



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB2564

Introduced 2/6/2018, by Sen. Pamela J. Althoff

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/109-1  
725 ILCS 5/110-6

from Ch. 38, par. 109-1  
from Ch. 38, par. 110-6

Amends the Code of Criminal Procedure of 1963. Provides that the Chief Judge of the Circuit Court of a county may decide not to implement a provision by local court rule that requires a person charged with an offense to be allowed counsel at the hearing at which bail is determined and if the defendant desires counsel for his or her initial appearance but is unable to obtain counsel, the court shall appoint a public defender or licensed attorney at law of this State to represent him or her for purposes of that hearing. Provides that the Chief Judge of the Circuit Court of a county may decide not to implement a provision requiring that a person in custody for a Category B offense due to an inability to post monetary bail be brought before the court at the next available court date or 7 calendar days from the date bail was set, whichever is earlier, for a rehearing on the amount or conditions of bail or release pending further court proceedings. Effective immediately.

LRB100 16376 SLF 31504 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 Sections 109-1 and 110-6 as follows:

6 (725 ILCS 5/109-1) (from Ch. 38, par. 109-1)

7 Sec. 109-1. Person arrested.

8 (a) A person arrested with or without a warrant shall be  
9 taken without unnecessary delay before the nearest and most  
10 accessible judge in that county, except when such county is a  
11 participant in a regional jail authority, in which event such  
12 person may be taken to the nearest and most accessible judge,  
13 irrespective of the county where such judge presides, and a  
14 charge shall be filed. Whenever a person arrested either with  
15 or without a warrant is required to be taken before a judge, a  
16 charge may be filed against such person by way of a two-way  
17 closed circuit television system, except that a hearing to deny  
18 bail to the defendant may not be conducted by way of closed  
19 circuit television.

20 (a-5) A person charged with an offense shall be allowed  
21 counsel at the hearing at which bail is determined under  
22 Article 110 of this Code. If the defendant desires counsel for  
23 his or her initial appearance but is unable to obtain counsel,

1 the court shall appoint a public defender or licensed attorney  
2 at law of this State to represent him or her for purposes of  
3 that hearing. The Chief Judge of the Circuit Court of a county  
4 may decide not to implement this subsection (a-5) by local  
5 court rule.

6 (b) The judge shall:

7 (1) Inform the defendant of the charge against him and  
8 shall provide him with a copy of the charge;

9 (2) Advise the defendant of his right to counsel and if  
10 indigent shall appoint a public defender or licensed  
11 attorney at law of this State to represent him in  
12 accordance with the provisions of Section 113-3 of this  
13 Code;

14 (3) Schedule a preliminary hearing in appropriate  
15 cases;

16 (4) Admit the defendant to bail in accordance with the  
17 provisions of Article 110 of this Code; and

18 (5) Order the confiscation of the person's passport or  
19 impose travel restrictions on a defendant arrested for  
20 first degree murder or other violent crime as defined in  
21 Section 3 of the Rights of Crime Victims and Witnesses Act,  
22 if the judge determines, based on the factors in Section  
23 110-5 of this Code, that this will reasonably ensure the  
24 appearance of the defendant and compliance by the defendant  
25 with all conditions of release.

26 (c) The court may issue an order of protection in

1 accordance with the provisions of Article 112A of this Code.

2 (d) At the initial appearance of a defendant in any  
3 criminal proceeding, the court must advise the defendant in  
4 open court that any foreign national who is arrested or  
5 detained has the right to have notice of the arrest or  
6 detention given to his or her country's consular  
7 representatives and the right to communicate with those  
8 consular representatives if the notice has not already been  
9 provided. The court must make a written record of so advising  
10 the defendant.

11 (e) If consular notification is not provided to a defendant  
12 before his or her first appearance in court, the court shall  
13 grant any reasonable request for a continuance of the  
14 proceedings to allow contact with the defendant's consulate.  
15 Any delay caused by the granting of the request by a defendant  
16 shall temporarily suspend for the time of the delay the period  
17 within which a person shall be tried as prescribed by  
18 subsections (a), (b), or (e) of Section 103-5 of this Code and  
19 on the day of the expiration of delay the period shall continue  
20 at the point at which it was suspended.

21 (Source: P.A. 99-78, eff. 7-20-15; 99-190, eff. 1-1-16; 100-1,  
22 eff. 1-1-18.)

23 (725 ILCS 5/110-6) (from Ch. 38, par. 110-6)

24 Sec. 110-6. Modification of bail or conditions.

25 (a) Upon verified application by the State or the defendant

1 or on its own motion the court before which the proceeding is  
2 pending may increase or reduce the amount of bail or may alter  
3 the conditions of the bail bond or grant bail where it has been  
4 previously revoked or denied. If bail has been previously  
5 revoked pursuant to subsection (f) of this Section or if bail  
6 has been denied to the defendant pursuant to subsection (e) of  
7 Section 110-6.1 or subsection (e) of Section 110-6.3, the  
8 defendant shall be required to present a verified application  
9 setting forth in detail any new facts not known or obtainable  
10 at the time of the previous revocation or denial of bail  
11 proceedings. If the court grants bail where it has been  
12 previously revoked or denied, the court shall state on the  
13 record of the proceedings the findings of facts and conclusion  
14 of law upon which such order is based.

15 (a-5) In addition to any other available motion or  
16 procedure under this Code, a person in custody for a Category B  
17 offense due to an inability to post monetary bail shall be  
18 brought before the court at the next available court date or 7  
19 calendar days from the date bail was set, whichever is earlier,  
20 for a rehearing on the amount or conditions of bail or release  
21 pending further court proceedings. The court may reconsider  
22 conditions of release for any other person whose inability to  
23 post monetary bail is the sole reason for continued  
24 incarceration, including a person in custody for a Category A  
25 offense. The Chief Judge of the Circuit Court of a county may  
26 decide not to implement this subsection (a-5) by local court

1 rule.

2 (b) Violation of the conditions of Section 110-10 of this  
3 Code or any special conditions of bail as ordered by the court  
4 shall constitute grounds for the court to increase the amount  
5 of bail, or otherwise alter the conditions of bail, or, where  
6 the alleged offense committed on bail is a forcible felony in  
7 Illinois or a Class 2 or greater offense under the Illinois  
8 Controlled Substances Act, the Cannabis Control Act, or the  
9 Methamphetamine Control and Community Protection Act, revoke  
10 bail pursuant to the appropriate provisions of subsection (e)  
11 of this Section.

12 (c) Reasonable notice of such application by the defendant  
13 shall be given to the State.

14 (d) Reasonable notice of such application by the State  
15 shall be given to the defendant, except as provided in  
16 subsection (e).

17 (e) Upon verified application by the State stating facts or  
18 circumstances constituting a violation or a threatened  
19 violation of any of the conditions of the bail bond the court  
20 may issue a warrant commanding any peace officer to bring the  
21 defendant without unnecessary delay before the court for a  
22 hearing on the matters set forth in the application. If the  
23 actual court before which the proceeding is pending is absent  
24 or otherwise unavailable another court may issue a warrant  
25 pursuant to this Section. When the defendant is charged with a  
26 felony offense and while free on bail is charged with a

1 subsequent felony offense and is the subject of a proceeding  
2 set forth in Section 109-1 or 109-3 of this Code, upon the  
3 filing of a verified petition by the State alleging a violation  
4 of Section 110-10 (a) (4) of this Code, the court shall without  
5 prior notice to the defendant, grant leave to file such  
6 application and shall order the transfer of the defendant and  
7 the application without unnecessary delay to the court before  
8 which the previous felony matter is pending for a hearing as  
9 provided in subsection (b) or this subsection of this Section.  
10 The defendant shall be held without bond pending transfer to  
11 and a hearing before such court. At the conclusion of the  
12 hearing based on a violation of the conditions of Section  
13 110-10 of this Code or any special conditions of bail as  
14 ordered by the court the court may enter an order increasing  
15 the amount of bail or alter the conditions of bail as deemed  
16 appropriate.

17 (f) Where the alleged violation consists of the violation  
18 of one or more felony statutes of any jurisdiction which would  
19 be a forcible felony in Illinois or a Class 2 or greater  
20 offense under the Illinois Controlled Substances Act, the  
21 Cannabis Control Act, or the Methamphetamine Control and  
22 Community Protection Act and the defendant is on bail for the  
23 alleged commission of a felony, or where the defendant is on  
24 bail for a felony domestic battery (enhanced pursuant to  
25 subsection (b) of Section 12-3.2 of the Criminal Code of 1961  
26 or the Criminal Code of 2012), aggravated domestic battery,

1 aggravated battery, unlawful restraint, aggravated unlawful  
2 restraint or domestic battery in violation of item (1) of  
3 subsection (a) of Section 12-3.2 of the Criminal Code of 1961  
4 or the Criminal Code of 2012 against a family or household  
5 member as defined in Section 112A-3 of this Code and the  
6 violation is an offense of domestic battery against the same  
7 victim the court shall, on the motion of the State or its own  
8 motion, revoke bail in accordance with the following  
9 provisions:

10 (1) The court shall hold the defendant without bail  
11 pending the hearing on the alleged breach; however, if the  
12 defendant is not admitted to bail the hearing shall be  
13 commenced within 10 days from the date the defendant is  
14 taken into custody or the defendant may not be held any  
15 longer without bail, unless delay is occasioned by the  
16 defendant. Where defendant occasions the delay, the  
17 running of the 10 day period is temporarily suspended and  
18 resumes at the termination of the period of delay. Where  
19 defendant occasions the delay with 5 or fewer days  
20 remaining in the 10 day period, the court may grant a  
21 period of up to 5 additional days to the State for good  
22 cause shown. The State, however, shall retain the right to  
23 proceed to hearing on the alleged violation at any time,  
24 upon reasonable notice to the defendant and the court.

25 (2) At a hearing on the alleged violation the State has  
26 the burden of going forward and proving the violation by



1 clear and convincing evidence. The evidence shall be  
2 presented in open court with the opportunity to testify, to  
3 present witnesses in his behalf, and to cross-examine  
4 witnesses if any are called by the State, and  
5 representation by counsel and if the defendant is indigent  
6 to have counsel appointed for him. The rules of evidence  
7 applicable in criminal trials in this State shall not  
8 govern the admissibility of evidence at such hearing.  
9 Information used by the court in its findings or stated in  
10 or offered in connection with hearings for increase or  
11 revocation of bail may be by way of proffer based upon  
12 reliable information offered by the State or defendant. All  
13 evidence shall be admissible if it is relevant and reliable  
14 regardless of whether it would be admissible under the  
15 rules of evidence applicable at criminal trials. A motion  
16 by the defendant to suppress evidence or to suppress a  
17 confession shall not be entertained at such a hearing.  
18 Evidence that proof may have been obtained as a result of  
19 an unlawful search and seizure or through improper  
20 interrogation is not relevant to this hearing.

21 (3) Upon a finding by the court that the State has  
22 established by clear and convincing evidence that the  
23 defendant has committed a forcible felony or a Class 2 or  
24 greater offense under the Illinois Controlled Substances  
25 Act, the Cannabis Control Act, or the Methamphetamine  
26 Control and Community Protection Act while admitted to

1 bail, or where the defendant is on bail for a felony  
2 domestic battery (enhanced pursuant to subsection (b) of  
3 Section 12-3.2 of the Criminal Code of 1961 or the Criminal  
4 Code of 2012), aggravated domestic battery, aggravated  
5 battery, unlawful restraint, aggravated unlawful restraint  
6 or domestic battery in violation of item (1) of subsection  
7 (a) of Section 12-3.2 of the Criminal Code of 1961 or the  
8 Criminal Code of 2012 against a family or household member  
9 as defined in Section 112A-3 of this Code and the violation  
10 is an offense of domestic battery, against the same victim,  
11 the court shall revoke the bail of the defendant and hold  
12 the defendant for trial without bail. Neither the finding  
13 of the court nor any transcript or other record of the  
14 hearing shall be admissible in the State's case in chief,  
15 but shall be admissible for impeachment, or as provided in  
16 Section 115-10.1 of this Code or in a perjury proceeding.

17 (4) If the bail of any defendant is revoked pursuant to  
18 paragraph (f) (3) of this Section, the defendant may demand  
19 and shall be entitled to be brought to trial on the offense  
20 with respect to which he was formerly released on bail  
21 within 90 days after the date on which his bail was  
22 revoked. If the defendant is not brought to trial within  
23 the 90 day period required by the preceding sentence, he  
24 shall not be held longer without bail. In computing the 90  
25 day period, the court shall omit any period of delay  
26 resulting from a continuance granted at the request of the

1 defendant.

2 (5) If the defendant either is arrested on a warrant  
3 issued pursuant to this Code or is arrested for an  
4 unrelated offense and it is subsequently discovered that  
5 the defendant is a subject of another warrant or warrants  
6 issued pursuant to this Code, the defendant shall be  
7 transferred promptly to the court which issued such  
8 warrant. If, however, the defendant appears initially  
9 before a court other than the court which issued such  
10 warrant, the non-issuing court shall not alter the amount  
11 of bail set on such warrant unless the court sets forth on  
12 the record of proceedings the conclusions of law and facts  
13 which are the basis for such altering of another court's  
14 bond. The non-issuing court shall not alter another courts  
15 bail set on a warrant unless the interests of justice and  
16 public safety are served by such action.

17 (g) The State may appeal any order where the court has  
18 increased or reduced the amount of bail or altered the  
19 conditions of the bail bond or granted bail where it has  
20 previously been revoked.

21 (Source: P.A. 100-1, eff. 1-1-18.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.