

# HB5811



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

**HB5811**

Introduced 11/16/2022, by Rep. Jim Durkin

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6.1

from Ch. 38, par. 110-6.1

Amends the Code of Criminal Procedure of 1963. Provides that upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release if the defendant is charged with intimidation by a public official or bribery. Effective January 1, 2023.

LRB102 29045 RLC 40948 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 110-6.1 as follows:

6 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

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

8 Sec. 110-6.1. Denial of bail in non-probationable felony  
9 offenses.

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

18 (1) A petition may be filed without prior notice to  
19 the defendant at the first appearance before a judge, or  
20 within the 21 calendar days, except as provided in Section  
21 110-6, after arrest and release of the defendant upon  
22 reasonable notice to defendant; provided that while such  
23 petition is pending before the court, the defendant if

1 previously released shall not be detained.

2 (2) The hearing shall be held immediately upon the  
3 defendant's appearance before the court, unless for good  
4 cause shown the defendant or the State seeks a  
5 continuance. A continuance on motion of the defendant may  
6 not exceed 5 calendar days, and a continuance on the  
7 motion of the State may not exceed 3 calendar days. The  
8 defendant may be held in custody during such continuance.

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

11 (1) the proof is evident or the presumption great that  
12 the defendant has committed an offense for which a  
13 sentence of imprisonment, without probation, periodic  
14 imprisonment or conditional discharge, must be imposed by  
15 law as a consequence of conviction, and

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

24 (3) the court finds that no condition or combination  
25 of conditions set forth in subsection (b) of Section  
26 110-10 of this Article, can reasonably assure the physical

1 safety of any other person or persons.

2 (c) Conduct of the hearings.

3 (1) The hearing on the defendant's culpability and  
4 dangerousness shall be conducted in accordance with the  
5 following provisions:

6 (A) Information used by the court in its findings  
7 or stated in or offered at such hearing may be by way  
8 of proffer based upon reliable information offered by  
9 the State or by defendant. Defendant has the right to  
10 be represented by counsel, and if he is indigent, to  
11 have counsel appointed for him. Defendant shall have  
12 the opportunity to testify, to present witnesses in  
13 his own behalf, and to cross-examine witnesses if any  
14 are called by the State. The defendant has the right to  
15 present witnesses in his favor. When the ends of  
16 justice so require, the court may exercise its  
17 discretion and compel the appearance of a complaining  
18 witness. The court shall state on the record reasons  
19 for granting a defense request to compel the presence  
20 of a complaining witness. Cross-examination of a  
21 complaining witness at the pretrial detention hearing  
22 for the purpose of impeaching the witness' credibility  
23 is insufficient reason to compel the presence of the  
24 witness. In deciding whether to compel the appearance  
25 of a complaining witness, the court shall be  
26 considerate of the emotional and physical well-being

1 of the witness. The pre-trial detention hearing is not  
2 to be used for purposes of discovery, and the post  
3 arraignment rules of discovery do not apply. The State  
4 shall tender to the defendant, prior to the hearing,  
5 copies of defendant's criminal history, if any, if  
6 available, and any written or recorded statements and  
7 the substance of any oral statements made by any  
8 person, if relied upon by the State in its petition.  
9 The rules concerning the admissibility of evidence in  
10 criminal trials do not apply to the presentation and  
11 consideration of information at the hearing. At the  
12 trial concerning the offense for which the hearing was  
13 conducted neither the finding of the court nor any  
14 transcript or other record of the hearing shall be  
15 admissible in the State's case in chief, but shall be  
16 admissible for impeachment, or as provided in Section  
17 115-10.1 of this Code, or in a perjury proceeding.

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

24 (2) The facts relied upon by the court to support a  
25 finding that the defendant poses a real and present threat  
26 to the physical safety of any person or persons shall be

1 supported by clear and convincing evidence presented by  
2 the State.

3 (d) Factors to be considered in making a determination of  
4 dangerousness. The court may, in determining whether the  
5 defendant poses a real and present threat to the physical  
6 safety of any person or persons, consider but shall not be  
7 limited to evidence or testimony concerning:

8 (1) The nature and circumstances of any offense  
9 charged, including whether the offense is a crime of  
10 violence, involving a weapon.

11 (2) The history and characteristics of the defendant  
12 including:

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

19 (B) Any evidence of the defendant's psychological,  
20 psychiatric or other similar social history which  
21 tends to indicate a violent, abusive, or assaultive  
22 nature, or lack of any such history.

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

26 (4) Any statements made by, or attributed to the

1 defendant, together with the circumstances surrounding  
2 them;

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

5 (6) Whether the defendant is known to possess or have  
6 access to any weapon or weapons;

7 (7) Whether, at the time of the current offense or any  
8 other offense or arrest, the defendant was on probation,  
9 parole, aftercare release, mandatory supervised release or  
10 other release from custody pending trial, sentencing,  
11 appeal or completion of sentence for an offense under  
12 federal or state law;

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

18 (e) Detention order. The court shall, in any order for  
19 detention:

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

23 (2) direct that the defendant be committed to the  
24 custody of the sheriff for confinement in the county jail  
25 pending trial;

26 (3) direct that the defendant be given a reasonable

1 opportunity for private consultation with counsel, and for  
2 communication with others of his choice by visitation,  
3 mail and telephone; and

4 (4) direct that the sheriff deliver the defendant as  
5 required for appearances in connection with court  
6 proceedings.

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

17 (g) Rights of the defendant. Any person shall be entitled  
18 to appeal any order entered under this Section denying bail to  
19 the defendant.

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

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

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



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

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

3 (a) Upon verified petition by the State, the court shall  
4 hold a hearing and may deny a defendant pretrial release only  
5 if:

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

12 (2) the defendant is charged with stalking or  
13 aggravated stalking and it is alleged that the defendant's  
14 pretrial ~~pre-trial~~ release poses a real and present threat  
15 to the physical safety of a victim of the alleged offense,  
16 and denial of release is necessary to prevent fulfillment  
17 of the threat upon which the charge is based;

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

1 Criminal Code of 2012 or a violent crime if the victim was  
2 a family or household member as defined by paragraph (6)  
3 of the Illinois Domestic Violence Act of 1986 at the time  
4 of the offense or a violation of a substantially similar  
5 municipal ordinance or law of this or any other state or  
6 the United States if the victim was a family or household  
7 member as defined by paragraph (6) of Section 103 of the  
8 Illinois Domestic Violence Act of 1986 at the time of the  
9 offense, and it is alleged that the defendant's pretrial  
10 ~~pre-trial~~ release poses a real and present threat to the  
11 physical safety of any person or persons;

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

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

24 (6) the defendant is charged with any of these  
25 violations under the Criminal Code of 2012 and it is  
26 alleged that the defendant's pretrial releases poses a

1 real and present threat to the physical safety of any  
2 specifically identifiable person or persons;~~:-~~

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

5 (B) Section 24-2.5 (aggravated discharge of a  
6 machine gun or a firearm equipped with a device  
7 designed or use for silencing the report of a  
8 firearm);

9 (C) Section 24-1.5 (reckless discharge of a  
10 firearm);

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

12 (E) Section 24-2.2 ~~2~~ (manufacture, sale or  
13 transfer of bullets or shells represented to be armor  
14 piercing bullets, dragon's breath shotgun shells, bolo  
15 shells, or flechette shells);

16 (F) Section 24-3 (unlawful sale or delivery of  
17 firearms);

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

20 (H) Section 24-34 (unlawful sale of firearms by  
21 liquor license);

22 (I) Section 24-3.5 ~~(~~unlawful purchase of a  
23 firearm);

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

25 (K) Section ~~or~~ 24-3B (firearms trafficking);

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

1 (M) Section 10-9 (c) (involuntary sexual servitude  
2 of a minor);

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

4 (O) Non-probationable violations: (i) (unlawful  
5 use or possession of weapons by felons or persons in  
6 the Custody of the Department of Corrections  
7 facilities (Section 24-1.1), (ii) aggravated unlawful  
8 use of a weapon (Section 24-1.6), or (iii) aggravated  
9 possession of a stolen firearm (Section 24-3.9);

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

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

14 (B) A felony offense other than a Class 4 offense;  
15 (8) the defendant is charged with a violation of  
16 paragraph (6) of subsection (a) of Section 12-6 of the  
17 Criminal Code of 2012 (intimidation by a public official)  
18 or Section 33-1 of the Criminal Code of 2012 (bribery).

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

1 (c) Timing of petition.

2 (1) A petition may be filed without prior notice to  
3 the defendant at the first appearance before a judge, or  
4 within the 21 calendar days, except as provided in Section  
5 110-6, after arrest and release of the defendant upon  
6 reasonable notice to defendant; provided that while such  
7 petition is pending before the court, the defendant if  
8 previously released shall not be detained.

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

21 (d) Contents of petition.

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

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

2 (e) Eligibility: All defendants shall be presumed eligible  
3 for pretrial release, and the State shall bear the burden of  
4 proving by clear and convincing evidence that:

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

8 (2) the defendant poses a real and present threat to  
9 the safety of a specific, identifiable person or persons,  
10 by conduct which may include, but is not limited to, a  
11 forcible felony, the obstruction of justice, intimidation,  
12 injury, or abuse as defined by paragraph (1) of Section  
13 103 of the Illinois Domestic Violence Act of 1986, and

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

18 (f) Conduct of the hearings.

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

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

3           (3) The defendant has the right to be represented by  
4 counsel, and if he or she is indigent, to have counsel  
5 appointed for him or her. The defendant shall have the  
6 opportunity to testify, to present witnesses on his or her  
7 own behalf, and to cross-examine any witnesses that are  
8 called by the State.

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

1           considerate of the emotional and physical well-being of  
2           the witness. The pretrial ~~pre-trial~~ detention hearing is  
3           not to be used for purposes of discovery, and the post  
4           arraignment rules of discovery do not apply.

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

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

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

24          (g) Factors to be considered in making a determination of  
25          dangerousness. The court may, in determining whether the  
26          defendant poses a specific, imminent threat of serious



1 physical harm to an identifiable person or persons, consider,l  
2 but shall not be limited to,l 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, or a sex offense.

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,l 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.l†

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

24 (5) The age and physical condition of the defendant.l†

25 (6) The age and physical condition of any victim or  
26 complaining witness.l†

1 (7) Whether the defendant is known to possess or have  
2 access to any weapon or weapons.†

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

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

14 (h) Detention order. The court shall, in any order for  
15 detention:

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

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

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

26 (4) direct that the sheriff deliver the defendant as

1 required for appearances in connection with court  
2 proceedings.

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

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

16 (k) Appeal. The State may appeal any order entered under  
17 this Section denying any motion for denial of pretrial  
18 release.

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

23 (m) Victim notice. ~~(1)~~ Crime victims shall be given notice  
24 by the State's Attorney's office of this hearing as required  
25 in paragraph (1) of subsection (b) of Section 4.5 of the Rights  
26 of Crime Victims and Witnesses Act and shall be informed of

1 their opportunity at this hearing to obtain an order of  
2 protection under Article 112A of this Code.

3 (Source: P.A. 101-652, eff. 1-1-23; revised 2-28-22.)

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

11 Section 99. Effective date. This Act takes effect January  
12 1, 2023.