

SB3947



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3947

Introduced 5/7/2024, by Sen. John F. Curran

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-2

from Ch. 38, par. 110-2

725 ILCS 5/110-6.1

from Ch. 38, par. 110-6.1

Amends the Code of Criminal Procedure of 1963. Provides that notwithstanding the pretrial release and denial of pretrial release provisions of the Code, if the defendant is charged with any of the following offenses, then the burden is on the defendant to show by clear and convincing evidence that the defendant's pretrial release does not pose a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case: (1) a violation of an order of protection issued under the Code or the Illinois Domestic Violence Act of 1986, a stalking no contact order under the Stalking No Contact Order Act, or of a civil no contact order under the Civil No Contact Order Act; or (2) domestic battery or aggravated domestic battery under the Criminal Code of 2012.

LRB103 40566 RLC 73146 b

A BILL FOR

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 and 110-6.1 as follows:

6 (725 ILCS 5/110-2) (from Ch. 38, par. 110-2)
7 Sec. 110-2. Pretrial release.

8 (a) All persons charged with an offense shall be eligible
9 for pretrial release before conviction. It is presumed that a
10 defendant is entitled to release on personal recognizance on
11 the condition that the defendant attend all required court
12 proceedings and the defendant does not commit any criminal
13 offense, and complies with all terms of pretrial release,
14 including, but not limited to, orders of protection under both
15 Section 112A-4 of this Code and Section 214 of the Illinois
16 Domestic Violence Act of 1986, all civil no contact orders,
17 and all stalking no contact orders. Pretrial release may be
18 denied only if a person is charged with an offense listed in
19 Section 110-6.1 and after the court has held a hearing under
20 Section 110-6.1, and in a manner consistent with subsections
21 (b), (c), and (d) of this Section.

22 (b) At all pretrial hearings, the prosecution shall have
23 the burden to prove by clear and convincing evidence that any

1 condition of release is necessary.

2 (c) When it is alleged that pretrial release should be
3 denied to a person upon the grounds that the person presents a
4 real and present threat to the safety of any person or persons
5 or the community, based on the specific articulable facts of
6 the case, the burden of proof of such allegations shall be upon
7 the State.

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

12 (e) This Section shall be liberally construed to
13 effectuate the purpose of relying on pretrial release by
14 nonmonetary means to reasonably ensure an eligible person's
15 appearance in court, the protection of the safety of any other
16 person or the community, that the person will not attempt or
17 obstruct the criminal justice process, and the person's
18 compliance with all conditions of release, while authorizing
19 the court, upon motion of a prosecutor, to order pretrial
20 detention of the person under Section 110-6.1 when it finds
21 clear and convincing evidence that no condition or combination
22 of conditions can reasonably ensure the effectuation of these
23 goals.

24 (e-1) Notwithstanding the other provisions of this
25 Section, if the defendant is charged with any of the following
26 offenses, then the burden is on the defendant to show by clear

1 and convincing evidence that the defendant's pretrial release
2 does not pose a real and present threat to the safety of any
3 person or persons or the community, based on the specific
4 articulable facts of the case:

5 (1) a violation of an order of protection issued under
6 Section 112A-14 of this Code or Section 214 of the
7 Illinois Domestic Violence Act of 1986, a stalking no
8 contact order under Section 80 of the Stalking No Contact
9 Order Act, or of a civil no contact order under Section 213
10 of the Civil No Contact Order Act; or

11 (2) domestic battery or aggravated domestic battery
12 under Section 12-3.2 or 12-3.3 of the Criminal Code of
13 2012.

14 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)

15 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

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 felony offense
21 other than a forcible felony for which, based on the
22 charge or the defendant's criminal history, a sentence of
23 imprisonment, without probation, periodic imprisonment or
24 conditional discharge, is required by law upon conviction,
25 and it is alleged that the defendant's pretrial release

1 poses a real and present threat to the safety of any person
2 or persons or the community, based on the specific
3 articulable facts of the case;

4 (1.5) the defendant's pretrial release poses a real
5 and present threat to the safety of any person or persons
6 or the community, based on the specific articulable facts
7 of the case, and the defendant is charged with a forcible
8 felony, which as used in this Section, means treason,
9 first degree murder, second degree murder, predatory
10 criminal sexual assault of a child, aggravated criminal
11 sexual assault, criminal sexual assault, armed robbery,
12 aggravated robbery, robbery, burglary where there is use
13 of force against another person, residential burglary,
14 home invasion, vehicular invasion, aggravated arson,
15 arson, aggravated kidnaping, kidnaping, aggravated battery
16 resulting in great bodily harm or permanent disability or
17 disfigurement or any other felony which involves the
18 threat of or infliction of great bodily harm or permanent
19 disability or disfigurement;

20 (2) the defendant is charged with stalking or
21 aggravated stalking, and it is alleged that the
22 defendant's pre-trial release poses a real and present
23 threat to the safety of a victim of the alleged offense,
24 and denial of release is necessary to prevent fulfillment
25 of the threat upon which the charge is based;

26 (3) the defendant is charged with a violation of an

1 order of protection issued under Section 112A-14 of this
2 Code or Section 214 of the Illinois Domestic Violence Act
3 of 1986, a stalking no contact order under Section 80 of
4 the Stalking No Contact Order Act, or of a civil no contact
5 order under Section 213 of the Civil No Contact Order Act,
6 and it is alleged that the defendant's pretrial release
7 poses a real and present threat to the safety of any person
8 or persons or the community, based on the specific
9 articulable facts of the case;

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

17 (5) the defendant is charged with any offense under
18 Article 11 of the Criminal Code of 2012, except for
19 Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35,
20 11-40, and 11-45 of the Criminal Code of 2012, or similar
21 provisions of the Criminal Code of 1961 and it is alleged
22 that the defendant's pretrial release poses a real and
23 present threat to the safety of any person or persons or
24 the community, based on the specific articulable facts of
25 the case;

26 (6) the defendant is charged with any of the following

1 offenses under the Criminal Code of 2012, and it is
2 alleged that the defendant's pretrial release poses a real
3 and present threat to the safety of any person or persons
4 or the community, based on the specific articulable facts
5 of the case:

6 (A) Section 24-1.2 (aggravated discharge of a
7 firearm);

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

12 (C) Section 24-1.5 (reckless discharge of a
13 firearm);

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

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

19 (F) Section 24-3 (unlawful sale or delivery of
20 firearms);

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

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

25 (I) Section 24-3.5 (unlawful purchase of a
26 firearm);

- 1 (J) Section 24-3A (gunrunning);
- 2 (K) Section 24-3B (firearms trafficking);
- 3 (L) Section 10-9 (b) (involuntary servitude);
- 4 (M) Section 10-9 (c) (involuntary sexual servitude
5 of a minor);
- 6 (N) Section 10-9(d) (trafficking in persons);
- 7 (O) Non-probationable violations: (i) unlawful use
8 or possession of weapons by felons or persons in the
9 Custody of the Department of Corrections facilities
10 (Section 24-1.1), (ii) aggravated unlawful use of a
11 weapon (Section 24-1.6), or (iii) aggravated
12 possession of a stolen firearm (Section 24-3.9);
- 13 (P) Section 9-3 (reckless homicide and involuntary
14 manslaughter);
- 15 (Q) Section 19-3 (residential burglary);
- 16 (R) Section 10-5 (child abduction);
- 17 (S) Felony violations of Section 12C-5 (child
18 endangerment);
- 19 (T) Section 12-7.1 (hate crime);
- 20 (U) Section 10-3.1 (aggravated unlawful
21 restraint);
- 22 (V) Section 12-9 (threatening a public official);
- 23 (W) Subdivision (f)(1) of Section 12-3.05
24 (aggravated battery with a deadly weapon other than by
25 discharge of a firearm);
- 26 (6.5) the defendant is charged with any of the

1 following offenses, and it is alleged that the defendant's
2 pretrial release poses a real and present threat to the
3 safety of any person or persons or the community, based on
4 the specific articulable facts of the case:

5 (A) Felony violations of Sections 3.01, 3.02, or
6 3.03 of the Humane Care for Animals Act (cruel
7 treatment, aggravated cruelty, and animal torture);

8 (B) Subdivision (d) (1) (B) of Section 11-501 of the
9 Illinois Vehicle Code (aggravated driving under the
10 influence while operating a school bus with
11 passengers);

12 (C) Subdivision (d) (1) (C) of Section 11-501 of the
13 Illinois Vehicle Code (aggravated driving under the
14 influence causing great bodily harm);

15 (D) Subdivision (d) (1) (D) of Section 11-501 of the
16 Illinois Vehicle Code (aggravated driving under the
17 influence after a previous reckless homicide
18 conviction);

19 (E) Subdivision (d) (1) (F) of Section 11-501 of the
20 Illinois Vehicle Code (aggravated driving under the
21 influence leading to death); or

22 (F) Subdivision (d) (1) (J) of Section 11-501 of the
23 Illinois Vehicle Code (aggravated driving under the
24 influence that resulted in bodily harm to a child
25 under the age of 16);

26 (7) the defendant is charged with an attempt to commit

1 any charge listed in paragraphs (1) through (6.5), and it
2 is alleged that the defendant's pretrial release poses a
3 real and present threat to the safety of any person or
4 persons or the community, based on the specific
5 articulable facts of the case; or

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

8 (A) Any felony described in subdivisions (a)(1)
9 through (a)(7) of this Section; or

10 (B) A felony offense other than a Class 4 offense.

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

20 (c) Timing of petition.

21 (1) A petition may be filed without prior notice to
22 the defendant at the first appearance before a judge, or
23 within the 21 calendar days, except as provided in Section
24 110-6, after arrest and release of the defendant upon
25 reasonable notice to defendant; provided that while such
26 petition is pending before the court, the defendant if

1 previously released shall not be detained.

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

14 (d) Contents of petition.

15 (1) The petition shall be verified by the State and
16 shall state the grounds upon which it contends the
17 defendant should be denied pretrial release, including the
18 real and present threat to the safety of any person or
19 persons or the community, based on the specific
20 articulable facts or flight risk, as appropriate.

21 (2) If the State seeks to file a second or subsequent
22 petition under this Section, the State shall be required
23 to present a verified application setting forth in detail
24 any new facts not known or obtainable at the time of the
25 filing of the previous petition.

26 (e) Eligibility: All defendants shall be presumed eligible

1 for pretrial release, and the State shall bear the burden of
2 proving by clear and convincing evidence that:

3 (1) the proof is evident or the presumption great that
4 the defendant has committed an offense listed in
5 subsection (a), and

6 (2) for offenses listed in paragraphs (1) through (7)
7 of subsection (a), the defendant poses a real and present
8 threat to the safety of any person or persons or the
9 community, based on the specific articulable facts of the
10 case, by conduct which may include, but is not limited to,
11 a forcible felony, the obstruction of justice,
12 intimidation, injury, or abuse as defined by paragraph (1)
13 of Section 103 of the Illinois Domestic Violence Act of
14 1986, and

15 (3) no condition or combination of conditions set
16 forth in subsection (b) of Section 110-10 of this Article
17 can mitigate (i) the real and present threat to the safety
18 of any person or persons or the community, based on the
19 specific articulable facts of the case, for offenses
20 listed in paragraphs (1) through (7) of subsection (a), or
21 (ii) the defendant's willful flight for offenses listed in
22 paragraph (8) of subsection (a), and

23 (4) for offenses under subsection (b) of Section 407
24 of the Illinois Controlled Substances Act that are subject
25 to paragraph (1) of subsection (a), no condition or
26 combination of conditions set forth in subsection (b) of

1 Section 110-10 of this Article can mitigate the real and
2 present threat to the safety of any person or persons or
3 the community, based on the specific articulable facts of
4 the case, and the defendant poses a serious risk to not
5 appear in court as required.

6 (e-1) Notwithstanding the provisions of subsection (e), if
7 the defendant is charged with any of the following offenses,
8 then the burden is on the defendant to show by clear and
9 convincing evidence that the defendant's pretrial release does
10 not pose a real and present threat to the safety of any person
11 or persons or the community, based on the specific articulable
12 facts of the case:

13 (1) a violation of an order of protection issued under
14 Section 112A-14 of this Code or Section 214 of the
15 Illinois Domestic Violence Act of 1986, a stalking no
16 contact order under Section 80 of the Stalking No Contact
17 Order Act, or of a civil no contact order under Section 213
18 of the Civil No Contact Order Act; or

19 (2) domestic battery or aggravated domestic battery
20 under Section 12-3.2 or 12-3.3 of the Criminal Code of
21 2012.

22 (f) Conduct of the hearings.

23 (1) Prior to the hearing, the State shall tender to
24 the defendant copies of the defendant's criminal history
25 available, any written or recorded statements, and the
26 substance of any oral statements made by any person, if

1 relied upon by the State in its petition, and any police
2 reports in the prosecutor's possession at the time of the
3 hearing.

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

6 (3) The defendant has the right to be represented by
7 counsel, and if he or she is indigent, to have counsel
8 appointed for him or her. The defendant shall have the
9 opportunity to testify, to present witnesses on his or her
10 own behalf, and to cross-examine any witnesses that are
11 called by the State. Defense counsel shall be given
12 adequate opportunity to confer with the defendant before
13 any hearing at which conditions of release or the
14 detention of the defendant are to be considered, with an
15 accommodation for a physical condition made to facilitate
16 attorney/client consultation. If defense counsel needs to
17 confer or consult with the defendant during any hearing
18 conducted via a two-way audio-visual communication system,
19 such consultation shall not be recorded and shall be
20 undertaken consistent with constitutional protections.

21 (3.5) A hearing at which pretrial release may be
22 denied must be conducted in person (and not by way of
23 two-way audio visual communication) unless the accused
24 waives the right to be present physically in court, the
25 court determines that the physical health and safety of
26 any person necessary to the proceedings would be

1 endangered by appearing in court, or the chief judge of
2 the circuit orders use of that system due to operational
3 challenges in conducting the hearing in person. Such
4 operational challenges must be documented and approved by
5 the chief judge of the circuit, and a plan to address the
6 challenges through reasonable efforts must be presented
7 and approved by the Administrative Office of the Illinois
8 Courts every 6 months.

9 (4) If the defense seeks to compel the complaining
10 witness to testify as a witness in its favor, it shall
11 petition the court for permission. When the ends of
12 justice so require, the court may exercise its discretion
13 and compel the appearance of a complaining witness. The
14 court shall state on the record reasons for granting a
15 defense request to compel the presence of a complaining
16 witness only on the issue of the defendant's pretrial
17 detention. In making a determination under this Section,
18 the court shall state on the record the reason for
19 granting a defense request to compel the presence of a
20 complaining witness, and only grant the request if the
21 court finds by clear and convincing evidence that the
22 defendant will be materially prejudiced if the complaining
23 witness does not appear. Cross-examination of a
24 complaining witness at the pretrial detention hearing for
25 the purpose of impeaching the witness' credibility is
26 insufficient reason to compel the presence of the witness.

1 In deciding whether to compel the appearance of a
2 complaining witness, the court shall be considerate of the
3 emotional and physical well-being of the witness. The
4 pre-trial detention hearing is not to be used for purposes
5 of discovery, and the post arraignment rules of discovery
6 do not apply. The State shall tender to the defendant,
7 prior to the hearing, copies, if any, of the defendant's
8 criminal history, if available, and any written or
9 recorded statements and the substance of any oral
10 statements made by any person, if in the State's
11 Attorney's possession at the time of the hearing.

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

21 (6) The defendant may not move to suppress evidence or
22 a confession, however, evidence that proof of the charged
23 crime may have been the result of an unlawful search or
24 seizure, or both, or through improper interrogation, is
25 relevant in assessing the weight of the evidence against
26 the defendant.

1 (7) Decisions regarding release, conditions of
2 release, and detention prior to trial must be
3 individualized, and no single factor or standard may be
4 used exclusively to order detention. Risk assessment tools
5 may not be used as the sole basis to deny pretrial release.

6 (g) Factors to be considered in making a determination of
7 dangerousness. The court may, in determining whether the
8 defendant poses a real and present threat to the safety of any
9 person or persons or the community, based on the specific
10 articulable facts of the case, consider, but shall not be
11 limited to, evidence or testimony concerning:

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

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

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

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

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

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

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

8 (6) The age and physical condition of any victim or
9 complaining witness.

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

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

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

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

25 (1) make a written finding summarizing the court's
26 reasons for concluding that the defendant should be denied

1 pretrial release, including why less restrictive
2 conditions would not avoid a real and present threat to
3 the safety of any person or persons or the community,
4 based on the specific articulable facts of the case, or
5 prevent the defendant's willful flight from prosecution;

6 (2) direct that the defendant be committed to the
7 custody of the sheriff for confinement in the county jail
8 pending trial;

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

13 (4) direct that the sheriff deliver the defendant as
14 required for appearances in connection with court
15 proceedings.

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

1 good cause shown pursuant to Section 103-5.

2 (i-5) At each subsequent appearance of the defendant
3 before the court, the judge must find that continued detention
4 is necessary to avoid a real and present threat to the safety
5 of any person or persons or the community, based on the
6 specific articulable facts of the case, or to prevent the
7 defendant's willful flight from prosecution.

8 (j) Rights of the defendant. The defendant shall be
9 entitled to appeal any order entered under this Section
10 denying his or her pretrial release.

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

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

18 (m) Interest of victims.

19 (1) Crime victims shall be given notice by the State's
20 Attorney's office of this hearing as required in paragraph (1)
21 of subsection (b) of Section 4.5 of the Rights of Crime Victims
22 and Witnesses Act and shall be informed of their opportunity
23 at this hearing to obtain a protective order.

24 (2) If the defendant is denied pretrial release, the court
25 may impose a no contact provision with the victim or other
26 interested party that shall be enforced while the defendant

1 remains in custody.

2 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)