



Rep. Monique D. Davis

Filed: 4/7/2014

09800HB4097ham001

LRB098 15655 RLC 58371 a

1 AMENDMENT TO HOUSE BILL 4097

2 AMENDMENT NO. _____. Amend House Bill 4097 by replacing
3 everything after the enacting clause with the following:

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

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

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

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

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

19 (b) The amount of bail shall be:

20 (1) Sufficient to assure compliance with the
21 conditions set forth in the bail bond, which shall include
22 the defendant's current address with a written
23 admonishment to the defendant that he or she must comply
24 with the provisions of Section 110-12 regarding any change
25 in his or her address. The defendant's address shall at all
26 times remain a matter of public record with the clerk of

1 the court.

2 (2) Not oppressive.

3 (3) Considerate of the financial ability of the
4 accused.

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

18 (b-1) If a first-time offender is charged with a
19 non-violent offense that is a misdemeanor, the court may order
20 him or her released on his or her own recognizance, unless the
21 court makes a specific finding that a cash bond is necessary to
22 secure his or her appearance, and in addition to any other
23 conditions, may order as a condition of his or her release, his
24 or her monitoring under electronic surveillance as provided in
25 Article 8A of Chapter V of the Unified Code of Corrections.

26 For the purposes of this subsection (b-1), "non-violent

1 offense" means an offense that is a violent crime as defined in
2 Section 3 of the Rights of Crime Victims and Witnesses Act.

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

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

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

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

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

26 Upon setting the hearing, the court shall examine, under

1 oath, any persons who may possess material information.

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

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

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

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

20 (f) When a person is charged with a violation of an order
21 of protection under Section 12-3.4 or 12-30 of the Criminal
22 Code of 1961 or the Criminal Code of 2012,

23 (1) whether the alleged incident involved harassment
24 or abuse, as defined in the Illinois Domestic Violence Act
25 of 1986;

26 (2) whether the person has a history of domestic

1 violence, as defined in the Illinois Domestic Violence Act,
2 or a history of other criminal acts;

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

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

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

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

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

12 (8) based on the severity of the alleged incident that
13 is the basis of the alleged offense, including, but not
14 limited to, the duration of the current incident, and
15 whether the alleged incident involved physical injury,
16 sexual assault, strangulation, abuse during the alleged
17 victim's pregnancy, abuse of pets, or forcible entry to
18 gain access to the alleged victim;

19 (9) whether a separation of the person from the alleged
20 victim or a termination of the relationship between the
21 person and the alleged victim has recently occurred or is
22 pending;

23 (10) whether the person has exhibited obsessive or
24 controlling behaviors toward the alleged victim,
25 including, but not limited to, stalking, surveillance, or
26 isolation of the alleged victim or victim's family member

1 or members;

2 (11) whether the person has expressed suicidal or
3 homicidal ideations;

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

7 the court may, in its discretion, order the respondent to
8 undergo a risk assessment evaluation conducted by an Illinois
9 Department of Human Services approved partner abuse
10 intervention program provider, pretrial service, probation, or
11 parole agency. These agencies shall have access to summaries of
12 the defendant's criminal history, which shall not include
13 victim interviews or information, for the risk evaluation.
14 Based on the information collected from the 12 points to be
15 considered at a bail hearing for a violation of an order of
16 protection, the results of any risk evaluation conducted and
17 the other circumstances of the violation, the court may order
18 that the person, as a condition of bail, be placed under
19 electronic surveillance as provided in Section 5-8A-7 of the
20 Unified Code of Corrections.

21 (Source: P.A. 97-1150, eff. 1-25-13; 98-558, eff. 1-1-14.)".