding text; (2) in bold type  
25 or underscored; and (3) in a type size at least 2 points larger  
26 than the surrounding type. When a person for whom bail has been  
27 set is charged with an offense under the "Illinois Controlled  
28 Substances Act" which is a Class X felony, the court may  
29 require the defendant to deposit a sum equal to 100% of the  
30 bail. Where any person is charged with a forcible felony while  
31 free on bail and is the subject of proceedings under Section  
32 109-3 of this Code the judge conducting the preliminary

1 examination may also conduct a hearing upon the application of  
2 the State pursuant to the provisions of Section 110-6 of this  
3 Code to increase or revoke the bail for that person's prior  
4 alleged offense.

5 (b) Upon depositing this sum and any bond fee authorized by  
6 law, the person shall be released from custody subject to the  
7 conditions of the bail bond.

8 (c) Once bail has been given and a charge is pending or is  
9 thereafter filed in or transferred to a court of competent  
10 jurisdiction the latter court shall continue the original bail  
11 in that court subject to the provisions of Section 110-6 of  
12 this Code.

13 (d) After conviction the court may order that the original  
14 bail stand as bail pending appeal or deny, increase or reduce  
15 bail subject to the provisions of Section 110-6.2.

16 (e) After the entry of an order by the trial court allowing  
17 or denying bail pending appeal either party may apply to the  
18 reviewing court having jurisdiction or to a justice thereof  
19 sitting in vacation for an order increasing or decreasing the  
20 amount of bail or allowing or denying bail pending appeal  
21 subject to the provisions of Section 110-6.2.

22 (f) Except as provided in subsection (f-5) of this Section,  
23 when ~~When~~ the conditions of the bail bond have been performed  
24 and the accused has been discharged from all obligations in the  
25 cause the clerk of the court shall return to the accused or to  
26 the defendant's designee by an assignment executed at the time  
27 the bail amount is deposited, unless the court orders  
28 otherwise, 90% of the sum which had been deposited and shall  
29 retain as bail bond costs 10% of the amount deposited. However,  
30 in no event shall the amount retained by the clerk as bail bond  
31 costs be less than \$5. Bail bond deposited by or on behalf of a  
32 defendant in one case may be used, in the court's discretion,  
33 to satisfy financial obligations of that same defendant  
34 incurred in a different case due to a fine, court costs,  
35 restitution or fees of the defendant's attorney of record. In  
36 counties with a population of 3,000,000 or more, the court

1 shall not order bail bond deposited by or on behalf of a  
2 defendant in one case to be used to satisfy financial  
3 obligations of that same defendant in a different case until  
4 the bail bond is first used to satisfy court costs and  
5 attorney's fees in the case in which the bail bond has been  
6 deposited ~~and any other unpaid child support obligations are~~  
7 ~~satisfied~~. In counties with a population of less than  
8 3,000,000, the court shall not order bail bond deposited by or  
9 on behalf of a defendant in one case to be used to satisfy  
10 financial obligations of that same defendant in a different  
11 case until the bail bond is first used to satisfy court costs  
12 in the case in which the bail bond has been deposited.

13 (f-5) The Administrative Office of the Illinois Courts  
14 shall adopt rules providing for the forfeiture of cash bail  
15 posted by a defendant who is in arrears on his or her child  
16 support payments.

17 Beginning January 1, 2006, an accused who posts bail and  
18 who is in arrears in the payment of child support shall forfeit  
19 the deposit of his or her bail pursuant to the rules.

20 The forfeiture of bail shall not apply in criminal cases  
21 where the complainant is the person to whom the child support  
22 payments are owed.

23 At the request of the defendant the court may order such  
24 90% of defendant's bail deposit, or whatever amount is  
25 repayable to defendant from such deposit, to be paid to  
26 defendant's attorney of record.

27 (g) If the accused does not comply with the conditions of  
28 the bail bond the court having jurisdiction shall enter an  
29 order declaring the bail to be forfeited. Notice of such order  
30 of forfeiture shall be mailed forthwith to the accused at his  
31 last known address. If the accused does not appear and  
32 surrender to the court having jurisdiction within 30 days from  
33 the date of the forfeiture or within such period satisfy the  
34 court that appearance and surrender by the accused is  
35 impossible and without his fault the court shall enter judgment  
36 for the State if the charge for which the bond was given was a

1 felony or misdemeanor, or if the charge was quasi-criminal or  
2 traffic, judgment for the political subdivision of the State  
3 which prosecuted the case, against the accused for the amount  
4 of the bail and costs of the court proceedings; however, in  
5 counties with a population of less than 3,000,000, instead of  
6 the court entering a judgment for the full amount of the bond  
7 the court may, in its discretion, enter judgment for the cash  
8 deposit on the bond, less costs, retain the deposit for further  
9 disposition or, if a cash bond was posted for failure to appear  
10 in a matter involving enforcement of child support or  
11 maintenance, the amount of the cash deposit on the bond, less  
12 outstanding costs, may be awarded to the person or entity to  
13 whom the child support or maintenance is due. The deposit made  
14 in accordance with paragraph (a) shall be applied to the  
15 payment of costs. If judgment is entered and any amount of such  
16 deposit remains after the payment of costs it shall be applied  
17 to payment of the judgment and transferred to the treasury of  
18 the municipal corporation wherein the bond was taken if the  
19 offense was a violation of any penal ordinance of a political  
20 subdivision of this State, or to the treasury of the county  
21 wherein the bond was taken if the offense was a violation of  
22 any penal statute of this State. The balance of the judgment  
23 may be enforced and collected in the same manner as a judgment  
24 entered in a civil action.

25 (h) After a judgment for a fine and court costs or either  
26 is entered in the prosecution of a cause in which a deposit had  
27 been made in accordance with paragraph (a) the balance of such  
28 deposit, after deduction of bail bond costs, shall be applied  
29 to the payment of the judgment.

30 (Source: P.A. 92-16, eff. 6-28-01; 93-371, eff. 1-1-04; 93-760,  
31 eff. 1-1-05.)