



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5804

Introduced 11/16/2022, by Rep. David Friess

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-2	from Ch. 38, par. 110-2
725 ILCS 5/110-3	from Ch. 38, par. 110-3
725 ILCS 5/110-4	from Ch. 38, par. 110-4
725 ILCS 5/110-5	from Ch. 38, par. 110-5
725 ILCS 5/110-5.2	
725 ILCS 5/110-6.1	from Ch. 38, par. 110-6.1
725 ILCS 5/110-6.4	

Amends the Pretrial Detention Article of the Code of Criminal Procedure of 1963. Provides that detention only shall be imposed when it is determined that the defendant poses a specific, real and present threat to a person or the community (rather than a specific, real and present threat to a person), or has a high likelihood of willful flight. Makes corresponding changes. Provides that a person may be denied pretrial release if the person poses a real and present threat to the community and is charged with a felony or a Class A misdemeanor. Provides that service of the certified copy of the order to show cause or otherwise why the person is subject to revocation of pretrial release may be completed by service to counsel of record and by United States mail at the address listed with the court.

LRB102 28629 RLC 40690 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 110-2, 110-3, 110-4, 110-5,
6 110-5.2, 110-6.1, and 110-6.4 as follows:

7 (725 ILCS 5/110-2) (from Ch. 38, par. 110-2)

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

9 Sec. 110-2. Release on own recognizance. When from all the
10 circumstances the court is of the opinion that the defendant
11 will appear as required either before or after conviction and
12 the defendant will not pose a danger to any person or the
13 community and that the defendant will comply with all
14 conditions of bond, which shall include the defendant's
15 current address with a written admonishment to the defendant
16 that he or she must comply with the provisions of Section
17 110-12 of this Code regarding any change in his or her address,
18 the defendant may be released on his or her own recognizance.
19 The defendant's address shall at all times remain a matter of
20 public record with the clerk of the court. A failure to appear
21 as required by such recognizance shall constitute an offense
22 subject to the penalty provided in Section 32-10 of the
23 Criminal Code of 2012 for violation of the bail bond, and any

1 obligated sum fixed in the recognizance shall be forfeited and
2 collected in accordance with subsection (g) of Section 110-7
3 of this Code.

4 This Section shall be liberally construed to effectuate
5 the purpose of relying upon contempt of court proceedings or
6 criminal sanctions instead of financial loss to assure the
7 appearance of the defendant, and that the defendant will not
8 pose a danger to any person or the community and that the
9 defendant will comply with all conditions of bond. Monetary
10 bail should be set only when it is determined that no other
11 conditions of release will reasonably assure the defendant's
12 appearance in court, that the defendant does not present a
13 danger to any person or the community and that the defendant
14 will comply with all conditions of bond.

15 The State may appeal any order permitting release by
16 personal recognizance.

17 (Source: P.A. 97-1150, eff. 1-25-13.)

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

19 Sec. 110-2. Release on own recognizance.

20 (a) It is presumed that a defendant is entitled to release
21 on personal recognizance on the condition that the defendant
22 attend all required court proceedings and the defendant does
23 not commit any criminal offense, and complies with all terms
24 of pretrial release, including, but not limited to, orders of
25 protection under both Section 112A-4 of this Code and Section

1 214 of the Illinois Domestic Violence Act of 1986, all civil no
2 contact orders, and all stalking no contact orders.

3 (b) Additional conditions of release, including those
4 highlighted above, shall be set only when it is determined
5 that they are necessary to assure the defendant's appearance
6 in court, assure the defendant does not commit any criminal
7 offense, and complies with all conditions of pretrial release.

8 (c) Detention only shall be imposed when it is determined
9 that the defendant poses a ~~specific~~, real and present threat
10 to a person or the community, or has a high likelihood of
11 willful flight. If the court deems that the defendant is to be
12 released on personal recognizance, the court may require that
13 a written admonishment be signed by the defendant requiring
14 that he or she must comply with the provisions of Section
15 110-12 of this Code regarding any change in his or her address.
16 The defendant may be released on his or her own recognizance
17 upon signature. The defendant's address shall at all times
18 remain a matter of public record with the clerk of the court. A
19 failure to appear as required by such recognizance shall
20 constitute an offense subject to the penalty provided in
21 Section 32-10 of the Criminal Code of 2012 for violation of the
22 conditions of pretrial release.

23 (d) If, after the procedures set out in Section 110-6.1,
24 the court decides to detain the defendant, the Court must make
25 a written finding as to why less restrictive conditions would
26 not assure safety to the community and assure the defendant's

1 appearance in court. At each subsequent appearance of the
2 defendant before the Court, the judge must find that continued
3 detention or the current set of conditions imposed are
4 necessary to avoid the ~~specific,~~ real and present threat to
5 any person or the community or of willful flight from
6 prosecution to continue detention of the defendant. The court
7 is not required to be presented with new information or a
8 change in circumstance to consider reconsidering pretrial
9 detention on current conditions.

10 (e) This Section shall be liberally construed to
11 effectuate the purpose of relying upon contempt of court
12 proceedings or criminal sanctions instead of financial loss to
13 assure the appearance of the defendant, and that the defendant
14 will not pose a danger to any person or the community and that
15 the defendant will not pose a danger to any person or the
16 community and that the defendant will comply with all
17 conditions of pretrial release.

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

19 (725 ILCS 5/110-3) (from Ch. 38, par. 110-3)

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

21 Sec. 110-3. Issuance of warrant. Upon failure to comply
22 with any condition of a bail bond or recognizance, the court
23 having jurisdiction at the time of such failure may, in
24 addition to any other action provided by law, issue a warrant
25 for the arrest of the person at liberty on bail or his own

1 recognizance. The contents of such a warrant shall be the same
2 as required for an arrest warrant issued upon complaint. When
3 a defendant is at liberty on bail or his own recognizance on a
4 felony charge and fails to appear in court as directed, the
5 court shall issue a warrant for the arrest of such person. Such
6 warrant shall be noted with a directive to peace officers to
7 arrest the person and hold such person without bail and to
8 deliver such person before the court for further proceedings.
9 A defendant who is arrested or surrenders within 30 days of the
10 issuance of such warrant shall not be bailable in the case in
11 question unless he shows by the preponderance of the evidence
12 that his failure to appear was not intentional.

13 (Source: P.A. 102-813, eff. 5-13-22.)

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

15 Sec. 110-3. Options for warrant alternatives.

16 (a) Upon failure to comply with any condition of pretrial
17 release or recognizance, the court having jurisdiction at the
18 time of such failure may, on its own motion or upon motion from
19 the State, issue an order to show cause as to why he or she
20 shall not be subject to revocation of pretrial release, or for
21 sanctions, as provided in Section 110-6. Nothing in this
22 Section prohibits the court from issuing a warrant under
23 subsection (c) upon failure to comply with any condition of
24 pretrial release or recognizance.

25 (b) The order issued by the court shall state the facts

1 alleged to constitute the hearing to show cause or otherwise
2 why the person is subject to revocation of pretrial release. A
3 certified copy of the order shall be served upon the person at
4 least 48 hours in advance of the scheduled hearing. Service of
5 the certified copy of the order may be completed by service to
6 counsel of record and by United States mail at the address
7 listed with the court.

8 (c) If the person does not appear at the hearing to show
9 cause or absconds, the court may, in addition to any other
10 action provided by law, issue a warrant for the arrest of the
11 person at liberty on pretrial release. The contents of such a
12 warrant shall be the same as required for an arrest warrant
13 issued upon complaint and may modify any previously imposed
14 conditions placed upon the person, rather than revoking
15 pretrial release or issuing a warrant for the person in
16 accordance with the requirements in subsections (d) and (e) of
17 Section 110-5. When a defendant is at liberty on pretrial
18 release or his own recognizance on a felony charge and fails to
19 appear in court as directed, the court may issue a warrant for
20 the arrest of such person after his or her failure to appear at
21 the show for cause hearing as provided in this Section. Such
22 warrant shall be noted with a directive to peace officers to
23 arrest the person and hold such person without pretrial
24 release and to deliver such person before the court for
25 further proceedings.

26 (d) If the order as described in subsection (b) is issued,

1 a failure to appear shall not be recorded until the defendant
2 fails to appear at the hearing to show cause. For the purpose
3 of any risk assessment or future evaluation of risk of willful
4 flight or risk of failure to appear, a non-appearance in court
5 cured by an appearance at the hearing to show cause shall not
6 be considered as evidence of future likelihood of appearance
7 in court.

8 (Source: P.A. 101-652, eff. 1-1-23; 102-813, eff. 5-13-22.)

9 (725 ILCS 5/110-4) (from Ch. 38, par. 110-4)

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

11 Sec. 110-4. Bailable Offenses.

12 (a) All persons shall be bailable before conviction,
13 except the following offenses where the proof is evident or
14 the presumption great that the defendant is guilty of the
15 offense: capital offenses; offenses for which a sentence of
16 life imprisonment may be imposed as a consequence of
17 conviction; felony offenses for which a sentence of
18 imprisonment, without conditional and revocable release, shall
19 be imposed by law as a consequence of conviction, where the
20 court after a hearing, determines that the release of the
21 defendant would pose a real and present threat to the physical
22 safety of any person or persons; stalking or aggravated
23 stalking, where the court, after a hearing, determines that
24 the release of the defendant would pose a real and present
25 threat to the physical safety of the alleged victim of the

1 offense and denial of bail is necessary to prevent fulfillment
2 of the threat upon which the charge is based; or unlawful use
3 of weapons in violation of item (4) of subsection (a) of
4 Section 24-1 of the Criminal Code of 1961 or the Criminal Code
5 of 2012 when that offense occurred in a school or in any
6 conveyance owned, leased, or contracted by a school to
7 transport students to or from school or a school-related
8 activity, or on any public way within 1,000 feet of real
9 property comprising any school, where the court, after a
10 hearing, determines that the release of the defendant would
11 pose a real and present threat to the physical safety of any
12 person and denial of bail is necessary to prevent fulfillment
13 of that threat; or making a terrorist threat in violation of
14 Section 29D-20 of the Criminal Code of 1961 or the Criminal
15 Code of 2012 or an attempt to commit the offense of making a
16 terrorist threat, where the court, after a hearing, determines
17 that the release of the defendant would pose a real and present
18 threat to the physical safety of any person and denial of bail
19 is necessary to prevent fulfillment of that threat.

20 (b) A person seeking release on bail who is charged with a
21 capital offense or an offense for which a sentence of life
22 imprisonment may be imposed shall not be bailable until a
23 hearing is held wherein such person has the burden of
24 demonstrating that the proof of his guilt is not evident and
25 the presumption is not great.

26 (c) Where it is alleged that bail should be denied to a

1 person upon the grounds that the person presents a real and
2 present threat to the physical safety of any person or
3 persons, the burden of proof of such allegations shall be upon
4 the State.

5 (d) When it is alleged that bail should be denied to a
6 person charged with stalking or aggravated stalking upon the
7 grounds set forth in Section 110-6.3 of this Code, the burden
8 of proof of those allegations shall be upon the State.

9 (Source: P.A. 97-1150, eff. 1-25-13.)

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

11 Sec. 110-4. Pretrial release.

12 (a) All persons charged with an offense shall be eligible
13 for pretrial release before conviction. Pretrial release may
14 only be denied when a person is charged with an offense listed
15 in Section 110-6.1 or when the defendant has a high likelihood
16 of willful flight, and after the court has held a hearing under
17 Section 110-6.1.

18 (b) A person seeking pretrial release who is charged with
19 a capital offense or an offense for which a sentence of life
20 imprisonment may be imposed shall not be eligible for release
21 pretrial until a hearing is held wherein such person has the
22 burden of demonstrating that the proof of his guilt is not
23 evident and the presumption is not great.

24 (c) Where it is alleged that pretrial release should be
25 denied to a person upon the grounds that the person presents a

1 real and present threat to ~~the physical safety of~~ any person or
2 persons or the community, the burden of proof of such
3 allegations shall be upon the State.

4 (d) When it is alleged that pretrial release should be
5 denied to a person charged with stalking or aggravated
6 stalking upon the grounds set forth in Section 110-6.3 of this
7 Code, the burden of proof of those allegations shall be upon
8 the State.

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

10 (725 ILCS 5/110-5) (from Ch. 38, par. 110-5)

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

12 Sec. 110-5. Determining the amount of bail and conditions
13 of release.

14 (a) In determining the amount of monetary bail or
15 conditions of release, if any, which will reasonably assure
16 the appearance of a defendant as required or the safety of any
17 other person or the community and the likelihood of compliance
18 by the defendant with all the conditions of bail, the court
19 shall, on the basis of available information, take into
20 account such matters as the nature and circumstances of the
21 offense charged, whether the evidence shows that as part of
22 the offense there was a use of violence or threatened use of
23 violence, whether the offense involved corruption of public
24 officials or employees, whether there was physical harm or
25 threats of physical harm to any public official, public

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

1 Section 110-6.5, whether a foreign national defendant is
2 lawfully admitted in the United States of America, whether the
3 government of the foreign national maintains an extradition
4 treaty with the United States by which the foreign government
5 will extradite to the United States its national for a trial
6 for a crime allegedly committed in the United States, whether
7 the defendant is currently subject to deportation or exclusion
8 under the immigration laws of the United States, whether the
9 defendant, although a United States citizen, is considered
10 under the law of any foreign state a national of that state for
11 the purposes of extradition or non-extradition to the United
12 States, the amount of unrecovered proceeds lost as a result of
13 the alleged offense, the source of bail funds tendered or
14 sought to be tendered for bail, whether from the totality of
15 the court's consideration, the loss of funds posted or sought
16 to be posted for bail will not deter the defendant from flight,
17 whether the evidence shows that the defendant is engaged in
18 significant possession, manufacture, or delivery of a
19 controlled substance or cannabis, either individually or in
20 consort with others, whether at the time of the offense
21 charged he or she was on bond or pre-trial release pending
22 trial, probation, periodic imprisonment or conditional
23 discharge pursuant to this Code or the comparable Code of any
24 other state or federal jurisdiction, whether the defendant is
25 on bond or pre-trial release pending the imposition or
26 execution of sentence or appeal of sentence for any offense

1 under the laws of Illinois or any other state or federal
2 jurisdiction, whether the defendant is under parole, aftercare
3 release, mandatory supervised release, or work release from
4 the Illinois Department of Corrections or Illinois Department
5 of Juvenile Justice or any penal institution or corrections
6 department of any state or federal jurisdiction, the
7 defendant's record of convictions, whether the defendant has
8 been convicted of a misdemeanor or ordinance offense in
9 Illinois or similar offense in other state or federal
10 jurisdiction within the 10 years preceding the current charge
11 or convicted of a felony in Illinois, whether the defendant
12 was convicted of an offense in another state or federal
13 jurisdiction that would be a felony if committed in Illinois
14 within the 20 years preceding the current charge or has been
15 convicted of such felony and released from the penitentiary
16 within 20 years preceding the current charge if a penitentiary
17 sentence was imposed in Illinois or other state or federal
18 jurisdiction, the defendant's records of juvenile adjudication
19 of delinquency in any jurisdiction, any record of appearance
20 or failure to appear by the defendant at court proceedings,
21 whether there was flight to avoid arrest or prosecution,
22 whether the defendant escaped or attempted to escape to avoid
23 arrest, whether the defendant refused to identify himself or
24 herself, or whether there was a refusal by the defendant to be
25 fingerprinted as required by law. Information used by the
26 court in its findings or stated in or offered in connection

1 with this Section may be by way of proffer based upon reliable
2 information offered by the State or defendant. All evidence
3 shall be admissible if it is relevant and reliable regardless
4 of whether it would be admissible under the rules of evidence
5 applicable at criminal trials. If the State presents evidence
6 that the offense committed by the defendant was related to or
7 in furtherance of the criminal activities of an organized gang
8 or was motivated by the defendant's membership in or
9 allegiance to an organized gang, and if the court determines
10 that the evidence may be substantiated, the court shall
11 prohibit the defendant from associating with other members of
12 the organized gang as a condition of bail or release. For the
13 purposes of this Section, "organized gang" has the meaning
14 ascribed to it in Section 10 of the Illinois Streetgang
15 Terrorism Omnibus Prevention Act.

16 (a-5) There shall be a presumption that any conditions of
17 release imposed shall be non-monetary in nature and the court
18 shall impose the least restrictive conditions or combination
19 of conditions necessary to reasonably assure the appearance of
20 the defendant for further court proceedings and protect the
21 integrity of the judicial proceedings from a specific threat
22 to a witness or participant. Conditions of release may
23 include, but not be limited to, electronic home monitoring,
24 curfews, drug counseling, stay-away orders, and in-person
25 reporting. The court shall consider the defendant's
26 socio-economic circumstance when setting conditions of release

1 or imposing monetary bail.

2 (b) The amount of bail shall be:

3 (1) Sufficient to assure compliance with the
4 conditions set forth in the bail bond, which shall include
5 the defendant's current address with a written
6 admonishment to the defendant that he or she must comply
7 with the provisions of Section 110-12 regarding any change
8 in his or her address. The defendant's address shall at
9 all times remain a matter of public record with the clerk
10 of the court.

11 (2) Not oppressive.

12 (3) Considerate of the financial ability of the
13 accused.

14 (4) When a person is charged with a drug related
15 offense involving possession or delivery of cannabis or
16 possession or delivery of a controlled substance as
17 defined in the Cannabis Control Act, the Illinois
18 Controlled Substances Act, or the Methamphetamine Control
19 and Community Protection Act, the full street value of the
20 drugs seized shall be considered. "Street value" shall be
21 determined by the court on the basis of a proffer by the
22 State based upon reliable information of a law enforcement
23 official contained in a written report as to the amount
24 seized and such proffer may be used by the court as to the
25 current street value of the smallest unit of the drug
26 seized.

1 (b-5) Upon the filing of a written request demonstrating
2 reasonable cause, the State's Attorney may request a source of
3 bail hearing either before or after the posting of any funds.
4 If the hearing is granted, before the posting of any bail, the
5 accused must file a written notice requesting that the court
6 conduct a source of bail hearing. The notice must be
7 accompanied by justifying affidavits stating the legitimate
8 and lawful source of funds for bail. At the hearing, the court
9 shall inquire into any matters stated in any justifying
10 affidavits, and may also inquire into matters appropriate to
11 the determination which shall include, but are not limited to,
12 the following:

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

15 (2) the source of any money or property deposited by
16 any surety, and whether any such money or property
17 constitutes the fruits of criminal or unlawful conduct;
18 and

19 (3) the source of any money posted as cash bail, and
20 whether any such money constitutes the fruits of criminal
21 or unlawful conduct; and

22 (4) the background, character, reputation, and
23 relationship to the accused of the person posting cash
24 bail.

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

1 The State's Attorney has a right to attend the hearing, to
2 call witnesses and to examine any witness in the proceeding.
3 The court shall, upon request of the State's Attorney,
4 continue the proceedings for a reasonable period to allow the
5 State's Attorney to investigate the matter raised in any
6 testimony or affidavit. If the hearing is granted after the
7 accused has posted bail, the court shall conduct a hearing
8 consistent with this subsection (b-5). At the conclusion of
9 the hearing, the court must issue an order either approving or
10 disapproving the bail.

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

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

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

19 (f) When a person is charged with a violation of an order
20 of protection under Section 12-3.4 or 12-30 of the Criminal
21 Code of 1961 or the Criminal Code of 2012 or when a person is
22 charged with domestic battery, aggravated domestic battery,
23 kidnapping, aggravated kidnaping, unlawful restraint,
24 aggravated unlawful restraint, stalking, aggravated stalking,
25 cyberstalking, harassment by telephone, harassment through
26 electronic communications, or an attempt to commit first

1 degree murder committed against an intimate partner regardless
2 whether an order of protection has been issued against the
3 person,

4 (1) whether the alleged incident involved harassment
5 or abuse, as defined in the Illinois Domestic Violence Act
6 of 1986;

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

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

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

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

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

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

19 (8) based on the severity of the alleged incident that
20 is the basis of the alleged offense, including, but not
21 limited to, the duration of the current incident, and
22 whether the alleged incident involved the use of a weapon,
23 physical injury, sexual assault, strangulation, abuse
24 during the alleged victim's pregnancy, abuse of pets, or
25 forcible entry to gain access to the alleged victim;

26 (9) whether a separation of the person from the

1 alleged victim or a termination of the relationship
2 between the person and the alleged victim has recently
3 occurred or is pending;

4 (10) whether the person has exhibited obsessive or
5 controlling behaviors toward the alleged victim,
6 including, but not limited to, stalking, surveillance, or
7 isolation of the alleged victim or victim's family member
8 or members;

9 (11) whether the person has expressed suicidal or
10 homicidal ideations;

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

14 the court may, in its discretion, order the respondent to
15 undergo a risk assessment evaluation using a recognized,
16 evidence-based instrument conducted by an Illinois Department
17 of Human Services approved partner abuse intervention program
18 provider, pretrial service, probation, or parole agency. These
19 agencies shall have access to summaries of the defendant's
20 criminal history, which shall not include victim interviews or
21 information, for the risk evaluation. Based on the information
22 collected from the 12 points to be considered at a bail hearing
23 under this subsection (f), the results of any risk evaluation
24 conducted and the other circumstances of the violation, the
25 court may order that the person, as a condition of bail, be
26 placed under electronic surveillance as provided in Section

1 5-8A-7 of the Unified Code of Corrections. Upon making a
2 determination whether or not to order the respondent to
3 undergo a risk assessment evaluation or to be placed under
4 electronic surveillance and risk assessment, the court shall
5 document in the record the court's reasons for making those
6 determinations. The cost of the electronic surveillance and
7 risk assessment shall be paid by, or on behalf, of the
8 defendant. As used in this subsection (f), "intimate partner"
9 means a spouse or a current or former partner in a cohabitation
10 or dating relationship.

11 (Source: P.A. 102-28, eff. 6-25-21; 102-558, eff. 8-20-21;
12 102-813, eff. 5-13-22.)

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

14 Sec. 110-5. Determining the amount of bail and conditions
15 of release.

16 (a) In determining which conditions of pretrial release,
17 if any, will reasonably assure the appearance of a defendant
18 as required or the safety of any other person or the community
19 and the likelihood of compliance by the defendant with all the
20 conditions of pretrial release, the court shall, on the basis
21 of available information, take into account such matters as:

22 (1) the nature and circumstances of the offense
23 charged;

24 (2) the weight of the evidence against the eligible
25 defendant, except that the court may consider the

1 admissibility of any evidence sought to be excluded;

2 (3) the history and characteristics of the eligible
3 defendant, including:

4 (A) the eligible defendant's character, physical
5 and mental condition, family ties, employment,
6 financial resources, length of residence in the
7 community, community ties, past relating to drug or
8 alcohol abuse, conduct, history criminal history, and
9 record concerning appearance at court proceedings; and

10 (B) whether, at the time of the current offense or
11 arrest, the eligible defendant was on probation,
12 parole, or on other release pending trial, sentencing,
13 appeal, or completion of sentence for an offense under
14 federal law, or the law of this or any other state;

15 (4) the nature and seriousness of the ~~specific~~, real
16 and present threat to any person or the community that
17 would be posed by the eligible defendant's release, if
18 applicable, as required under paragraph (7.5) of Section 4
19 of the Rights of Crime Victims and Witnesses Act; and

20 (5) the nature and seriousness of the risk of
21 obstructing or attempting to obstruct the criminal justice
22 process that would be posed by the eligible defendant's
23 release, if applicable.

24 (b) The court shall impose any conditions that are
25 mandatory under Section 110-10. The court may impose any
26 conditions that are permissible under Section 110-10.

1 (b-5) When a person is charged with a violation of an order
2 of protection under Section 12-3.4 or 12-30 of the Criminal
3 Code of 1961 or the Criminal Code of 2012 or when a person is
4 charged with domestic battery, aggravated domestic battery,
5 kidnapping, aggravated kidnaping, unlawful restraint,
6 aggravated unlawful restraint, stalking, aggravated stalking,
7 cyberstalking, harassment by telephone, harassment through
8 electronic communications, or an attempt to commit first
9 degree murder committed against an intimate partner regardless
10 whether an order of protection has been issued against the
11 person,

12 (1) whether the alleged incident involved harassment
13 or abuse, as defined in the Illinois Domestic Violence Act
14 of 1986;

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

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

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

21 (5) whether the person has been, or is, potentially a
22 threat to any other person or the community;

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

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

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

8 (9) whether a separation of the person from the victim
9 of abuse or a termination of the relationship between the
10 person and the victim of abuse has recently occurred or is
11 pending;

12 (10) whether the person has exhibited obsessive or
13 controlling behaviors toward the victim of abuse,
14 including, but not limited to, stalking, surveillance, or
15 isolation of the victim of abuse or victim's family member
16 or members;

17 (11) whether the person has expressed suicidal or
18 homicidal ideations;

19 (11.5) any other factors deemed by the court to have a
20 reasonable bearing upon the defendant's propensity or
21 reputation for violent, abusive or assaultive behavior, or
22 lack of that behavior.

23 (c) In cases of stalking or aggravated stalking under
24 Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the
25 court may consider the following additional factors:

26 (1) Any evidence of the defendant's prior criminal

1 history indicative of violent, abusive or assaultive
2 behavior, or lack of that behavior. The evidence may
3 include testimony or documents received in juvenile
4 proceedings, criminal, quasi-criminal, civil commitment,
5 domestic relations or other proceedings;

6 (2) Any evidence of the defendant's psychological,
7 psychiatric or other similar social history that tends to
8 indicate a violent, abusive, or assaultive nature, or lack
9 of any such history;

10 (3) The nature of the threat which is the basis of the
11 charge against the defendant;

12 (4) Any statements made by, or attributed to the
13 defendant, together with the circumstances surrounding
14 them;

15 (5) The age and physical condition of any person
16 allegedly assaulted by the defendant;

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

19 (7) Any other factors deemed by the court to have a
20 reasonable bearing upon the defendant's propensity or
21 reputation for violent, abusive or assaultive behavior, or
22 lack of that behavior.

23 (d) The Court may use a regularly validated risk
24 assessment tool to aid its determination of appropriate
25 conditions of release as provided for in Section 110-6.4. Risk
26 assessment tools may not be used as the sole basis to deny

1 pretrial release. If a risk assessment tool is used, the
2 defendant's counsel shall be provided with the information and
3 scoring system of the risk assessment tool used to arrive at
4 the determination. The defendant retains the right to
5 challenge the validity of a risk assessment tool used by the
6 court and to present evidence relevant to the defendant's
7 challenge.

8 (e) If a person remains in pretrial detention after his or
9 her pretrial conditions hearing after having been ordered
10 released with pretrial conditions, the court shall hold a
11 hearing to determine the reason for continued detention. If
12 the reason for continued detention is due to the
13 unavailability or the defendant's ineligibility for one or
14 more pretrial conditions previously ordered by the court or
15 directed by a pretrial services agency, the court shall reopen
16 the conditions of release hearing to determine what available
17 pretrial conditions exist that will reasonably assure the
18 appearance of a defendant as required or the safety of any
19 other person and the likelihood of compliance by the defendant
20 with all the conditions of pretrial release. The inability of
21 the defendant to pay for a condition of release or any other
22 ineligibility for a condition of pretrial release shall not be
23 used as a justification for the pretrial detention of that
24 defendant.

25 (f) Prior to the defendant's first appearance, the Court
26 shall appoint the public defender or a licensed attorney at

1 law of this State to represent the defendant for purposes of
2 that hearing, unless the defendant has obtained licensed
3 counsel for themselves.

4 (g) Electronic monitoring, GPS monitoring, or home
5 confinement can only be imposed as a condition of pretrial
6 release if a no less restrictive condition of release or
7 combination of less restrictive condition of release would
8 reasonably ensure the appearance of the defendant for later
9 hearings or protect a person or persons or the community from a
10 real and present threat posed by the defendant ~~an identifiable~~
11 ~~person or persons from imminent threat of serious physical~~
12 ~~harm.~~

13 (h) If the court imposes electronic monitoring, GPS
14 monitoring, or home confinement, the court shall set forth in
15 the record the basis for its finding. A defendant shall be
16 given custodial credit for each day he or she was subjected to
17 that program, at the same rate described in subsection (b) of
18 Section 5-4.5-100 of the Unified Code of Corrections.

19 (i) If electronic monitoring, GPS monitoring, or home
20 confinement is imposed, the court shall determine every 60
21 days if no less restrictive condition of release or
22 combination of less restrictive conditions of release would
23 reasonably ensure the appearance, or continued appearance, of
24 the defendant for later hearings or protect a ~~an identifiable~~
25 ~~person or persons~~ or the community from a real and present
26 threat posed by the defendant ~~imminent threat of serious~~

1 ~~physical~~ harm. If the court finds that there are less
2 restrictive conditions of release, the court shall order that
3 the condition be removed. This subsection takes effect January
4 1, 2022.

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

11 (Source: P.A. 101-652, eff. 1-1-23; 102-28, eff. 6-25-21;
12 102-558, eff. 8-20-21; 102-813, eff. 5-13-22.)

13 (725 ILCS 5/110-5.2)

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

15 Sec. 110-5.2. Bail; pregnant pre-trial detainee.

16 (a) It is the policy of this State that a pre-trial
17 detainee shall not be required to deliver a child while in
18 custody absent a finding by the court that continued pre-trial
19 custody is necessary to protect the public or the victim of the
20 offense on which the charge is based.

21 (b) If the court reasonably believes that a pre-trial
22 detainee will give birth while in custody, the court shall
23 order an alternative to custody unless, after a hearing, the
24 court determines:

25 (1) that the release of the pregnant pre-trial

1 detainee would pose a real and present threat to the
2 physical safety of the alleged victim of the offense and
3 continuing custody is necessary to prevent the fulfillment
4 of the threat upon which the charge is based; or

5 (2) that the release of the pregnant pre-trial
6 detainee would pose a real and present threat to the
7 physical safety of any person or persons or the general
8 public.

9 (c) The court may order a pregnant or post-partum detainee
10 to be subject to electronic monitoring as a condition of
11 pre-trial release or order other condition or combination of
12 conditions the court reasonably determines are in the best
13 interest of the detainee and the public.

14 (d) This Section shall be applicable to a pregnant
15 pre-trial detainee in custody on or after the effective date
16 of this amendatory Act of the 100th General Assembly.

17 (Source: P.A. 100-630, eff. 1-1-19.)

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

19 Sec. 110-5.2. Pretrial release; pregnant pre-trial
20 detainee.

21 (a) It is the policy of this State that a pre-trial
22 detainee shall not be required to deliver a child while in
23 custody absent a finding by the court that continued pre-trial
24 custody is necessary to protect the public or the victim of the
25 offense on which the charge is based.

1 (b) If the court reasonably believes that a pre-trial
2 detainee will give birth while in custody, the court shall
3 order an alternative to custody unless, after a hearing, the
4 court determines:

5 (1) that the release of the pregnant pre-trial
6 detainee would pose a real and present threat to ~~the~~
7 ~~physical safety of~~ the alleged victim of the offense and
8 continuing custody is necessary to prevent the fulfillment
9 of the threat upon which the charge is based; or

10 (2) that the release of the pregnant pre-trial
11 detainee would pose a real and present threat to ~~the~~
12 ~~physical safety of~~ any person or persons or the community
13 ~~general public~~.

14 (c) The court may order a pregnant or post-partum detainee
15 to be subject to electronic monitoring as a condition of
16 pre-trial release or order other condition or combination of
17 conditions the court reasonably determines are in the best
18 interest of the detainee and the public.

19 (d) This Section shall be applicable to a pregnant
20 pre-trial detainee in custody on or after the effective date
21 of this amendatory Act of the 100th General Assembly.

22 (Source: P.A. 100-630, eff. 1-1-19; 101-652, eff. 1-1-23.)

23 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

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

25 Sec. 110-6.1. Denial of bail in non-probationable felony

1 offenses.

2 (a) Upon verified petition by the State, the court shall
3 hold a hearing to determine whether bail should be denied to a
4 defendant who is charged with a felony offense for which a
5 sentence of imprisonment, without probation, periodic
6 imprisonment or conditional discharge, is required by law upon
7 conviction, when it is alleged that the defendant's admission
8 to bail poses a real and present threat to the physical safety
9 of any person or persons.

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

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

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

26 (1) the proof is evident or the presumption great that

1 the defendant has committed an offense for which a
2 sentence of imprisonment, without probation, periodic
3 imprisonment or conditional discharge, must be imposed by
4 law as a consequence of conviction, and

5 (2) the defendant poses a real and present threat to
6 the physical safety of any person or persons, by conduct
7 which may include, but is not limited to, a forcible
8 felony, the obstruction of justice, intimidation, injury,
9 physical harm, an offense under the Illinois Controlled
10 Substances Act which is a Class X felony, or an offense
11 under the Methamphetamine Control and Community Protection
12 Act which is a Class X felony, and

13 (3) the court finds that no condition or combination
14 of conditions set forth in subsection (b) of Section
15 110-10 of this Article, can reasonably assure the physical
16 safety of any other person or persons.

17 (c) Conduct of the hearings.

18 (1) The hearing on the defendant's culpability and
19 dangerousness shall be conducted in accordance with the
20 following provisions:

21 (A) Information used by the court in its findings
22 or stated in or offered at such hearing may be by way
23 of proffer based upon reliable information offered by
24 the State or by defendant. Defendant has the right to
25 be represented by counsel, and if he is indigent, to
26 have counsel appointed for him. Defendant shall have

1 the opportunity to testify, to present witnesses in
2 his own behalf, and to cross-examine witnesses if any
3 are called by the State. The defendant has the right to
4 present witnesses in his favor. When the ends of
5 justice so require, the court may exercise its
6 discretion and compel the appearance of a complaining
7 witness. The court shall state on the record reasons
8 for granting a defense request to compel the presence
9 of a complaining witness. Cross-examination of a
10 complaining witness at the pretrial detention hearing
11 for the purpose of impeaching the witness' credibility
12 is insufficient reason to compel the presence of the
13 witness. In deciding whether to compel the appearance
14 of a complaining witness, the court shall be
15 considerate of the emotional and physical well-being
16 of the witness. The pre-trial detention hearing is not
17 to be used for purposes of discovery, and the post
18 arraignment rules of discovery do not apply. The State
19 shall tender to the defendant, prior to the hearing,
20 copies of defendant's criminal history, if any, if
21 available, and any written or recorded statements and
22 the substance of any oral statements made by any
23 person, if relied upon by the State in its petition.
24 The rules concerning the admissibility of evidence in
25 criminal trials do not apply to the presentation and
26 consideration of information at the hearing. At the

1 trial concerning the offense for which the hearing was
2 conducted neither the finding of the court nor any
3 transcript or other record of the hearing shall be
4 admissible in the State's case in chief, but shall be
5 admissible for impeachment, or as provided in Section
6 115-10.1 of this Code, or in a perjury proceeding.

7 (B) A motion by the defendant to suppress evidence
8 or to suppress a confession shall not be entertained.
9 Evidence that proof may have been obtained as the
10 result of an unlawful search and seizure or through
11 improper interrogation is not relevant to this state
12 of the prosecution.

13 (2) The facts relied upon by the court to support a
14 finding that the defendant poses a real and present threat
15 to the physical safety of any person or persons shall be
16 supported by clear and convincing evidence presented by
17 the State.

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

23 (1) The nature and circumstances of any offense
24 charged, including whether the offense is a crime of
25 violence, involving a weapon.

26 (2) The history and characteristics of the defendant

1 including:

2 (A) Any evidence of the defendant's prior criminal
3 history indicative of violent, abusive or assaultive
4 behavior, or lack of such behavior. Such evidence may
5 include testimony or documents received in juvenile
6 proceedings, criminal, quasi-criminal, civil
7 commitment, domestic relations or other proceedings.

8 (B) Any evidence of the defendant's psychological,
9 psychiatric or other similar social history which
10 tends to indicate a violent, abusive, or assaultive
11 nature, or lack of any such history.

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

15 (4) Any statements made by, or attributed to the
16 defendant, together with the circumstances surrounding
17 them;

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

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

22 (7) Whether, at the time of the current offense or any
23 other offense or arrest, the defendant was on probation,
24 parole, aftercare release, mandatory supervised release or
25 other release from custody pending trial, sentencing,
26 appeal or completion of sentence for an offense under

1 federal or state law;

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

7 (e) Detention order. The court shall, in any order for
8 detention:

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

12 (2) direct that the defendant be committed to the
13 custody of the sheriff for confinement in the county jail
14 pending trial;

15 (3) direct that the defendant be given a reasonable
16 opportunity for private consultation with counsel, and for
17 communication with others of his choice by visitation,
18 mail and telephone; and

19 (4) direct that the sheriff deliver the defendant as
20 required for appearances in connection with court
21 proceedings.

22 (f) If the court enters an order for the detention of the
23 defendant pursuant to subsection (e) of this Section, the
24 defendant shall be brought to trial on the offense for which he
25 is detained within 90 days after the date on which the order
26 for detention was entered. If the defendant is not brought to

1 trial within the 90 day period required by the preceding
2 sentence, he shall not be held longer without bail. In
3 computing the 90 day period, the court shall omit any period of
4 delay resulting from a continuance granted at the request of
5 the defendant.

6 (g) Rights of the defendant. Any person shall be entitled
7 to appeal any order entered under this Section denying bail to
8 the defendant.

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

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

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

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

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

17 (a) Upon verified petition by the State, the court shall
18 hold a hearing and may deny a defendant pretrial release only
19 if:

20 (1) the defendant is charged with a forcible felony
21 offense for which a sentence of imprisonment, without
22 probation, periodic imprisonment or conditional discharge,
23 is required by law upon conviction, and it is alleged that
24 the defendant's pretrial release poses a ~~specific~~ real
25 and present threat to any person or the community;

1 (2) the defendant is charged with stalking or
2 aggravated stalking and it is alleged that the defendant's
3 pretrial ~~pre-trial~~ release poses a real and present threat
4 to ~~the physical safety of~~ a victim of the alleged offense,
5 and denial of release is necessary to prevent fulfillment
6 of the threat upon which the charge is based;

7 (3) the victim of abuse was a family or household
8 member as defined by paragraph (6) of Section 103 of the
9 Illinois Domestic Violence Act of 1986, and the person
10 charged, at the time of the alleged offense, was subject
11 to the terms of an order of protection issued under
12 Section 112A-14 of this Code, or Section 214 of the
13 Illinois Domestic Violence Act of 1986 or previously was
14 convicted of a violation of an order of protection under
15 Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the
16 Criminal Code of 2012 or a violent crime if the victim was
17 a family or household member as defined by paragraph (6)
18 of the Illinois Domestic Violence Act of 1986 at the time
19 of the offense or a violation of a substantially similar
20 municipal ordinance or law of this or any other state or
21 the United States if the victim was a family or household
22 member as defined by paragraph (6) of Section 103 of the
23 Illinois Domestic Violence Act of 1986 at the time of the
24 offense, and it is alleged that the defendant's pretrial
25 ~~pre-trial~~ release poses a real and present threat to ~~the~~
26 ~~physical safety of~~ any person or persons or the community;

1 (4) the defendant is charged with domestic battery or
2 aggravated domestic battery under Section 12-3.2 or 12-3.3
3 of the Criminal Code of 2012 and it is alleged that the
4 defendant's pretrial release poses a real and present
5 threat to ~~the physical safety of~~ any person or persons or
6 the community;

7 (5) the defendant is charged with any offense under
8 Article 11 of the Criminal Code of 2012, except for
9 Sections 11-30, 11-35, 11-40, and 11-45 of the Criminal
10 Code of 2012, or similar provisions of the Criminal Code
11 of 1961 and it is alleged that the defendant's pretrial
12 release poses a real and present threat to ~~the physical~~
13 ~~safety of~~ any person or persons or the community;

14 (6) the defendant is charged with any of these
15 violations under the Criminal Code of 2012 and it is
16 alleged that the defendant's pretrial releases poses a
17 real and present threat to ~~the physical safety of~~ any
18 specifically identifiable person or persons or the
19 community:-

20 (A) Section 24-1.2 (aggravated discharge of a
21 firearm);

22 (B) Section 24-2.5 (aggravated discharge of a
23 machine gun or a firearm equipped with a device
24 designed or use for silencing the report of a
25 firearm);

26 (C) Section 24-1.5 (reckless discharge of a

1 firearm);

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

3 (E) Section 24-2.2 ~~2~~ (manufacture, sale or
4 transfer of bullets or shells represented to be armor
5 piercing bullets, dragon's breath shotgun shells, bolo
6 shells, or flechette shells);

7 (F) Section 24-3 (unlawful sale or delivery of
8 firearms);

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

11 (H) Section 24-34 (unlawful sale of firearms by
12 liquor license);

13 (I) Section 24-3.5 ~~(~~unlawful purchase of a
14 firearm);

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

16 (K) Section ~~or~~ 24-3B (firearms trafficking);

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

18 (M) Section 10-9 (c) (involuntary sexual servitude
19 of a minor);

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

21 (O) Non-probationable violations: (i) (unlawful
22 use or possession of weapons by felons or persons in
23 the Custody of the Department of Corrections
24 facilities (Section 24-1.1), (ii) aggravated unlawful
25 use of a weapon (Section 24-1.6), or (iii) aggravated
26 possession of a stolen firearm (Section 24-3.9);

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

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

5 (B) A felony offense other than a Class 4 offense;

6 or

7 (8) the person poses a real and present threat to the
8 community and is charged with a felony or a Class A
9 misdemeanor.

10 (b) If the charged offense is a felony, the Court shall
11 hold a hearing pursuant to Section 109-3 of this Code to
12 determine whether there is probable cause the defendant has
13 committed an offense, unless a grand jury has returned a true
14 bill of indictment against the defendant. If there is a
15 finding of no probable cause, the defendant shall be released.
16 No such finding is necessary if the defendant is charged with a
17 misdemeanor.

18 (c) Timing of petition.

19 (1) A petition may be filed without prior notice to
20 the defendant at the first appearance before a judge, or
21 within the 21 calendar days, except as provided in Section
22 110-6, after arrest and release of the defendant upon
23 reasonable notice to defendant; provided that while such
24 petition is pending before the court, the defendant if
25 previously released shall not be detained.

26 (2) ~~(2)~~ Upon filing, the court shall immediately hold

1 a hearing on the petition unless a continuance is
2 requested. If a continuance is requested, the hearing
3 shall be held within 48 hours of the defendant's first
4 appearance if the defendant is charged with a Class X,
5 Class 1, Class 2, or Class 3 felony, and within 24 hours if
6 the defendant is charged with a Class 4 or misdemeanor
7 offense. The Court may deny and or grant the request for
8 continuance. If the court decides to grant the
9 continuance, the Court retains the discretion to detain or
10 release the defendant in the time between the filing of
11 the petition and the hearing.

12 (d) Contents of petition.

13 (1) The petition shall be verified by the State and
14 shall state the grounds upon which it contends the
15 defendant should be denied pretrial release, including the
16 identity of the specific person or persons the State
17 believes the defendant poses a danger to.

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

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

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

25 (2) the defendant poses a real and present threat to
26 ~~the safety of~~ a specific, identifiable person or persons

1 or the community, by conduct which may include, but is not
2 limited to, a forcible felony, the obstruction of justice,
3 intimidation, injury, or abuse as defined by paragraph (1)
4 of Section 103 of the Illinois Domestic Violence Act of
5 1986, and

6 (3) no condition or combination of conditions set
7 forth in subsection (b) of Section 110-10 of this Article
8 can mitigate the real and present threat to ~~the safety of~~
9 any person or persons or the community or the defendant's
10 willful flight.

11 (f) Conduct of the hearings.

12 (1) Prior to the hearing the State shall tender to the
13 defendant copies of defendant's criminal history
14 available, any written or recorded statements, and the
15 substance of any oral statements made by any person, if
16 relied upon by the State in its petition, and any police
17 reports in the State's Attorney's possession at the time
18 of the hearing that are required to be disclosed to the
19 defense under Illinois Supreme Court rules.

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

22 (3) The defendant has the right to be represented by
23 counsel, and if he or she is indigent, to have counsel
24 appointed for him or her. The defendant shall have the
25 opportunity to testify, to present witnesses on his or her
26 own behalf, and to cross-examine any witnesses that are

1 called by the State.

2 (4) If the defense seeks to call the complaining
3 witness as a witness in its favor, it shall petition the
4 court for permission. When the ends of justice so require,
5 the court may exercise its discretion and compel the
6 appearance of a complaining witness. The court shall state
7 on the record reasons for granting a defense request to
8 compel the presence of a complaining witness. In making a
9 determination under this Section ~~section~~, the court shall
10 state on the record the reason for granting a defense
11 request to compel the presence of a complaining witness,
12 and only grant the request if the court finds by clear and
13 convincing evidence that the defendant will be materially
14 prejudiced if the complaining witness does not appear.
15 Cross-examination of a complaining witness at the pretrial
16 detention hearing for the purpose of impeaching the
17 witness' credibility is insufficient reason to compel the
18 presence of the witness. In deciding whether to compel the
19 appearance of a complaining witness, the court shall be
20 considerate of the emotional and physical well-being of
21 the witness. The pretrial ~~pre-trial~~ detention hearing is
22 not to be used for purposes of discovery, and the post
23 arraignment rules of discovery do not apply.

24 (5) The rules concerning the admissibility of evidence
25 in criminal trials do not apply to the presentation and
26 consideration of information at the hearing. At the trial

1 concerning the offense for which the hearing was conducted
2 neither the finding of the court nor any transcript or
3 other record of the hearing shall be admissible in the
4 State's case in chief, but shall be admissible for
5 impeachment, or as provided in Section 115-10.1 of this
6 Code, or in a perjury proceeding.

7 (6) The defendant may not move to suppress evidence or
8 a confession, however, evidence that proof of the charged
9 crime may have been the result of an unlawful search or
10 seizure, or both, or through improper interrogation, is
11 relevant in assessing the weight of the evidence against
12 the defendant.

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

17 (g) Factors to be considered in making a determination of
18 dangerousness. The court may, in determining whether the
19 defendant poses a real and present ~~specific, imminent~~ threat
20 ~~of serious physical harm~~ to an identifiable person or persons
21 or the community, consider, but shall not be limited to,
22 evidence or testimony concerning:

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

26 (2) The history and characteristics of the defendant

1 including:

2 (A) Any evidence of the defendant's prior criminal
3 history indicative of violent, abusive or assaultive
4 behavior, or lack of such behavior. Such evidence may
5 include testimony or documents received in juvenile
6 proceedings, criminal, quasi-criminal, civil
7 commitment, domestic relations, or other proceedings.

8 (B) Any evidence of the defendant's psychological,
9 psychiatric or other similar social history which
10 tends to indicate a violent, abusive, or assaultive
11 nature, or lack of any such history.

12 (3) The identity of any person or persons to whose
13 safety the defendant is believed to pose a threat, and the
14 nature of the threat.

15 (4) Any statements made by, or attributed to the
16 defendant, together with the circumstances surrounding
17 them.

18 (5) The age and physical condition of the defendant.

19 (6) The age and physical condition of any victim or
20 complaining witness.

21 (7) Whether the defendant is known to possess or have
22 access to any weapon or weapons.

23 (8) Whether, at the time of the current offense or any
24 other offense or arrest, the defendant was on probation,
25 parole, aftercare release, mandatory supervised release or
26 other release from custody pending trial, sentencing,

1 appeal or completion of sentence for an offense under
2 federal or state law.~~†~~

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

8 (h) Detention order. The court shall, in any order for
9 detention:

10 (1) briefly summarize the evidence of the defendant's
11 guilt or innocence, and the court's reasons for concluding
12 that the defendant should be denied pretrial release;

13 (2) direct that the defendant be committed to the
14 custody of the sheriff for confinement in the county jail
15 pending trial;

16 (3) direct that the defendant be given a reasonable
17 opportunity for private consultation with counsel, and for
18 communication with others of his or her choice by
19 visitation, mail and telephone; and

20 (4) direct that the sheriff deliver the defendant as
21 required for appearances in connection with court
22 proceedings.

23 (i) Detention. If the court enters an order for the
24 detention of the defendant pursuant to subsection (e) of this
25 Section, the defendant shall be brought to trial on the
26 offense for which he is detained within 90 days after the date

1 on which the order for detention was entered. If the defendant
2 is not brought to trial within the 90-day ~~90-day~~ period
3 required by the preceding sentence, he shall not be denied
4 pretrial release. In computing the 90-day ~~90-day~~ period, the
5 court shall omit any period of delay resulting from a
6 continuance granted at the request of the defendant.

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

10 (k) Appeal. The State may appeal any order entered under
11 this Section denying any motion for denial of pretrial
12 release.

13 (l) Presumption of innocence. Nothing in this Section
14 shall be construed as modifying or limiting in any way the
15 defendant's presumption of innocence in further criminal
16 proceedings.

17 (m) Victim notice. ~~(1)~~ Crime victims shall be given notice
18 by the State's Attorney's office of this hearing as required
19 in paragraph (1) of subsection (b) of Section 4.5 of the Rights
20 of Crime Victims and Witnesses Act and shall be informed of
21 their opportunity at this hearing to obtain an order of
22 protection under Article 112A of this Code.

23 (Source: P.A. 101-652, eff. 1-1-23; revised 2-28-22.)

24 (725 ILCS 5/110-6.4)

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

1 Sec. 110-6.4. Statewide risk-assessment tool. The Supreme
2 Court may establish a statewide risk-assessment tool to be
3 used in proceedings to assist the court in establishing bail
4 for a defendant by assessing the defendant's likelihood of
5 appearing at future court proceedings or determining if the
6 defendant poses a real and present threat to the physical
7 safety of any person or persons. The Supreme Court shall
8 consider establishing a risk-assessment tool that does not
9 discriminate on the basis of race, gender, educational level,
10 socio-economic status, or neighborhood. If a risk-assessment
11 tool is utilized within a circuit that does not require a
12 personal interview to be completed, the Chief Judge of the
13 circuit or the director of the pretrial services agency may
14 exempt the requirement under Section 9 and subsection (a) of
15 Section 7 of the Pretrial Services Act.

16 For the purpose of this Section, "risk-assessment tool"
17 means an empirically validated, evidence-based screening
18 instrument that demonstrates reduced instances of a
19 defendant's failure to appear for further court proceedings or
20 prevents future criminal activity.

21 (Source: P.A. 100-1, eff. 1-1-18; 100-863, eff. 8-14-18.)

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

23 Sec. 110-6.4. Statewide risk-assessment tool. The Supreme
24 Court may establish a statewide risk-assessment tool to be
25 used in proceedings to assist the court in establishing

1 conditions of pretrial release for a defendant by assessing
2 the defendant's likelihood of appearing at future court
3 proceedings or determining if the defendant poses a real and
4 present threat to ~~the physical safety of~~ any person or persons
5 or the community. The Supreme Court shall consider
6 establishing a risk-assessment tool that does not discriminate
7 on the basis of race, gender, educational level,
8 socio-economic status, or neighborhood. If a risk-assessment
9 tool is utilized within a circuit that does not require a
10 personal interview to be completed, the Chief Judge of the
11 circuit or the director of the pretrial services agency may
12 exempt the requirement under Section 9 and subsection (a) of
13 Section 7 of the Pretrial Services Act.

14 For the purpose of this Section, "risk-assessment tool"
15 means an empirically validated, evidence-based screening
16 instrument that demonstrates reduced instances of a
17 defendant's failure to appear for further court proceedings or
18 prevents future criminal activity.

19 (Source: P.A. 100-1, eff. 1-1-18; 100-863, eff. 8-14-18;
20 101-652, eff. 1-1-23.)

21 Section 95. No acceleration or delay. Where this Act makes
22 changes in a statute that is represented in this Act by text
23 that is not yet or no longer in effect (for example, a Section
24 represented by multiple versions), the use of that text does
25 not accelerate or delay the taking effect of (i) the changes

1 made by this Act or (ii) provisions derived from any other
2 Public Act.