



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5356

Introduced 1/31/2022, by Rep. Mark Batinick

SYNOPSIS AS INTRODUCED:

705 ILCS 105/27.11 new
725 ILCS 5/110-6.1

from Ch. 38, par. 110-6.1

Amends the Clerks of Courts Act. Provides that beginning January 1, 2023, the clerk of the circuit court must report to the Administrative Office of the Illinois Courts and every 30 days thereafter a list of offenders in the clerk's circuit who were charged with a violation of the Deadly Weapons Article of the Criminal Code of 2012 and whether they were detained or released on pretrial release. Provides that the Administrative Office of the Illinois Courts shall publish the information on a public database providing the offense type, date of the offense, and whether there was an order for detention or pretrial release. Provides that the offenders names shall not be listed on the public database. Provides that the Administrative Office of the Illinois Courts shall determine the manner in which the information is reported to the Office from the clerks. Amends the Code of Criminal Procedure of 1963. Provides that in addition to other factors in which the court may deny a defendant pretrial release, the court may deny a defendant pretrial release if: (1) the defendant is charged with an offense that involves the discharge of a firearm; or (2) the defendant is charged with any felony offense listed in Article 24 of the Criminal Code of 2012 and has a prior conviction for a weapons offense. Effective immediately.

LRB102 25058 RLC 34317 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 Clerks of Courts Act is amended by adding
5 Section 27.11 as follows:

6 (705 ILCS 105/27.11 new)

7 Sec. 27.11. Firearm offenses database; pretrial release.

8 (a) Beginning January 1, 2023, the clerk of the circuit
9 court must report to the Administrative Office of the Illinois
10 Courts and every 30 days thereafter a list of offenders in the
11 clerk's circuit who were charged with a violation of Article
12 24 of the Criminal Code of 2012 and whether they were detained
13 or released on pretrial release.

14 (b) The Administrative Office of the Illinois Courts shall
15 publish the information on a public database providing the
16 offense type, date of the offense, and whether there was an
17 order for detention or pretrial release.

18 (c) The offenders names shall not be listed on the public
19 database.

20 (d) The Administrative Office of the Illinois Courts shall
21 determine the manner in which the information is reported to
22 the Office from the clerks.

1 Section 10. The Code of Criminal Procedure of 1963 is
2 amended by changing Section 110-6.1 as follows:

3 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

4 (Text of Section before amendment by P.A. 101-652)

5 Sec. 110-6.1. Denial of bail in non-probationable felony
6 offenses.

7 (a) Upon verified petition by the State, the court shall
8 hold a hearing to determine whether bail should be denied to a
9 defendant who is charged with a felony offense for which a
10 sentence of imprisonment, without probation, periodic
11 imprisonment or conditional discharge, is required by law upon
12 conviction, when it is alleged that the defendant's admission
13 to bail poses a real and present threat to the physical safety
14 of any person or persons.

15 (1) A petition may be filed without prior notice to
16 the defendant at the first appearance before a judge, or
17 within the 21 calendar days, except as provided in Section
18 110-6, after arrest and release of the defendant upon
19 reasonable notice to defendant; provided that while such
20 petition is pending before the court, the defendant if
21 previously released shall not be detained.

22 (2) The hearing shall be held immediately upon the
23 defendant's appearance before the court, unless for good
24 cause shown the defendant or the State seeks a
25 continuance. A continuance on motion of the defendant may

1 not exceed 5 calendar days, and a continuance on the
2 motion of the State may not exceed 3 calendar days. The
3 defendant may be held in custody during such continuance.

4 (b) The court may deny bail to the defendant where, after
5 the hearing, it is determined that:

6 (1) the proof is evident or the presumption great that
7 the defendant has committed an offense for which a
8 sentence of imprisonment, without probation, periodic
9 imprisonment or conditional discharge, must be imposed by
10 law as a consequence of conviction, and

11 (2) the defendant poses a real and present threat to
12 the physical safety of any person or persons, by conduct
13 which may include, but is not limited to, a forcible
14 felony, the obstruction of justice, intimidation, injury,
15 physical harm, an offense under the Illinois Controlled
16 Substances Act which is a Class X felony, or an offense
17 under the Methamphetamine Control and Community Protection
18 Act which is a Class X felony, and

19 (3) the court finds that no condition or combination
20 of conditions set forth in subsection (b) of Section
21 110-10 of this Article, can reasonably assure the physical
22 safety of any other person or persons.

23 (c) Conduct of the hearings.

24 (1) The hearing on the defendant's culpability and
25 dangerousness shall be conducted in accordance with the
26 following provisions:

1 (A) Information used by the court in its findings
2 or stated in or offered at such hearing may be by way
3 of proffer based upon reliable information offered by
4 the State or by defendant. Defendant has the right to
5 be represented by counsel, and if he is indigent, to
6 have counsel appointed for him. Defendant shall have
7 the opportunity to testify, to present witnesses in
8 his own behalf, and to cross-examine witnesses if any
9 are called by the State. The defendant has the right to
10 present witnesses in his favor. When the ends of
11 justice so require, the court may exercises its
12 discretion and compel the appearance of a complaining
13 witness. The court shall state on the record reasons
14 for granting a defense request to compel the presence
15 of a complaining witness. Cross-examination of a
16 complaining witness at the pretrial detention hearing
17 for the purpose of impeaching the witness' credibility
18 is insufficient reason to compel the presence of the
19 witness. In deciding whether to compel the appearance
20 of a complaining witness, the court shall be
21 considerate of the emotional and physical well-being
22 of the witness. The pre-trial detention hearing is not
23 to be used for purposes of discovery, and the post
24 arraignment rules of discovery do not apply. The State
25 shall tender to the defendant, prior to the hearing,
26 copies of defendant's criminal history, if any, if

1 available, and any written or recorded statements and
2 the substance of any oral statements made by any
3 person, if relied upon by the State in its petition.
4 The rules concerning the admissibility of evidence in
5 criminal trials do not apply to the presentation and
6 consideration of information at the hearing. At the
7 trial concerning the offense for which the hearing was
8 conducted neither the finding of the court nor any
9 transcript or other record of the hearing shall be
10 admissible in the State's case in chief, but shall be
11 admissible for impeachment, or as provided in Section
12 115-10.1 of this Code, or in a perjury proceeding.

13 (B) A motion by the defendant to suppress evidence
14 or to suppress a confession shall not be entertained.
15 Evidence that proof may have been obtained as the
16 result of an unlawful search and seizure or through
17 improper interrogation is not relevant to this state
18 of the prosecution.

19 (2) The facts relied upon by the court to support a
20 finding that the defendant poses a real and present threat
21 to the physical safety of any person or persons shall be
22 supported by clear and convincing evidence presented by
23 the State.

24 (d) Factors to be considered in making a determination of
25 dangerousness. The court may, in determining whether the
26 defendant poses a real and present threat to the physical

1 safety of any person or persons, consider but shall not be
2 limited to evidence or testimony concerning:

3 (1) The nature and circumstances of any offense
4 charged, including whether the offense is a crime of
5 violence, involving a weapon.

6 (2) The history and characteristics of the defendant
7 including:

8 (A) Any evidence of the defendant's prior criminal
9 history indicative of violent, abusive or assaultive
10 behavior, or lack of such behavior. Such evidence may
11 include testimony or documents received in juvenile
12 proceedings, criminal, quasi-criminal, civil
13 commitment, domestic relations or other proceedings.

14 (B) Any evidence of the defendant's psychological,
15 psychiatric or other similar social history which
16 tends to indicate a violent, abusive, or assaultive
17 nature, or lack of any such history.

18 (3) The identity of any person or persons to whose
19 safety the defendant is believed to pose a threat, and the
20 nature of the threat;

21 (4) Any statements made by, or attributed to the
22 defendant, together with the circumstances surrounding
23 them;

24 (5) The age and physical condition of any person
25 assaulted by the defendant;

26 (6) Whether the defendant is known to possess or have

1 access to any weapon or weapons;

2 (7) Whether, at the time of the current offense or any
3 other offense or arrest, the defendant was on probation,
4 parole, aftercare release, mandatory supervised release or
5 other release from custody pending trial, sentencing,
6 appeal or completion of sentence for an offense under
7 federal or state law;

8 (8) Any other factors, including those listed in
9 Section 110-5 of this Article deemed by the court to have a
10 reasonable bearing upon the defendant's propensity or
11 reputation for violent, abusive or assaultive behavior, or
12 lack of such behavior.

13 (e) Detention order. The court shall, in any order for
14 detention:

15 (1) briefly summarize the evidence of the defendant's
16 culpability and its reasons for concluding that the
17 defendant should be held without bail;

18 (2) direct that the defendant be committed to the
19 custody of the sheriff for confinement in the county jail
20 pending trial;

21 (3) direct that the defendant be given a reasonable
22 opportunity for private consultation with counsel, and for
23 communication with others of his choice by visitation,
24 mail and telephone; and

25 (4) direct that the sheriff deliver the defendant as
26 required for appearances in connection with court

1 proceedings.

2 (f) If the court enters an order for the detention of the
3 defendant pursuant to subsection (e) of this Section, the
4 defendant shall be brought to trial on the offense for which he
5 is detained within 90 days after the date on which the order
6 for detention was entered. If the defendant is not brought to
7 trial within the 90 day period required by the preceding
8 sentence, he shall not be held longer without bail. In
9 computing the 90 day period, the court shall omit any period of
10 delay resulting from a continuance granted at the request of
11 the defendant.

12 (g) Rights of the defendant. Any person shall be entitled
13 to appeal any order entered under this Section denying bail to
14 the defendant.

15 (h) The State may appeal any order entered under this
16 Section denying any motion for denial of bail.

17 (i) Nothing in this Section shall be construed as
18 modifying or limiting in any way the defendant's presumption
19 of innocence in further criminal proceedings.

20 (Source: P.A. 98-558, eff. 1-1-14.)

21 (Text of Section after amendment by P.A. 101-652)

22 Sec. 110-6.1. Denial of pretrial release.

23 (a) Upon verified petition by the State, the court shall
24 hold a hearing and may deny a defendant pretrial release only
25 if:

1 (1) the defendant is charged with a forcible felony
2 offense for which a sentence of imprisonment, without
3 probation, periodic imprisonment or conditional discharge,
4 is required by law upon conviction, and it is alleged that
5 the defendant's pretrial release poses a specific, real
6 and present threat to any person or the community.;

7 (2) the defendant is charged with stalking or
8 aggravated stalking and it is alleged that the defendant's
9 pre-trial release poses a real and present threat to the
10 physical safety of a victim of the alleged offense, and
11 denial of release is necessary to prevent fulfillment of
12 the threat upon which the charge is based;

13 (3) the victim of abuse was a family or household
14 member as defined by paragraph (6) of Section 103 of the
15 Illinois Domestic Violence Act of 1986, and the person
16 charged, at the time of the alleged offense, was subject
17 to the terms of an order of protection issued under
18 Section 112A-14 of this Code, or Section 214 of the
19 Illinois Domestic Violence Act of 1986 or previously was
20 convicted of a violation of an order of protection under
21 Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the
22 Criminal Code of 2012 or a violent crime if the victim was
23 a family or household member as defined by paragraph (6)
24 of the Illinois Domestic Violence Act of 1986 at the time
25 of the offense or a violation of a substantially similar
26 municipal ordinance or law of this or any other state or

1 the United States if the victim was a family or household
2 member as defined by paragraph (6) of Section 103 of the
3 Illinois Domestic Violence Act of 1986 at the time of the
4 offense, and it is alleged that the defendant's pre-trial
5 release poses a real and present threat to the physical
6 safety of any person or persons;

7 (4) the defendant is charged with domestic battery or
8 aggravated domestic battery under Section 12-3.2 or 12-3.3
9 of the Criminal Code of 2012 and it is alleged that the
10 defendant's pretrial release poses a real and present
11 threat to the physical safety of any person or persons;

12 (5) the defendant is charged with any offense under
13 Article 11 of the Criminal Code of 2012, except for
14 Sections 11-30, 11-35, 11-40, and 11-45 of the Criminal
15 Code of 2012, or similar provisions of the Criminal Code
16 of 1961 and it is alleged that the defendant's pretrial
17 release poses a real and present threat to the physical
18 safety of any person or persons;

19 (6) the defendant is charged with any of these
20 violations under the Criminal Code of 2012 and it is
21 alleged that the defendant's pretrial releases poses a
22 real and present threat to the physical safety of any
23 specifically identifiable person or persons.

24 (A) Section 24-1.2 (aggravated discharge of a
25 firearm);

26 (B) Section 24-2.5 (aggravated discharge of a

1 machine gun or a firearm equipped with a device
2 designed or use for silencing the report of a
3 firearm);

4 (C) Section 24-1.5 (reckless discharge of a
5 firearm);

6 (D) Section 24-1.7 (armed habitual criminal);

7 (E) Section 24-2.2 2 (manufacture, sale or
8 transfer of bullets or shells represented to be armor
9 piercing bullets, dragon's breath shotgun shells, bolo
10 shells or flechette shells);

11 (F) Section 24-3 (unlawful sale or delivery of
12 firearms);

13 (G) Section 24-3.3 (unlawful sale or delivery of
14 firearms on the premises of any school);

15 (H) Section 24-34 (unlawful sale of firearms by
16 liquor license);

17 (I) Section 24-3.5 (unlawful purchase of a
18 firearm);

19 (J) Section 24-3A (gunrunning); or

20 (K) Section on 24-3B (firearms trafficking);

21 (L) Section 10-9 (b) (involuntary servitude);

22 (M) Section 10-9 (c) (involuntary sexual servitude
23 of a minor);

24 (N) Section 10-9(d) (trafficking in persons);

25 (O) Non-probationable violations: (i) (unlawful
26 use or possession of weapons by felons or persons in

1 the Custody of the Department of Corrections
2 facilities (Section 24-1.1), (ii) aggravated unlawful
3 use of a weapon (Section 24-1.6, or (iii) aggravated
4 possession of a stolen firearm (Section 24-3.9);

5 (7) the person has a high likelihood of willful flight
6 to avoid prosecution and is charged with:

7 (A) Any felony described in Sections (a)(1)
8 through (a)(5) of this Section; or

9 (B) A felony offense other than a Class 4 offense;

10 (8) the defendant is charged with an offense that
11 involves the discharge of a firearm; or

12 (9) the defendant is charged with any felony offense
13 listed in Article 24 of the Criminal Code of 2012 and has a
14 prior conviction for a weapons offense.

15

16 (b) If the charged offense is a felony, the Court shall
17 hold a hearing pursuant to 109-3 of this Code to determine
18 whether there is probable cause the defendant has committed an
19 offense, unless a grand jury has returned a true bill of
20 indictment against the defendant. If there is a finding of no
21 probable cause, the defendant shall be released. No such
22 finding is necessary if the defendant is charged with a
23 misdemeanor.

24 (c) Timing of petition.

25 (1) A petition may be filed without prior notice to
26 the defendant at the first appearance before a judge, or

1 within the 21 calendar days, except as provided in Section
2 110-6, after arrest and release of the defendant upon
3 reasonable notice to defendant; provided that while such
4 petition is pending before the court, the defendant if
5 previously released shall not be detained.

6 (2) (2) Upon filing, the court shall immediately hold
7 a hearing on the petition unless a continuance is
8 requested. If a continuance is requested, the hearing
9 shall be held within 48 hours of the defendant's first
10 appearance if the defendant is charged with a Class X,
11 Class 1, Class 2, or Class 3 felony, and within 24 hours if
12 the defendant is charged with a Class 4 or misdemeanor
13 offense. The Court may deny and or grant the request for
14 continuance. If the court decides to grant the
15 continuance, the Court retains the discretion to detain or
16 release the defendant in the time between the filing of
17 the petition and the hearing.

18 (d) Contents of petition.

19 (1) The petition shall be verified by the State and
20 shall state the grounds upon which it contends the
21 defendant should be denied pretrial release, including the
22 identity of the specific person or persons the State
23 believes the defendant poses a danger to.

24 (2) Only one petition may be filed under this Section.

25 (e) Eligibility: All defendants shall be presumed eligible
26 for pretrial release, and the State shall bear the burden of

1 proving by clear and convincing evidence that:

2 (1) the proof is evident or the presumption great that
3 the defendant has committed an offense listed in
4 paragraphs (1) through (6) of subsection (a), and

5 (2) the defendant poses a real and present threat to
6 the safety of a specific, identifiable person or persons,
7 by conduct which may include, but is not limited to, a
8 forcible felony, the obstruction of justice, intimidation,
9 injury, or abuse as defined by paragraph (1) of Section
10 103 of the Illinois Domestic Violence Act of 1986, and

11 (3) no condition or combination of conditions set
12 forth in subsection (b) of Section 110-10 of this Article
13 can mitigate the real and present threat to the safety of
14 any person or persons or the defendant's willful flight.

15 (f) Conduct of the hearings.

16 (1) Prior to the hearing the State shall tender to the
17 defendant copies of defendant's criminal history
18 available, any written or recorded statements, and the
19 substance of any oral statements made by any person, if
20 relied upon by the State in its petition, and any police
21 reports in the State's Attorney's possession at the time
22 of the hearing that are required to be disclosed to the
23 defense under Illinois Supreme Court rules.

24 (2) The State or defendant may present evidence at the
25 hearing by way of proffer based upon reliable information.

26 (3) The defendant has the right to be represented by

1 counsel, and if he or she is indigent, to have counsel
2 appointed for him or her. The defendant shall have the
3 opportunity to testify, to present witnesses on his or her
4 own behalf, and to cross-examine any witnesses that are
5 called by the State.

6 (4) If the defense seeks to call the complaining
7 witness as a witness in its favor, it shall petition the
8 court for permission. When the ends of justice so require,
9 the court may exercise its discretion and compel the
10 appearance of a complaining witness. The court shall state
11 on the record reasons for granting a defense request to
12 compel the presence of a complaining witness. In making a
13 determination under this section, the court shall state on
14 the record the reason for granting a defense request to
15 compel the presence of a complaining witness, and only
16 grant the request if the court finds by clear and
17 convincing evidence that the defendant will be materially
18 prejudiced if the complaining witness does not appear.
19 Cross-examination of a complaining witness at the pretrial
20 detention hearing for the purpose of impeaching the
21 witness' credibility is insufficient reason to compel the
22 presence of the witness. In deciding whether to compel the
23 appearance of a complaining witness, the court shall be
24 considerate of the emotional and physical well-being of
25 the witness. The pre-trial detention hearing is not to be
26 used for purposes of discovery, and the post arraignment

1 rules of discovery do not apply.

2 (5) The rules concerning the admissibility of evidence
3 in criminal trials do not apply to the presentation and
4 consideration of information at the hearing. At the trial
5 concerning the offense for which the hearing was conducted
6 neither the finding of the court nor any transcript or
7 other record of the hearing shall be admissible in the
8 State's case in chief, but shall be admissible for
9 impeachment, or as provided in Section 115-10.1 of this
10 Code, or in a perjury proceeding.

11 (6) The defendant may not move to suppress evidence or
12 a confession, however, evidence that proof of the charged
13 crime may have been the result of an unlawful search or
14 seizure, or both, or through improper interrogation, is
15 relevant in assessing the weight of the evidence against
16 the defendant.

17 (7) Decisions regarding release, conditions of release
18 and detention prior trial should be individualized, and no
19 single factor or standard should be used exclusively to
20 make a condition or detention decision.

21 (g) Factors to be considered in making a determination of
22 dangerousness. The court may, in determining whether the
23 defendant poses a specific, imminent threat of serious
24 physical harm to an identifiable person or persons, consider
25 but shall not be limited to evidence or testimony concerning:

26 (1) The nature and circumstances of any offense

1 charged, including whether the offense is a crime of
2 violence, involving a weapon, or a sex offense.

3 (2) The history and characteristics of the defendant
4 including:

5 (A) Any evidence of the defendant's prior criminal
6 history indicative of violent, abusive or assaultive
7 behavior, or lack of such behavior. Such evidence may
8 include testimony or documents received in juvenile
9 proceedings, criminal, quasi-criminal, civil
10 commitment, domestic relations or other proceedings.

11 (B) Any evidence of the defendant's psychological,
12 psychiatric or other similar social history which
13 tends to indicate a violent, abusive, or assaultive
14 nature, or lack of any such history.

15 (3) The identity of any person or persons to whose
16 safety the defendant is believed to pose a threat, and the
17 nature of the threat;

18 (4) Any statements made by, or attributed to the
19 defendant, together with the circumstances surrounding
20 them;

21 (5) The age and physical condition of the defendant;

22 (6) The age and physical condition of any victim or
23 complaining witness;

24 (7) Whether the defendant is known to possess or have
25 access to any weapon or weapons;

26 (8) Whether, at the time of the current offense or any

1 other offense or arrest, the defendant was on probation,
2 parole, aftercare release, mandatory supervised release or
3 other release from custody pending trial, sentencing,
4 appeal or completion of sentence for an offense under
5 federal or state law;

6 (9) Any other factors, including those listed in
7 Section 110-5 of this Article deemed by the court to have a
8 reasonable bearing upon the defendant's propensity or
9 reputation for violent, abusive or assaultive behavior, or
10 lack of such behavior.

11 (h) Detention order. The court shall, in any order for
12 detention:

13 (1) briefly summarize the evidence of the defendant's
14 guilt or innocence, and the court's reasons for concluding
15 that the defendant should be denied pretrial release;

16 (2) direct that the defendant be committed to the
17 custody of the sheriff for confinement in the county jail
18 pending trial;

19 (3) direct that the defendant be given a reasonable
20 opportunity for private consultation with counsel, and for
21 communication with others of his or her choice by
22 visitation, mail and telephone; and

23 (4) direct that the sheriff deliver the defendant as
24 required for appearances in connection with court
25 proceedings.

26 (i) Detention. If the court enters an order for the

1 detention of the defendant pursuant to subsection (e) of this
2 Section, the defendant shall be brought to trial on the
3 offense for which he is detained within 90 days after the date
4 on which the order for detention was entered. If the defendant
5 is not brought to trial within the 90 day period required by
6 the preceding sentence, he shall not be denied pretrial
7 release. In computing the 90 day period, the court shall omit
8 any period of delay resulting from a continuance granted at
9 the request of the defendant.

10 (j) Rights of the defendant. Any person shall be entitled
11 to appeal any order entered under this Section denying
12 pretrial release to the defendant.

13 (k) Appeal. The State may appeal any order entered under
14 this Section denying any motion for denial of pretrial
15 release.

16 (l) Presumption of innocence. Nothing in this Section
17 shall be construed as modifying or limiting in any way the
18 defendant's presumption of innocence in further criminal
19 proceedings.

20 (m) Victim notice.

21 (1) Crime victims shall be given notice by the State's
22 Attorney's office of this hearing as required in paragraph
23 (1) of subsection (b) of Section 4.5 of the Rights of Crime
24 Victims and Witnesses Act and shall be informed of their
25 opportunity at this hearing to obtain an order of
26 protection under Article 112A of this Code.

1 (Source: P.A. 101-652, eff. 1-1-23.)

2 Section 95. No acceleration or delay. Where this Act makes
3 changes in a statute that is represented in this Act by text
4 that is not yet or no longer in effect (for example, a Section
5 represented by multiple versions), the use of that text does
6 not accelerate or delay the taking effect of (i) the changes
7 made by this Act or (ii) provisions derived from any other
8 Public Act.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.