



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5540

by Rep. Joyce Mason

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 all cases involving domestic violence, the court must order the defendant to undergo a risk assessment evaluation using a recognized, evidence-based instrument conducted by an Illinois Department of Human Services approved partner abuse intervention program provider, pretrial service, probation, or parole agency. Provides that these agencies shall have access to summaries of the defendant's criminal history, which shall not include victim interviews or information, for the risk evaluation. Provides that in every domestic violence case that will effect the amount of bail or require electronic monitoring, the defendant shall pay for the cost of electronic monitoring. Provides that the court shall revoke bail in domestic violence cases and issue a warrant for defendant's arrest if during the defendant's release on bail, the defendant makes a credible threat against the victim or other persons.

LRB101 18320 RLC 67766 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 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 offense involved domestic violence as
17 defined in Section 112A-3, whether the evidence shows that as
18 part of the offense there was a use of violence or threatened
19 use of violence or committed domestic violence or threatened
20 domestic violence against a family or household member, whether
21 the offense involved corruption of public officials or
22 employees, whether there was physical harm or threats of
23 physical harm to any public official, public employee, judge,

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

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

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

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

15 (a-1) In all cases involving domestic violence as defined
16 in Section 112A-3, the court must order the defendant to
17 undergo a risk assessment evaluation using a recognized,
18 evidence-based instrument conducted by an Illinois Department
19 of Human Services approved partner abuse intervention program
20 provider, pretrial service, probation, or parole agency. These
21 agencies shall have access to summaries of the defendant's
22 criminal history, which shall not include victim interviews or
23 information, for the risk evaluation. In every domestic
24 violence case that will effect the amount of bail or require
25 electronic monitoring, the defendant shall pay for the cost of
26 electronic monitoring. The court shall revoke bail in domestic

1 violence cases and issue a warrant for defendant's arrest if
2 during the defendant's release on bail, the defendant makes a
3 credible threat against the victim or other persons.

4 (a-5) There shall be a presumption that any conditions of
5 release imposed shall be non-monetary in nature and the court
6 shall impose the least restrictive conditions or combination of
7 conditions necessary to reasonably assure the appearance of the
8 defendant for further court proceedings and protect the
9 integrity of the judicial proceedings from a specific threat to
10 a witness or participant. Conditions of release may include,
11 but not be limited to, electronic home monitoring, curfews,
12 drug counseling, stay-away orders, and in-person reporting.
13 The court shall consider the defendant's socio-economic
14 circumstance when setting conditions of release or imposing
15 monetary bail.

16 (b) The amount of bail shall be:

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

25 (2) Not oppressive.

26 (3) Considerate of the financial ability of the

1 accused.

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

15 (b-5) Upon the filing of a written request demonstrating
16 reasonable cause, the State's Attorney may request a source of
17 bail hearing either before or after the posting of any funds.
18 If the hearing is granted, before the posting of any bail, the
19 accused must file a written notice requesting that the court
20 conduct a source of bail hearing. The notice must be
21 accompanied by justifying affidavits stating the legitimate
22 and lawful source of funds for bail. At the hearing, the court
23 shall inquire into any matters stated in any justifying
24 affidavits, and may also inquire into matters appropriate to
25 the determination which shall include, but are not limited to,
26 the following:

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

3 (2) the source of any money or property deposited by
4 any surety, and whether any such money or property
5 constitutes the fruits of criminal or unlawful conduct; and

6 (3) the source of any money posted as cash bail, and
7 whether any such money constitutes the fruits of criminal
8 or unlawful conduct; and

9 (4) the background, character, reputation, and
10 relationship to the accused of the person posting cash
11 bail.

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

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

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

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

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

6 (f) When a person is charged with a violation of an order
7 of protection under Section 12-3.4 or 12-30 of the Criminal
8 Code of 1961 or the Criminal Code of 2012 or when a person is
9 charged with domestic battery, aggravated domestic battery,
10 kidnapping, aggravated kidnaping, unlawful restraint,
11 aggravated unlawful restraint, stalking, aggravated stalking,
12 cyberstalking, harassment by telephone, harassment through
13 electronic communications, or an attempt to commit first degree
14 murder committed against an intimate partner regardless
15 whether an order of protection has been issued against the
16 person,

17 (1) whether the alleged incident involved harassment
18 or abuse, as defined in the Illinois Domestic Violence Act
19 of 1986;

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

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

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

26 (5) whether the person has been, or is, potentially a

1 threat to any other person;

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

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

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

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

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

22 (11) whether the person has expressed suicidal or
23 homicidal ideations;

24 (12) based on any information contained in the
25 complaint and any police reports, affidavits, or other
26 documents accompanying the complaint,

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

24 (Source: P.A. 99-143, eff. 7-27-15; 100-1, eff. 1-1-18; revised
25 7-12-19.)