

# HB0539



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0539

Introduced 2/4/2009, by Rep. Monique D. Davis

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. Provides that when the defendant is charged with a non-violent crime, in setting the amount of bail, the court shall consider any evidence offered as to the annual gross income of the defendant.

LRB096 06263 RLC 16346 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 Section 110-5 as follows:

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

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

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

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

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

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

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

11 (b) The amount of bail shall be:

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

20 (2) Not oppressive.

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

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

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

10 (b-1) When the defendant is charged with a non-violent  
11 crime, in setting the amount of bail, the court shall consider  
12 any evidence offered as to the annual gross income of the  
13 defendant. For the purposes of this subsection (b-1), "gross  
14 income" has the meaning ascribed to it in Section 61 of the  
15 federal Internal Revenue Code; and "non-violent crime" means an  
16 offense that is not a violent crime as defined in Section 3 of  
17 the Rights of Crime Victims and Witnesses Act.

18 (b-5) Upon the filing of a written request demonstrating  
19 reasonable cause, the State's Attorney may request a source of  
20 bail hearing either before or after the posting of any funds.  
21 If the hearing is granted, before the posting of any bail, the  
22 accused must file a written notice requesting that the court  
23 conduct a source of bail hearing. The notice must be  
24 accompanied by justifying affidavits stating the legitimate  
25 and lawful source of funds for bail. At the hearing, the court  
26 shall inquire into any matters stated in any justifying

1 affidavits, and may also inquire into matters appropriate to  
2 the determination which shall include, but are not limited to,  
3 the following:

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

6 (2) the source of any money or property deposited by  
7 any surety, and whether any such money or property  
8 constitutes the fruits of criminal or unlawful conduct; and

9 (3) the source of any money posted as cash bail, and  
10 whether any such money constitutes the fruits of criminal  
11 or unlawful conduct; and

12 (4) the background, character, reputation, and  
13 relationship to the accused of the person posting cash  
14 bail.

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

17 The State's Attorney has a right to attend the hearing, to  
18 call witnesses and to examine any witness in the proceeding.  
19 The court shall, upon request of the State's Attorney, continue  
20 the proceedings for a reasonable period to allow the State's  
21 Attorney to investigate the matter raised in any testimony or  
22 affidavit. If the hearing is granted after the accused has  
23 posted bail, the court shall conduct a hearing consistent with  
24 this subsection (b-5). At the conclusion of the hearing, the  
25 court must issue an order either approving of disapproving the  
26 bail.



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

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

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

9           (f) When a person is charged with a violation of an order  
10 of protection under Section 12-30 of the Criminal Code of 1961,  
11 the court shall order the respondent to undergo a risk  
12 assessment evaluation at an Illinois Department of Human  
13 Services protocol approved partner abuse intervention program.  
14 Based on the results of the risk assessment and the other  
15 circumstances of the violation, the court may order that the  
16 person, as a condition of bail, be placed under electronic  
17 surveillance as provided in Section 5-8A-7 of the Unified Code  
18 of Corrections.

19           (Source: P.A. 94-556, eff. 9-11-05; 95-773, eff. 1-1-09.)