



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0130

Introduced 1/10/2013, by Rep. Monique D. Davis

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. Provides that if a first-time offender is charged with a non-violent offense, the court shall order him or her released on his or her own recognizance, unless the court makes a specific finding that a cash bond is necessary to secure his or her appearance, and in addition to any other conditions, may order as a condition of his or her release, his or her monitoring under electronic surveillance as provided in the Unified Code of Corrections.

LRB098 02934 MRW 32948 b

1 AN ACT concerning criminal law.

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 110-5 as follows:

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

7 Sec. 110-5. Determining the amount of bail and conditions
8 of release.

9 (a) In determining the amount of monetary bail or
10 conditions of release, if any, which will reasonably assure the
11 appearance of a defendant as required or the safety of any
12 other person or the community and the likelihood of compliance
13 by the defendant with all the conditions of bail, the court
14 shall, on the basis of available information, take into account
15 such matters as the nature and circumstances of the offense
16 charged, whether the evidence shows that as part of the offense
17 there was a use of violence or threatened use of violence,
18 whether the offense involved corruption of public officials or
19 employees, whether there was physical harm or threats of
20 physical harm to any public official, public employee, judge,
21 prosecutor, juror or witness, senior citizen, child or
22 handicapped person, whether evidence shows that during the
23 offense or during the arrest the defendant possessed or used a

1 firearm, machine gun, explosive or metal piercing ammunition or
2 explosive bomb device or any military or paramilitary armament,
3 whether the evidence shows that the offense committed was
4 related to or in furtherance of the criminal activities of an
5 organized gang or was motivated by the defendant's membership
6 in or allegiance to an organized gang, the condition of the
7 victim, any written statement submitted by the victim or
8 proffer or representation by the State regarding the impact
9 which the alleged criminal conduct has had on the victim and
10 the victim's concern, if any, with further contact with the
11 defendant if released on bail, whether the offense was based on
12 racial, religious, sexual orientation or ethnic hatred, the
13 likelihood of the filing of a greater charge, the likelihood of
14 conviction, the sentence applicable upon conviction, the
15 weight of the evidence against such defendant, whether there
16 exists motivation or ability to flee, whether there is any
17 verification as to prior residence, education, or family ties
18 in the local jurisdiction, in another county, state or foreign
19 country, the defendant's employment, financial resources,
20 character and mental condition, past conduct, prior use of
21 alias names or dates of birth, and length of residence in the
22 community, the consent of the defendant to periodic drug
23 testing in accordance with Section 110-6.5, whether a foreign
24 national defendant is lawfully admitted in the United States of
25 America, whether the government of the foreign national
26 maintains an extradition treaty with the United States by which

1 the foreign government will extradite to the United States its
2 national for a trial for a crime allegedly committed in the
3 United States, whether the defendant is currently subject to
4 deportation or exclusion under the immigration laws of the
5 United States, whether the defendant, although a United States
6 citizen, is considered under the law of any foreign state a
7 national of that state for the purposes of extradition or
8 non-extradition to the United States, the amount of unrecovered
9 proceeds lost as a result of the alleged offense, the source of
10 bail funds tendered or sought to be tendered for bail, whether
11 from the totality of the court's consideration, the loss of
12 funds posted or sought to be posted for bail will not deter the
13 defendant from flight, whether the evidence shows that the
14 defendant is engaged in significant possession, manufacture,
15 or delivery of a controlled substance or cannabis, either
16 individually or in consort with others, whether at the time of
17 the offense charged he was on bond or pre-trial release pending
18 trial, probation, periodic imprisonment or conditional
19 discharge pursuant to this Code or the comparable Code of any
20 other state or federal jurisdiction, whether the defendant is
21 on bond or pre-trial release pending the imposition or
22 execution of sentence or appeal of sentence for any offense
23 under the laws of Illinois or any other state or federal
24 jurisdiction, whether the defendant is under parole or
25 mandatory supervised release or work release from the Illinois
26 Department of Corrections or any penal institution or

1 corrections department of any state or federal jurisdiction,
2 the defendant's record of convictions, whether the defendant
3 has been convicted of a misdemeanor or ordinance offense in
4 Illinois or similar offense in other state or federal
5 jurisdiction within the 10 years preceding the current charge
6 or convicted of a felony in Illinois, whether the defendant was
7 convicted of an offense in another state or federal
8 jurisdiction that would be a felony if committed in Illinois
9 within the 20 years preceding the current charge or has been
10 convicted of such felony and released from the penitentiary
11 within 20 years preceding the current charge if a penitentiary
12 sentence was imposed in Illinois or other state or federal
13 jurisdiction, the defendant's records of juvenile adjudication
14 of delinquency in any jurisdiction, any record of appearance or
15 failure to appear by the defendant at court proceedings,
16 whether there was flight to avoid arrest or prosecution,
17 whether the defendant escaped or attempted to escape to avoid
18 arrest, whether the defendant refused to identify himself, or
19 whether there was a refusal by the defendant to be
20 fingerprinted as required by law. Information used by the court
21 in its findings or stated in or offered in connection with this
22 Section may be by way of proffer based upon reliable
23 information offered by the State or defendant. All evidence
24 shall be admissible if it is relevant and reliable regardless
25 of whether it would be admissible under the rules of evidence
26 applicable at criminal trials. If the State presents evidence

1 that the offense committed by the defendant was related to or
2 in furtherance of the criminal activities of an organized gang
3 or was motivated by the defendant's membership in or allegiance
4 to an organized gang, and if the court determines that the
5 evidence may be substantiated, the court shall prohibit the
6 defendant from associating with other members of the organized
7 gang as a condition of bail or release. For the purposes of
8 this Section, "organized gang" has the meaning ascribed to it
9 in Section 10 of the Illinois Streetgang Terrorism Omnibus
10 Prevention Act.

11 (b) The amount of bail shall be:

12 (1) Sufficient to assure compliance with the
13 conditions set forth in the bail bond, which shall include
14 the defendant's current address with a written
15 admonishment to the defendant that he or she must comply
16 with the provisions of Section 110-12 regarding any change
17 in his or her address. The defendant's address shall at all
18 times remain a matter of public record with the clerk of
19 the court.

20 (2) Not oppressive.

21 (3) Considerate of the financial ability of the
22 accused.

23 (4) When a person is charged with a drug related
24 offense involving possession or delivery of cannabis or
25 possession or delivery of a controlled substance as defined
26 in the Cannabis Control Act, the Illinois Controlled

1 Substances Act, or the Methamphetamine Control and
2 Community Protection Act, the full street value of the
3 drugs seized shall be considered. "Street value" shall be
4 determined by the court on the basis of a proffer by the
5 State based upon reliable information of a law enforcement
6 official contained in a written report as to the amount
7 seized and such proffer may be used by the court as to the
8 current street value of the smallest unit of the drug
9 seized.

10 (b-1) If a first-time offender is charged with a
11 non-violent offense, the court shall order him or her released
12 on his or her own recognizance, unless the court makes a
13 specific finding that a cash bond is necessary to secure his or
14 her appearance, and in addition to any other conditions, may
15 order as a condition of his or her release, his or her
16 monitoring under electronic surveillance as provided in
17 Article 8A of Chapter V of the Unified Code of Corrections.

18 For the purposes of this subsection (b-1), "non-violent
19 crime" means an offense that is not a forcible felony or a
20 violent crime as defined in Section 3 of the Rights of Crime
21 Victims and Witnesses Act.

22 (b-5) Upon the filing of a written request demonstrating
23 reasonable cause, the State's Attorney may request a source of
24 bail hearing either before or after the posting of any funds.
25 If the hearing is granted, before the posting of any bail, the
26 accused must file a written notice requesting that the court

1 conduct a source of bail hearing. The notice must be
2 accompanied by justifying affidavits stating the legitimate
3 and lawful source of funds for bail. At the hearing, the court
4 shall inquire into any matters stated in any justifying
5 affidavits, and may also inquire into matters appropriate to
6 the determination which shall include, but are not limited to,
7 the following:

8 (1) the background, character, reputation, and
9 relationship to the accused of any surety; and

10 (2) the source of any money or property deposited by
11 any surety, and whether any such money or property
12 constitutes the fruits of criminal or unlawful conduct; and

13 (3) the source of any money posted as cash bail, and
14 whether any such money constitutes the fruits of criminal
15 or unlawful conduct; and

16 (4) the background, character, reputation, and
17 relationship to the accused of the person posting cash
18 bail.

19 Upon setting the hearing, the court shall examine, under
20 oath, any persons who may possess material information.

21 The State's Attorney has a right to attend the hearing, to
22 call witnesses and to examine any witness in the proceeding.
23 The court shall, upon request of the State's Attorney, continue
24 the proceedings for a reasonable period to allow the State's
25 Attorney to investigate the matter raised in any testimony or
26 affidavit. If the hearing is granted after the accused has

1 posted bail, the court shall conduct a hearing consistent with
2 this subsection (b-5). At the conclusion of the hearing, the
3 court must issue an order either approving of disapproving the
4 bail.

5 (c) When a person is charged with an offense punishable by
6 fine only the amount of the bail shall not exceed double the
7 amount of the maximum penalty.

8 (d) When a person has been convicted of an offense and only
9 a fine has been imposed the amount of the bail shall not exceed
10 double the amount of the fine.

11 (e) The State may appeal any order granting bail or setting
12 a given amount for bail.

13 (f) When a person is charged with a violation of an order
14 of protection under Section 12-3.4 or 12-30 of the Criminal
15 Code of 1961 or the Criminal Code of 2012,

16 (1) whether the alleged incident involved harassment
17 or abuse, as defined in the Illinois Domestic Violence Act
18 of 1986;

19 (2) whether the person has a history of domestic
20 violence, as defined in the Illinois Domestic Violence Act,
21 or a history of other criminal acts;

22 (3) based on the mental health of the person;

23 (4) whether the person has a history of violating the
24 orders of any court or governmental entity;

25 (5) whether the person has been, or is, potentially a
26 threat to any other person;

1 (6) whether the person has access to deadly weapons or
2 a history of using deadly weapons;

3 (7) whether the person has a history of abusing alcohol
4 or any controlled substance;

5 (8) based on the severity of the alleged incident that
6 is the basis of the alleged offense, including, but not
7 limited to, the duration of the current incident, and
8 whether the alleged incident involved physical injury,
9 sexual assault, strangulation, abuse during the alleged
10 victim's pregnancy, abuse of pets, or forcible entry to
11 gain access to the alleged victim;

12 (9) whether a separation of the person from the alleged
13 victim or a termination of the relationship between the
14 person and the alleged victim has recently occurred or is
15 pending;

16 (10) whether the person has exhibited obsessive or
17 controlling behaviors toward the alleged victim,
18 including, but not limited to, stalking, surveillance, or
19 isolation of the alleged victim or victim's family member
20 or members;

21 (11) whether the person has expressed suicidal or
22 homicidal ideations;

23 (12) based on any information contained in the
24 complaint and any police reports, affidavits, or other
25 documents accompanying the complaint,

26 the court may, in its discretion, order the respondent to

1 undergo a risk assessment evaluation conducted by an Illinois
2 Department of Human Services approved partner abuse
3 intervention program provider, pretrial service, probation, or
4 parole agency. These agencies shall have access to summaries of
5 the defendant's criminal history, which shall not include
6 victim interviews or information, for the risk evaluation.
7 Based on the information collected from the 12 points to be
8 considered at a bail hearing for a violation of an order of
9 protection, the results of any risk evaluation conducted and
10 the other circumstances of the violation, the court may order
11 that the person, as a condition of bail, be placed under
12 electronic surveillance as provided in Section 5-8A-7 of the
13 Unified Code of Corrections.

14 (Source: P.A. 95-773, eff. 1-1-09; 96-688, eff. 8-25-09;
15 96-1551, eff. 7-1-11.)