

HB0203



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0203

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. Provides that in determining the amount of monetary bail or conditions of release, the court shall consider whether the defendant has been convicted of one or more offenses involving the unlawful use of a weapon.

LRB100 03952 SLF 13957 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:

16 (1) the nature and circumstances of the offense
17 charged;τ

18 (2) whether the evidence shows that as part of the
19 offense there was a use of violence or threatened use of
20 violence;τ

21 (3) whether the offense involved corruption of public
22 officials or employees;τ

23 (4) whether there was physical harm or threats of

1 physical harm to any public official, public employee,
2 judge, prosecutor, juror or witness, senior citizen,
3 child, or person with a disability;IT

4 (5) whether evidence shows that during the offense or
5 during the arrest the defendant possessed or used a
6 firearm, machine gun, explosive or metal piercing
7 ammunition or explosive bomb device or any military or
8 paramilitary armament;IT

9 (6) whether the evidence shows that the offense
10 committed was related to or in furtherance of the criminal
11 activities of an organized gang or was motivated by the
12 defendant's membership in or allegiance to an organized
13 gang;IT

14 (7) the condition of the victim;IT

15 (8) any written statement submitted by the victim or
16 proffer or representation by the State regarding the impact
17 which the alleged criminal conduct has had on the victim
18 and the victim's concern, if any, with further contact with
19 the defendant if released on bail;IT

20 (9) whether the offense was based on racial, religious,
21 sexual orientation or ethnic hatred;IT

22 (10) the likelihood of the filing of a greater charge;IT

23 (11) the likelihood of conviction;IT

24 (12) the sentence applicable upon conviction;IT

25 (13) the weight of the evidence against the ~~such~~
26 defendant;IT

1 (14) whether there exists motivation or ability to
2 flee;7

3 (15) whether there is any verification as to prior
4 residence, education, or family ties in the local
5 jurisdiction, in another county, state or foreign
6 country;7

7 (16) the defendant's employment, financial resources,
8 character and mental condition, past conduct, prior use of
9 alias names or dates of birth, and length of residence in
10 the community;7

11 (17) the consent of the defendant to periodic drug
12 testing in accordance with Section 110-6.5 of this Code;7

13 (18) whether a foreign national defendant is lawfully
14 admitted in the United States of America;7

15 (19) whether the government of a ~~the~~ foreign national
16 defendant maintains an extradition treaty with the United
17 States by which the foreign government will extradite to
18 the United States its national for a trial for a crime
19 allegedly committed in the United States;7

20 (20) whether the defendant is currently subject to
21 deportation or exclusion under the immigration laws of the
22 United States;7

23 (21) whether the defendant, although a United States
24 citizen, is considered under the law of any foreign state a
25 national of that state for the purposes of extradition or
26 non-extradition to the United States;7

1 (22) the amount of unrecovered proceeds lost as a
2 result of the alleged offense;7

3 (23) the source of bail funds tendered or sought to be
4 tendered for bail;7

5 (24) whether from the totality of the court's
6 consideration, the loss of funds posted or sought to be
7 posted for bail will not deter the defendant from flight;7

8 (25) whether the evidence shows that the defendant is
9 engaged in significant possession, manufacture, or
10 delivery of a controlled substance or cannabis, either
11 individually or in consort with others;7

12 (26) whether at the time of the offense charged he or
13 she was on bond or pre-trial release pending trial,
14 probation, periodic imprisonment, or conditional discharge
15 under ~~pursuant to~~ this Code or the comparable Code of any
16 other state or federal jurisdiction;7

17 (27) whether the defendant is on bond or pre-trial
18 release pending the imposition or execution of sentence or
19 appeal of sentence for any offense under the laws of
20 Illinois or any other state or federal jurisdiction;7

21 (28) whether the defendant is under parole, aftercare
22 release, mandatory supervised release, or work release
23 from the Illinois Department of Corrections or Illinois
24 Department of Juvenile Justice or any penal institution or
25 corrections department of any state or federal
26 jurisdiction;7

1 (29) the defendant's record of convictions;IT

2 (30) whether the defendant has been convicted of a
3 misdemeanor or ordinance offense in Illinois or similar
4 offense in other state or federal jurisdiction within the
5 10 years preceding the current charge or convicted of a
6 felony in Illinois;IT

7 (31) whether the defendant was convicted of an offense
8 in another state or federal jurisdiction that would be a
9 felony if committed in Illinois within the 20 years
10 preceding the current charge or has been convicted of such
11 felony and released from the penitentiary within 20 years
12 preceding the current charge if a penitentiary sentence was
13 imposed in Illinois or other state or federal
14 jurisdiction;IT

15 (32) whether the defendant has been convicted of one or
16 more offenses involving the unlawful use of a weapon;

17 (33) the defendant's records of juvenile adjudication
18 of delinquency in any jurisdiction;IT

19 (34) any record of appearance or failure to appear by
20 the defendant at court proceedings;IT

21 (35) whether there was flight to avoid arrest or
22 prosecution;IT

23 (36) whether the defendant escaped or attempted to
24 escape to avoid arrest;IT

25 (37) whether the defendant refused to identify himself
26 or herself;IT or

1 (38) whether there was a refusal by the defendant to be
2 fingerprinted as required by law.

3 Information used by the court in its findings or stated in
4 or offered in connection with this Section may be by way of
5 proffer based upon reliable information offered by the State or
6 defendant. All evidence shall be admissible if it is relevant
7 and reliable regardless of whether it would be admissible under
8 the rules of evidence applicable at criminal trials. If the
9 State presents evidence that the offense committed by the
10 defendant was related to or in furtherance of the criminal
11 activities of an organized gang or was motivated by the
12 defendant's membership in or allegiance to an organized gang,
13 and if the court determines that the evidence may be
14 substantiated, the court shall prohibit the defendant from
15 associating with other members of the organized gang as a
16 condition of bail or release. For the purposes of this Section,
17 "organized gang" has the meaning ascribed to it in Section 10
18 of the Illinois Streetgang Terrorism Omnibus 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-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 12-3.4 or 12-30 of the Criminal
11 Code of 1961 or the Criminal Code of 2012 or when a person is
12 charged with domestic battery, aggravated domestic battery,
13 kidnapping, aggravated kidnaping, unlawful restraint,
14 aggravated unlawful restraint, stalking, aggravated stalking,
15 cyberstalking, harassment by telephone, harassment through
16 electronic communications, or an attempt to commit first degree
17 murder committed against an intimate partner regardless
18 whether an order of protection has been issued against the
19 person,

20 (1) whether the alleged incident involved harassment
21 or abuse, as defined in the Illinois Domestic Violence Act
22 of 1986;

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

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

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

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

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

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

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

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

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

25 (11) whether the person has expressed suicidal or
26 homicidal ideations;

1 (12) based on any information contained in the
2 complaint and any police reports, affidavits, or other
3 documents accompanying the complaint,
4 the court may, in its discretion, order the respondent to
5 undergo a risk assessment evaluation using a recognized,
6 evidence-based instrument conducted by an Illinois Department
7 of Human Services approved partner abuse intervention program
8 provider, pretrial service, probation, or parole agency. These
9 agencies shall have access to summaries of the defendant's
10 criminal history, which shall not include victim interviews or
11 information, for the risk evaluation. Based on the information
12 collected from the 12 points to be considered at a bail hearing
13 under this subsection (f), the results of any risk evaluation
14 conducted and the other circumstances of the violation, the
15 court may order that the person, as a condition of bail, be
16 placed under electronic surveillance as provided in Section
17 5-8A-7 of the Unified Code of Corrections. Upon making a
18 determination whether or not to order the respondent to undergo
19 a risk assessment evaluation or to be placed under electronic
20 surveillance and risk assessment, the court shall document in
21 the record the court's reasons for making those determinations.
22 The cost of the electronic surveillance and risk assessment
23 shall be paid by, or on behalf, of the defendant. As used in
24 this subsection (f), "intimate partner" means a spouse or a
25 current or former partner in a cohabitation or dating
26 relationship.

1 (Source: P.A. 98-558, eff. 1-1-14; 98-1012, eff. 1-1-15;
2 99-143, eff. 7-27-15.)