



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2775

by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-4
725 ILCS 5/110-6

from Ch. 38, par. 110-4
from Ch. 38, par. 110-6

Amends the Code of Criminal Procedure of 1963. Provides that a person who does not pose a real and present threat to the physical safety of any person, presents a flight risk in the absence of a bail bond, and is otherwise eligible for bail shall not be detained solely because of their financial or economic inability to post bond. Provides that if bail is set or if a defendant is ordered to be electronically monitored as a condition of release, and if the defendant has been unable to post the required bond or secure a location from which to be electronically monitored and remains in custody for 72 hours after the date bail or release with conditions has been set, the defendant shall be afforded a hearing where the court may alter the conditions of bail or release. Provides that the inability of the defendant to pay bail or lack of suitable housing shall be deemed sufficient new facts to support a motion for this hearing.

LRB100 10527 SLF 20743 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 110-4 and 110-6 as follows:

6 (725 ILCS 5/110-4) (from Ch. 38, par. 110-4)

7 Sec. 110-4. Bailable Offenses.

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

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

17 (a-5) A person who does not pose a real and present threat
18 to the physical safety of any person, presents a flight risk in
19 the absence of a bail bond, and is otherwise eligible for bail
20 under this Article shall not be detained solely because of
21 their financial or economic inability to post bond.

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

1 the presumption is not great.

2 (c) Where it is alleged that bail should be denied to a
3 person upon the grounds that the person presents a real and
4 present threat to the physical safety of any person or persons,
5 the burden of proof of such allegations shall be upon the
6 State.

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

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

12 (725 ILCS 5/110-6) (from Ch. 38, par. 110-6)

13 Sec. 110-6. (a) Upon verified application by the State or
14 the defendant or on its own motion the court before which the
15 proceeding is pending may increase or reduce the amount of bail
16 or may alter the conditions of the bail bond or grant bail
17 where it has been previously revoked or denied. If bail has
18 been previously revoked under ~~pursuant to~~ subsection (f) of
19 this Section or if bail has been denied to the defendant under
20 ~~pursuant to~~ subsection (e) of Section 110-6.1 or subsection (e)
21 of Section 110-6.3, the defendant shall be required to present
22 a verified application setting forth in detail any new facts
23 not known or obtainable at the time of the previous revocation
24 or denial of bail proceedings. If the court grants bail where
25 it has been previously revoked or denied, the court shall state

1 on the record of the proceedings the findings of facts and
2 conclusion of law upon which such order is based.

3 (a-5) If bail is set under Section 110-5 of this Article or
4 if a defendant is ordered to be electronically monitored as a
5 condition of release, and if the defendant has been unable to
6 post the required bond or secure a location from which to be
7 electronically monitored and remains in custody for 72 hours
8 after the date bail or release with conditions has been set,
9 the defendant shall be afforded a hearing under subsection (a)
10 of this Section. The inability of the defendant to pay bail or
11 lack of suitable housing shall be deemed sufficient new facts
12 to support a motion for the alteration of bail under subsection
13 (a) of this Section.

14 (b) Violation of the conditions of Section 110-10 of this
15 Code or any special conditions of bail as ordered by the court
16 shall constitute grounds for the court to increase the amount
17 of bail, or otherwise alter the conditions of bail, or, where
18 the alleged offense committed on bail is a forcible felony in
19 Illinois or a Class 2 or greater offense under the Illinois
20 Controlled Substances Act, the Cannabis Control Act, or the
21 Methamphetamine Control and Community Protection Act, revoke
22 bail pursuant to the appropriate provisions of subsection (e)
23 of this Section.

24 (c) Reasonable notice of such application by the defendant
25 shall be given to the State.

26 (d) Reasonable notice of such application by the State

1 shall be given to the defendant, except as provided in
2 subsection (e).

3 (e) Upon verified application by the State stating facts or
4 circumstances constituting a violation or a threatened
5 violation of any of the conditions of the bail bond the court
6 may issue a warrant commanding any peace officer to bring the
7 defendant without unnecessary delay before the court for a
8 hearing on the matters set forth in the application. If the
9 actual court before which the proceeding is pending is absent
10 or otherwise unavailable another court may issue a warrant
11 pursuant to this Section. When the defendant is charged with a
12 felony offense and while free on bail is charged with a
13 subsequent felony offense and is the subject of a proceeding
14 set forth in Section 109-1 or 109-3 of this Code, upon the
15 filing of a verified petition by the State alleging a violation
16 of Section 110-10 (a) (4) of this Code, the court shall without
17 prior notice to the defendant, grant leave to file such
18 application and shall order the transfer of the defendant and
19 the application without unnecessary delay to the court before
20 which the previous felony matter is pending for a hearing as
21 provided in subsection (b) or this subsection of this Section.
22 The defendant shall be held without bond pending transfer to
23 and a hearing before such court. At the conclusion of the
24 hearing based on a violation of the conditions of Section
25 110-10 of this Code or any special conditions of bail as
26 ordered by the court the court may enter an order increasing

1 the amount of bail or alter the conditions of bail as deemed
2 appropriate.

3 (f) Where the alleged violation consists of the violation
4 of one or more felony statutes of any jurisdiction which would
5 be a forcible felony in Illinois or a Class 2 or greater
6 offense under the Illinois Controlled Substances Act, the
7 Cannabis Control Act, or the Methamphetamine Control and
8 Community Protection Act and the defendant is on bail for the
9 alleged commission of a felony, or where the defendant is on
10 bail for a felony domestic battery (enhanced pursuant to
11 subsection (b) of Section 12-3.2 of the Criminal Code of 1961
12 or the Criminal Code of 2012), aggravated domestic battery,
13 aggravated battery, unlawful restraint, aggravated unlawful
14 restraint or domestic battery in violation of item (1) of
15 subsection (a) of Section 12-3.2 of the Criminal Code of 1961
16 or the Criminal Code of 2012 against a family or household
17 member as defined in Section 112A-3 of this Code and the
18 violation is an offense of domestic battery against the same
19 victim the court shall, on the motion of the State or its own
20 motion, revoke bail in accordance with the following
21 provisions:

22 (1) The court shall hold the defendant without bail
23 pending the hearing on the alleged breach; however, if the
24 defendant is not admitted to bail the hearing shall be
25 commenced within 10 days from the date the defendant is
26 taken into custody or the defendant may not be held any

1 longer without bail, unless delay is occasioned by the
2 defendant. Where defendant occasions the delay, the
3 running of the 10 day period is temporarily suspended and
4 resumes at the termination of the period of delay. Where
5 defendant occasions the delay with 5 or fewer days
6 remaining in the 10 day period, the court may grant a
7 period of up to 5 additional days to the State for good
8 cause shown. The State, however, shall retain the right to
9 proceed to hearing on the alleged violation at any time,
10 upon reasonable notice to the defendant and the court.

11 (2) At a hearing on the alleged violation the State has
12 the burden of going forward and proving the violation by
13 clear and convincing evidence. The evidence shall be
14 presented in open court with the opportunity to testify, to
15 present witnesses in his behalf, and to cross-examine
16 witnesses if any are called by the State, and
17 representation by counsel and if the defendant is indigent
18 to have counsel appointed for him. The rules of evidence
19 applicable in criminal trials in this State shall not
20 govern the admissibility of evidence at such hearing.
21 Information used by the court in its findings or stated in
22 or offered in connection with hearings for increase or
23 revocation of bail may be by way of proffer based upon
24 reliable information offered by the State or defendant. All
25 evidence shall be admissible if it is relevant and reliable
26 regardless of whether it would be admissible under the

1 rules of evidence applicable at criminal trials. A motion
2 by the defendant to suppress evidence or to suppress a
3 confession shall not be entertained at such a hearing.
4 Evidence that proof may have been obtained as a result of
5 an unlawful search and seizure or through improper
6 interrogation is not relevant to this hearing.

7 (3) Upon a finding by the court that the State has
8 established by clear and convincing evidence that the
9 defendant has committed a forcible felony or a Class 2 or
10 greater offense under the Illinois Controlled Substances
11 Act, the Cannabis Control Act, or the Methamphetamine
12 Control and Community Protection Act while admitted to
13 bail, or where the defendant is on bail for a felony
14 domestic battery (enhanced pursuant to subsection (b) of
15 Section 12-3.2 of the Criminal Code of 1961 or the Criminal
16 Code of 2012), aggravated domestic battery, aggravated
17 battery, unlawful restraint, aggravated unlawful restraint
18 or domestic battery in violation of item (1) of subsection
19 (a) of Section 12-3.2 of the Criminal Code of 1961 or the
20 Criminal Code of 2012 against a family or household member
21 as defined in Section 112A-3 of this Code and the violation
22 is an offense of domestic battery, against the same victim,
23 the court shall revoke the bail of the defendant and hold
24 the defendant for trial without bail. Neither the finding
25 of the court nor any transcript or other record of the
26 hearing shall be admissible in the State's case in chief,

1 but shall be admissible for impeachment, or as provided in
2 Section 115-10.1 of this Code or in a perjury proceeding.

3 (4) If the bail of any defendant is revoked pursuant to
4 paragraph (f) (3) of this Section, the defendant may demand
5 and shall be entitled to be brought to trial on the offense
6 with respect to which he was formerly released on bail
7 within 90 days after the date on which his bail was
8 revoked. If the defendant is not brought to trial within
9 the 90 day period required by the preceding sentence, he
10 shall not be held longer without bail. In computing the 90
11 day period, the court shall omit any period of delay
12 resulting from a continuance granted at the request of the
13 defendant.

14 (5) If the defendant either is arrested on a warrant
15 issued pursuant to this Code or is arrested for an
16 unrelated offense and it is subsequently discovered that
17 the defendant is a subject of another warrant or warrants
18 issued pursuant to this Code, the defendant shall be
19 transferred promptly to the court which issued such
20 warrant. If, however, the defendant appears initially
21 before a court other than the court which issued such
22 warrant, the non-issuing court shall not alter the amount
23 of bail heretofore set on such warrant unless the court
24 sets forth on the record of proceedings the conclusions of
25 law and facts which are the basis for such altering of
26 another court's bond. The non-issuing court shall not alter

1 another courts bail set on a warrant unless the interests
2 of justice and public safety are served by such action.

3 (g) The State may appeal any order where the court has
4 increased or reduced the amount of bail or altered the
5 conditions of the bail bond or granted bail where it has
6 previously been revoked.

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