



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4860

Introduced 1/27/2022, by Rep. Jawaharial Williams

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6.1

from Ch. 38, par. 110-6.1

Amends the Code of Criminal Procedure of 1963. Provides that the court may deny the defendant pretrial release if the defendant is charged with a felony and has previously been convicted of 2 or more felonies, if, at the time of the commission of the offense, the defendant was in possession of a large capacity ammunition feeding device. Defines "large capacity ammunition feeding device" as: (1) a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, 30 rounds or more of ammunition; or (2) any combination of parts from which a device described in (1) can be assembled.

LRB102 24809 RLC 34054 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 110-6.1 as follows:

6 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

7 (Text of Section before amendment by P.A. 101-652)

8 Sec. 110-6.1. Denial of bail in non-probationable felony
9 offenses.

10 (a) Upon verified petition by the State, the court shall
11 hold a hearing to determine whether bail should be denied to a
12 defendant who is charged with a felony offense for which a
13 sentence of imprisonment, without probation, periodic
14 imprisonment or conditional discharge, is required by law upon
15 conviction, when it is alleged that the defendant's admission
16 to bail poses a real and present threat to the physical safety
17 of any person or persons.

18 (1) A petition may be filed without prior notice to
19 the defendant at the first appearance before a judge, or
20 within the 21 calendar days, except as provided in Section
21 110-6, after arrest and release of the defendant upon
22 reasonable notice to defendant; provided that while such
23 petition is pending before the court, the defendant if

1 previously released shall not be detained.

2 (2) The hearing shall be held immediately upon the
3 defendant's appearance before the court, unless for good
4 cause shown the defendant or the State seeks a
5 continuance. A continuance on motion of the defendant may
6 not exceed 5 calendar days, and a continuance on the
7 motion of the State may not exceed 3 calendar days. The
8 defendant may be held in custody during such continuance.

9 (b) The court may deny bail to the defendant where, after
10 the hearing, it is determined that:

11 (1) the proof is evident or the presumption great that
12 the defendant has committed an offense for which a
13 sentence of imprisonment, without probation, periodic
14 imprisonment or conditional discharge, must be imposed by
15 law as a consequence of conviction, and

16 (2) the defendant poses a real and present threat to
17 the physical safety of any person or persons, by conduct
18 which may include, but is not limited to, a forcible
19 felony, the obstruction of justice, intimidation, injury,
20 physical harm, an offense under the Illinois Controlled
21 Substances Act which is a Class X felony, or an offense
22 under the Methamphetamine Control and Community Protection
23 Act which is a Class X felony, and

24 (3) the court finds that no condition or combination
25 of conditions set forth in subsection (b) of Section
26 110-10 of this Article, can reasonably assure the physical

1 safety of any other person or persons.

2 (c) Conduct of the hearings.

3 (1) The hearing on the defendant's culpability and
4 dangerousness shall be conducted in accordance with the
5 following provisions:

6 (A) Information used by the court in its findings
7 or stated in or offered at such hearing may be by way
8 of proffer based upon reliable information offered by
9 the State or by defendant. Defendant has the right to
10 be represented by counsel, and if he is indigent, to
11 have counsel appointed for him. Defendant shall have
12 the opportunity to testify, to present witnesses in
13 his own behalf, and to cross-examine witnesses if any
14 are called by the State. The defendant has the right to
15 present witnesses in his favor. When the ends of
16 justice so require, the court may exercise its
17 discretion and compel the appearance of a complaining
18 witness. The court shall state on the record reasons
19 for granting a defense request to compel the presence
20 of a complaining witness. Cross-examination of a
21 complaining witness at the pretrial detention hearing
22 for the purpose of impeaching the witness' credibility
23 is insufficient reason to compel the presence of the
24 witness. In deciding whether to compel the appearance
25 of a complaining witness, the court shall be
26 considerate of the emotional and physical well-being

1 of the witness. The pre-trial detention hearing is not
2 to be used for purposes of discovery, and the post
3 arraignment rules of discovery do not apply. The State
4 shall tender to the defendant, prior to the hearing,
5 copies of defendant's criminal history, if any, if
6 available, and any written or recorded statements and
7 the substance of any oral statements made by any
8 person, if relied upon by the State in its petition.
9 The rules concerning the admissibility of evidence in
10 criminal trials do not apply to the presentation and
11 consideration of information at the hearing. At the
12 trial concerning the offense for which the hearing was
13 conducted neither the finding of the court nor any
14 transcript or other record of the hearing shall be
15 admissible in the State's case in chief, but shall be
16 admissible for impeachment, or as provided in Section
17 115-10.1 of this Code, or in a perjury proceeding.

18 (B) A motion by the defendant to suppress evidence
19 or to suppress a confession shall not be entertained.
20 Evidence that proof may have been obtained as the
21 result of an unlawful search and seizure or through
22 improper interrogation is not relevant to this state
23 of the prosecution.

24 (2) The facts relied upon by the court to support a
25 finding that the defendant poses a real and present threat
26 to the physical safety of any person or persons shall be

1 supported by clear and convincing evidence presented by
2 the State.

3 (d) Factors to be considered in making a determination of
4 dangerousness. The court may, in determining whether the
5 defendant poses a real and present threat to the physical
6 safety of any person or persons, consider but shall not be
7 limited to evidence or testimony concerning:

8 (1) The nature and circumstances of any offense
9 charged, including whether the offense is a crime of
10 violence, involving a weapon.

11 (2) The history and characteristics of the defendant
12 including:

13 (A) Any evidence of the defendant's prior criminal
14 history indicative of violent, abusive or assaultive
15 behavior, or lack of such behavior. Such evidence may
16 include testimony or documents received in juvenile
17 proceedings, criminal, quasi-criminal, civil
18 commitment, domestic relations or other proceedings.

19 (B) Any evidence of the defendant's psychological,
20 psychiatric or other similar social history which
21 tends to indicate a violent, abusive, or assaultive
22 nature, or lack of any such history.

23 (3) The identity of any person or persons to whose
24 safety the defendant is believed to pose a threat, and the
25 nature of the threat;

26 (4) Any statements made by, or attributed to the

1 defendant, together with the circumstances surrounding
2 them;

3 (5) The age and physical condition of any person
4 assaulted by the defendant;

5 (6) Whether the defendant is known to possess or have
6 access to any weapon or weapons;

7 (7) Whether, at the time of the current offense or any
8 other offense or arrest, the defendant was on probation,
9 parole, aftercare release, mandatory supervised release or
10 other release from custody pending trial, sentencing,
11 appeal or completion of sentence for an offense under
12 federal or state law;

13 (8) Any other factors, including those listed in
14 Section 110-5 of this Article deemed by the court to have a
15 reasonable bearing upon the defendant's propensity or
16 reputation for violent, abusive or assaultive behavior, or
17 lack of such behavior.

18 (e) Detention order. The court shall, in any order for
19 detention:

20 (1) briefly summarize the evidence of the defendant's
21 culpability and its reasons for concluding that the
22 defendant should be held without bail;

23 (2) direct that the defendant be committed to the
24 custody of the sheriff for confinement in the county jail
25 pending trial;

26 (3) direct that the defendant be given a reasonable

1 opportunity for private consultation with counsel, and for
2 communication with others of his choice by visitation,
3 mail and telephone; and

4 (4) direct that the sheriff deliver the defendant as
5 required for appearances in connection with court
6 proceedings.

7 (f) If the court enters an order for the detention of the
8 defendant pursuant to subsection (e) of this Section, the
9 defendant shall be brought to trial on the offense for which he
10 is detained within 90 days after the date on which the order
11 for detention was entered. If the defendant is not brought to
12 trial within the 90 day period required by the preceding
13 sentence, he shall not be held longer without bail. In
14 computing the 90 day period, the court shall omit any period of
15 delay resulting from a continuance granted at the request of
16 the defendant.

17 (g) Rights of the defendant. Any person shall be entitled
18 to appeal any order entered under this Section denying bail to
19 the defendant.

20 (h) The State may appeal any order entered under this
21 Section denying any motion for denial of bail.

22 (i) Nothing in this Section shall be construed as
23 modifying or limiting in any way the defendant's presumption
24 of innocence in further criminal proceedings.

25 (Source: P.A. 98-558, eff. 1-1-14.)

1 (Text of Section after amendment by P.A. 101-652)

2 Sec. 110-6.1. Denial of pretrial release.

3 (a) Upon verified petition by the State, the court shall
4 hold a hearing and may deny a defendant pretrial release only
5 if:

6 (1) the defendant is charged with a forcible felony
7 offense for which a sentence of imprisonment, without
8 probation, periodic imprisonment or conditional discharge,
9 is required by law upon conviction, and it is alleged that
10 the defendant's pretrial release poses a specific, real
11 and present threat to any person or the community.;

12 (2) the defendant is charged with stalking or
13 aggravated stalking and it is alleged that the defendant's
14 pre-trial release poses a real and present threat to the
15 physical safety of a victim of the alleged offense, and
16 denial of release is necessary to prevent fulfillment of
17 the threat upon which the charge is based;

18 (3) the victim of abuse was a family or household
19 member as defined by paragraph (6) of Section 103 of the
20 Illinois Domestic Violence Act of 1986, and the person
21 charged, at the time of the alleged offense, was subject
22 to the terms of an order of protection issued under
23 Section 112A-14 of this Code, or Section 214 of the
24 Illinois Domestic Violence Act of 1986 or previously was
25 convicted of a violation of an order of protection under
26 Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the

1 Criminal Code of 2012 or a violent crime if the victim was
2 a family or household member as defined by paragraph (6)
3 of the Illinois Domestic Violence Act of 1986 at the time
4 of the offense or a violation of a substantially similar
5 municipal ordinance or law of this or any other state or
6 the United States if the victim was a family or household
7 member as defined by paragraph (6) of Section 103 of the
8 Illinois Domestic Violence Act of 1986 at the time of the
9 offense, and it is alleged that the defendant's pre-trial
10 release poses a real and present threat to the physical
11 safety of any person or persons;

12 (4) the defendant is charged with domestic battery or
13 aggravated domestic battery under Section 12-3.2 or 12-3.3
14 of the Criminal Code of 2012 and it is alleged that the
15 defendant's pretrial release poses a real and present
16 threat to the physical safety of any person or persons;

17 (5) the defendant is charged with any offense under
18 Article 11 of the Criminal Code of 2012, except for
19 Sections 11-30, 11-35, 11-40, and 11-45 of the Criminal
20 Code of 2012, or similar provisions of the Criminal Code
21 of 1961 and it is alleged that the defendant's pretrial
22 release poses a real and present threat to the physical
23 safety of any person or persons;

24 (6) the defendant is charged with any of these
25 violations under the Criminal Code of 2012 and it is
26 alleged that the defendant's pretrial releases poses a

1 real and present threat to the physical safety of any
2 specifically identifiable person or persons.

3 (A) Section 24-1.2 (aggravated discharge of a
4 firearm);

5 (B) Section 24-2.5 (aggravated discharge of a
6 machine gun or a firearm equipped with a device
7 designed or use for silencing the report of a
8 firearm);

9 (C) Section 24-1.5 (reckless discharge of a
10 firearm);

11 (D) Section 24-1.7 (armed habitual criminal);

12 (E) Section 24-2.2 2 (manufacture, sale or
13 transfer of bullets or shells represented to be armor
14 piercing bullets, dragon's breath shotgun shells, bolo
15 shells or flechette shells);

16 (F) Section 24-3 (unlawful sale or delivery of
17 firearms);

18 (G) Section 24-3.3 (unlawful sale or delivery of
19 firearms on the premises of any school);

20 (H) Section 24-34 (unlawful sale of firearms by
21 liquor license);

22 (I) Section 24-3.5 (unlawful purchase of a
23 firearm);

24 (J) Section 24-3A (gunrunning); or

25 (K) Section on 24-3B (firearms trafficking);

26 (L) Section 10-9 (b) (involuntary servitude);

1 (M) Section 10-9 (c) (involuntary sexual servitude
2 of a minor);

3 (N) Section 10-9(d) (trafficking in persons);

4 (O) Non-probationable violations: (i) (unlawful
5 use or possession of weapons by felons or persons in
6 the Custody of the Department of Corrections
7 facilities (Section 24-1.1), (ii) aggravated unlawful
8 use of a weapon (Section 24-1.6, or (iii) aggravated
9 possession of a stolen firearm (Section 24-3.9);

10 (7) the person has a high likelihood of willful flight
11 to avoid prosecution and is charged with:

12 (A) Any felony described in Sections (a)(1)
13 through (a)(5) of this Section; or

14 (B) A felony offense other than a Class 4 offense;
15 or -

16 (8) the defendant is charged with a felony and has
17 previously been convicted of 2 or more felonies, if, at
18 the time of the commission of the offense, the defendant
19 was in possession of a large capacity ammunition feeding
20 device. In this paragraph (8), "large capacity ammunition
21 feeding device" means:

22 (A) a magazine, belt, drum, feed strip, or similar
23 device that has a capacity of, or that can be readily
24 restored or converted to accept, 30 rounds or more of
25 ammunition; or

26 (B) any combination of parts from which a device

1 described in subparagraph (A) can be assembled.

2 (b) If the charged offense is a felony, the Court shall
3 hold a hearing pursuant to 109-3 of this Code to determine
4 whether there is probable cause the defendant has committed an
5 offense, unless a grand jury has returned a true bill of
6 indictment against the defendant. If there is a finding of no
7 probable cause, the defendant shall be released. No such
8 finding is necessary if the defendant is charged with a
9 misdemeanor.

10

11 (c) Timing of petition.

12 (1) A petition may be filed without prior notice to
13 the defendant at the first appearance before a judge, or
14 within the 21 calendar days, except as provided in Section
15 110-6, after arrest and release of the defendant upon
16 reasonable notice to defendant; provided that while such
17 petition is pending before the court, the defendant if
18 previously released shall not be detained.

19 (2) (2) Upon filing, the court shall immediately hold
20 a hearing on the petition unless a continuance is
21 requested. If a continuance is requested, the hearing
22 shall be held within 48 hours of the defendant's first
23 appearance if the defendant is charged with a Class X,
24 Class 1, Class 2, or Class 3 felony, and within 24 hours if
25 the defendant is charged with a Class 4 or misdemeanor
26 offense. The Court may deny and or grant the request for

1 continuance. If the court decides to grant the
2 continuance, the Court retains the discretion to detain or
3 release the defendant in the time between the filing of
4 the petition and the hearing.

5 (d) Contents of petition.

6 (1) The petition shall be verified by the State and
7 shall state the grounds upon which it contends the
8 defendant should be denied pretrial release, including the
9 identity of the specific person or persons the State
10 believes the defendant poses a danger to.

11 (2) Only one petition may be filed under this Section.

12 (e) Eligibility: All defendants shall be presumed eligible
13 for pretrial release, and the State shall bear the burden of
14 proving by clear and convincing evidence that:

15 (1) the proof is evident or the presumption great that
16 the defendant has committed an offense listed in
17 paragraphs (1) through (6) of subsection (a), and

18 (2) the defendant poses a real and present threat to
19 the safety of a specific, identifiable person or persons,
20 by conduct which may include, but is not limited to, a
21 forcible felony, the obstruction of justice, intimidation,
22 injury, or abuse as defined by paragraph (1) of Section
23 103 of the Illinois Domestic Violence Act of 1986, and

24 (3) no condition or combination of conditions set
25 forth in subsection (b) of Section 110-10 of this Article
26 can mitigate the real and present threat to the safety of

1 any person or persons or the defendant's willful flight.

2 (f) Conduct of the hearings.

3 (1) Prior to the hearing the State shall tender to the
4 defendant copies of defendant's criminal history
5 available, any written or recorded statements, and the
6 substance of any oral statements made by any person, if
7 relied upon by the State in its petition, and any police
8 reports in the State's Attorney's possession at the time
9 of the hearing that are required to be disclosed to the
10 defense under Illinois Supreme Court rules.

11 (2) The State or defendant may present evidence at the
12 hearing by way of proffer based upon reliable information.

13 (3) The defendant has the right to be represented by
14 counsel, and if he or she is indigent, to have counsel
15 appointed for him or her. The defendant shall have the
16 opportunity to testify, to present witnesses on his or her
17 own behalf, and to cross-examine any witnesses that are
18 called by the State.

19 (4) If the defense seeks to call the complaining
20 witness as a witness in its favor, it shall petition the
21 court for permission. When the ends of justice so require,
22 the court may exercise its discretion and compel the
23 appearance of a complaining witness. The court shall state
24 on the record reasons for granting a defense request to
25 compel the presence of a complaining witness. In making a
26 determination under this section, the court shall state on

1 the record the reason for granting a defense request to
2 compel the presence of a complaining witness, and only
3 grant the request if the court finds by clear and
4 convincing evidence that the defendant will be materially
5 prejudiced if the complaining witness does not appear.
6 Cross-examination of a complaining witness at the pretrial
7 detention hearing for the purpose of impeaching the
8 witness' credibility is insufficient reason to compel the
9 presence of the witness. In deciding whether to compel the
10 appearance of a complaining witness, the court shall be
11 considerate of the emotional and physical well-being of
12 the witness. The pre-trial detention hearing is not to be
13 used for purposes of discovery, and the post arraignment
14 rules of discovery do not apply.

15 (5) The rules concerning the admissibility of evidence
16 in criminal trials do not apply to the presentation and
17 consideration of information at the hearing. At the trial
18 concerning the offense for which the hearing was conducted
19 neither the finding of the court nor any transcript or
20 other record of the hearing shall be admissible in the
21 State's case in chief, but shall be admissible for
22 impeachment, or as provided in Section 115-10.1 of this
23 Code, or in a perjury proceeding.

24 (6) The defendant may not move to suppress evidence or
25 a confession, however, evidence that proof of the charged
26 crime may have been the result of an unlawful search or

1 seizure, or both, or through improper interrogation, is
2 relevant in assessing the weight of the evidence against
3 the defendant.

4 (7) Decisions regarding release, conditions of release
5 and detention prior trial should be individualized, and no
6 single factor or standard should be used exclusively to
7 make a condition or detention decision.

8 (g) Factors to be considered in making a determination of
9 dangerousness. The court may, in determining whether the
10 defendant poses a specific, imminent threat of serious
11 physical harm to an identifiable person or persons, consider
12 but shall not be limited to evidence or testimony concerning:

13 (1) The nature and circumstances of any offense
14 charged, including whether the offense is a crime of
15 violence, involving a weapon, or a sex offense.

16 (2) The history and characteristics of the defendant
17 including:

18 (A) Any evidence of the defendant's prior criminal
19 history indicative of violent, abusive or assaultive
20 behavior, or lack of such behavior. Such evidence may
21 include testimony or documents received in juvenile
22 proceedings, criminal, quasi-criminal, civil
23 commitment, domestic relations or other proceedings.

24 (B) Any evidence of the defendant's psychological,
25 psychiatric or other similar social history which
26 tends to indicate a violent, abusive, or assaultive

1 nature, or lack of any such history.

2 (3) The identity of any person or persons to whose
3 safety the defendant is believed to pose a threat, and the
4 nature of the threat;

5 (4) Any statements made by, or attributed to the
6 defendant, together with the circumstances surrounding
7 them;

8 (5) The age and physical condition of the defendant;

9 (6) The age and physical condition of any victim or
10 complaining witness;

11 (7) Whether the defendant is known to possess or have
12 access to any weapon or weapons;

13 (8) Whether, at the time of the current offense or any
14 other offense or arrest, the defendant was on probation,
15 parole, aftercare release, mandatory supervised release or
16 other release from custody pending trial, sentencing,
17 appeal or completion of sentence for an offense under
18 federal or state law;

19 (9) Any other factors, including those listed in
20 Section 110-5 of this Article deemed by the court to have a
21 reasonable bearing upon the defendant's propensity or
22 reputation for violent, abusive or assaultive behavior, or
23 lack of such behavior.

24 (h) Detention order. The court shall, in any order for
25 detention:

26 (1) briefly summarize the evidence of the defendant's

1 guilt or innocence, and the court's reasons for concluding
2 that the defendant should be denied pretrial release;

3 (2) direct that the defendant be committed to the
4 custody of the sheriff for confinement in the county jail
5 pending trial;

6 (3) direct that the defendant be given a reasonable
7 opportunity for private consultation with counsel, and for
8 communication with others of his or her choice by
9 visitation, mail and telephone; and

10 (4) direct that the sheriff deliver the defendant as
11 required for appearances in connection with court
12 proceedings.

13 (i) Detention. If the court enters an order for the
14 detention of the defendant pursuant to subsection (e) of this
15 Section, the defendant shall be brought to trial on the
16 offense for which he is detained within 90 days after the date
17 on which the order for detention was entered. If the defendant
18 is not brought to trial within the 90 day period required by
19 the preceding sentence, he shall not be denied pretrial
20 release. In computing the 90 day period, the court shall omit
21 any period of delay resulting from a continuance granted at
22 the request of the defendant.

23 (j) Rights of the defendant. Any person shall be entitled
24 to appeal any order entered under this Section denying
25 pretrial release to the defendant.

26 (k) Appeal. The State may appeal any order entered under

1 this Section denying any motion for denial of pretrial
2 release.

3 (1) Presumption of innocence. Nothing in this Section
4 shall be construed as modifying or limiting in any way the
5 defendant's presumption of innocence in further criminal
6 proceedings.

7 (m) Victim notice.

8 (1) Crime victims shall be given notice by the State's
9 Attorney's office of this hearing as required in paragraph
10 (1) of subsection (b) of Section 4.5 of the Rights of Crime
11 Victims and Witnesses Act and shall be informed of their
12 opportunity at this hearing to obtain an order of
13 protection under Article 112A of this Code.

14 (Source: P.A. 101-652, eff. 1-1-23.)

15 Section 95. No acceleration or delay. Where this Act makes
16 changes in a statute that is represented in this Act by text
17 that is not yet or no longer in effect (for example, a Section
18 represented by multiple versions), the use of that text does
19 not accelerate or delay the taking effect of (i) the changes
20 made by this Act or (ii) provisions derived from any other
21 Public Act.