

# HB5867



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5867

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. Deletes a provision that if the defense seeks to compel the complaining witness to testify as a witness in its favor in a hearing to deny pretrial release, it shall petition the court for permission. Deletes a provision that when the ends of justice so require, the court may exercise its discretion and compel the appearance of a complaining witness at a hearing to deny pretrial release.

LRB102 30144 RLC 42436 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 1. References to Act; intent.

5 (a) This Act may be referred to as the Protect Our Victims  
6 (POV) Act.

7 (b) In 2022, the Illinois SAFE-T Act was enacted into law.  
8 One provision added, enhanced an accused's ability to compel a  
9 crime victim to appear at a detention hearing and be subject to  
10 cross-examination. These hearings are often conducted within  
11 days after the arrest of the accused. The wounds and trauma of  
12 the victims are fresh and devastating. We, as a State, have  
13 prioritized the rights of crime victims by statute and more  
14 importantly by constitutional amendment. In 2014, voters  
15 approved the Illinois Crime Victims' Bill of Rights (otherwise  
16 known as Marsy's Law). This constitutional provision states  
17 that crime victims have a right to be free from harassment,  
18 intimidation, and abuse throughout the court process.  
19 Subjecting a crime victim to be involuntarily called before a  
20 judge in a courtroom with the accused present for a detention  
21 hearing serves no purpose other than to traumatize the victim.  
22 This Act is consistent with our Constitution and deletes this  
23 ill-advised practice from our Code of Criminal Procedure of  
24 1963. Illinois needs to stand-up for the countless victims of

1 crime.

2 Section 5. The Code of Criminal Procedure of 1963 is  
3 amended by changing Section 110-6.1 as follows:

4 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

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

6 (a) Upon verified petition by the State, the court shall  
7 hold a hearing and may deny a defendant pretrial release only  
8 if:

9 (1) the defendant is charged with a felony offense  
10 other than a forcible felony for which, based on the  
11 charge or the defendant's criminal history, a sentence of  
12 imprisonment, without probation, periodic imprisonment or  
13 conditional discharge, is required by law upon conviction,  
14 and it is alleged that the defendant's pretrial release  
15 poses a real and present threat to the safety of any person  
16 or persons or the community, based on the specific  
17 articulable facts of the case;

18 (1.5) the defendant's pretrial release poses a real  
19 and present threat to the safety of any person or persons  
20 or the community, based on the specific articulable facts  
21 of the case, and the defendant is charged with a forcible  
22 felony, which as used in this Section, means treason,  
23 first degree murder, second degree murder, predatory  
24 criminal sexual assault of a child, aggravated criminal

1 sexual assault, criminal sexual assault, armed robbery,  
2 aggravated robbery, robbery, burglary where there is use  
3 of force against another person, residential burglary,  
4 home invasion, vehicular invasion, aggravated arson,  
5 arson, aggravated kidnaping, kidnaping, aggravated battery  
6 resulting in great bodily harm or permanent disability or  
7 disfigurement or any other felony which involves the  
8 threat of or infliction of great bodily harm or permanent  
9 disability or disfigurement;

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

16 (3) the defendant is charged with a violation of an  
17 order of protection issued under Section 112A-14 of this  
18 Code or Section 214 of the Illinois Domestic Violence Act  
19 of 1986, a stalking no contact order under Section 80 of  
20 the Stalking No Contact Order Act, or of a civil no contact  
21 order under Section 213 of the Civil No Contact Order Act,  
22 and it is alleged that the defendant's pretrial release  
23 poses a real and present threat to the safety of any person  
24 or persons or the community, based on the specific  
25 articulable facts of the case;

26 (4) the defendant is charged with domestic battery or

1 aggravated domestic battery under Section 12-3.2 or 12-3.3  
2 of the Criminal Code of 2012 and it is alleged that the  
3 defendant's pretrial release poses a real and present  
4 threat to the safety of any person or persons or the  
5 community, based on the specific articulable facts of the  
6 case;

7 (5) the defendant is charged with any offense under  
8 Article 11 of the Criminal Code of 2012, except for  
9 Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35,  
10 11-40, and 11-45 of the Criminal Code of 2012, or similar  
11 provisions of the Criminal Code of 1961 and it is alleged  
12 that the defendant's pretrial release poses a real and  
13 present threat to the safety of any person or persons or  
14 the community, based on the specific articulable facts of  
15 the case;

16 (6) the defendant is charged with any of the following  
17 offenses under the Criminal Code of 2012, and it is  
18 alleged that the defendant's pretrial release poses a real  
19 and present threat to the safety of any person or persons  
20 or the community, based on the specific articulable facts  
21 of the case:

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

24 (B) Section 24-2.5 (aggravated discharge of a  
25 machine gun or a firearm equipped with a device  
26 designed or use for silencing the report of a

1 firearm);

2 (C) Section 24-1.5 (reckless discharge of a  
3 firearm);

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

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

9 (F) Section 24-3 (unlawful sale or delivery of  
10 firearms);

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

13 (H) Section 24-34 (unlawful sale of firearms by  
14 liquor license);

15 (I) Section 24-3.5 (unlawful purchase of a  
16 firearm);

17 (J) Section 24-3A (gunrunning);

18 (K) Section 24-3B (firearms trafficking);

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

20 (M) Section 10-9 (c) (involuntary sexual servitude  
21 of a minor);

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

23 (O) Non-probationable violations: (i) unlawful use  
24 or possession of weapons by felons or persons in the  
25 Custody of the Department of Corrections facilities  
26 (Section 24-1.1), (ii) aggravated unlawful use of a

1           weapon (Section 24-1.6), or (iii) aggravated  
2           possession of a stolen firearm (Section 24-3.9);

3           (P) Section 9-3 (reckless homicide and involuntary  
4           manslaughter);

5           (Q) Section 19-3 (residential burglary);

6           (R) Section 10-5 (child abduction);

7           (S) Felony violations of Section 12C-5 (child  
8           endangerment);

9           (T) Section 12-7.1 (hate crime);

10          (U) Section 10-3.1 (aggravated unlawful  
11          restraint);

12          (V) Section 12-9 (threatening a public official);

13          (W) Subdivision (f)(1) of Section 12-3.05  
14          (aggravated battery with a deadly weapon other than by  
15          discharge of a firearm);

16          (6.5) the defendant is charged with any of the  
17          following offenses, and it is alleged that the defendant's  
18          pretrial release poses a real and present threat to the  
19          safety of any person or persons or the community, based on  
20          the specific articulable facts of the case:

21          (A) Felony violations of Sections 3.01, 3.02, or  
22          3.03 of the Humane Care for Animals Act (cruel  
23          treatment, aggravated cruelty, and animal torture);

24          (B) Subdivision (d)(1)(B) of Section 11-501 of the  
25          Illinois Vehicle Code (aggravated driving under the  
26          influence while operating a school bus with

1 passengers);

2 (C) Subdivision (d) (1) (C) of Section 11-501 of the  
3 Illinois Vehicle Code (aggravated driving under the  
4 influence causing great bodily harm);

5 (D) Subdivision (d) (1) (D) of Section 11-501 of the  
6 Illinois Vehicle Code (aggravated driving under the  
7 influence after a previous reckless homicide  
8 conviction);

9 (E) Subdivision (d) (1) (F) of Section 11-501 of the  
10 Illinois Vehicle Code (aggravated driving under the  
11 influence leading to death); or

12 (F) Subdivision (d) (1) (J) of Section 11-501 of the  
13 Illinois Vehicle Code (aggravated driving under the  
14 influence that resulted in bodily harm to a child  
15 under the age of 16);

16 (7) the defendant is charged with an attempt to commit  
17 any charge listed in paragraphs (1) through (6.5), and it  
18 is alleged that the defendant's pretrial release poses a  
19 real and present threat to the safety of any person or  
20 persons or the community, based on the specific  
21 articulable facts of the case; or

22 (8) the person has a high likelihood of willful flight  
23 to avoid prosecution and is charged with:

24 (A) Any felony described in subdivisions (a) (1)  
25 through (a) (7) of this Section; or

26 (B) A felony offense other than a Class 4 offense.



1 (b) If the charged offense is a felony, as part of the  
2 detention hearing, the court shall determine whether there is  
3 probable cause the defendant has committed an offense, unless  
4 a hearing pursuant to Section 109-3 of this Code has already  
5 been held or a grand jury has returned a true bill of  
6 indictment against the defendant. If there is a finding of no  
7 probable cause, the defendant shall be released. No such  
8 finding is necessary if the defendant is charged with a  
9 misdemeanor.

10 (c) Timing of petition.

11 (1) A petition may be filed without prior notice to  
12 the defendant at the first appearance before a judge, or  
13 within the 21 calendar days, except as provided in Section  
14 110-6, after arrest and release of the defendant upon  
15 reasonable notice to defendant; provided that while such  
16 petition is pending before the court, the defendant if  
17 previously released shall not be detained.

18 (2) Upon filing, the court shall immediately hold a  
19 hearing on the petition unless a continuance is requested.  
20 If a continuance is requested and granted, the hearing  
21 shall be held within 48 hours of the defendant's first  
22 appearance if the defendant is charged with first degree  
23 murder or a Class X, Class 1, Class 2, or Class 3 felony,  
24 and within 24 hours if the defendant is charged with a  
25 Class 4 or misdemeanor offense. The Court may deny or  
26 grant the request for continuance. If the court decides to

1 grant the continuance, the Court retains the discretion to  
2 detain or release the defendant in the time between the  
3 filing of the petition and the hearing.

4 (d) Contents of petition.

5 (1) The petition shall be verified by the State and  
6 shall state the grounds upon which it contends the  
7 defendant should be denied pretrial release, including the  
8 real and present threat to the safety of any person or  
9 persons or the community, based on the specific  
10 articulable facts or flight risk, as appropriate.

11 (2) If the State seeks to file a second or subsequent  
12 petition under this Section, the State shall be required  
13 to present a verified application setting forth in detail  
14 any new facts not known or obtainable at the time of the  
15 filing of the previous petition.

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

19 (1) the proof is evident or the presumption great that  
20 the defendant has committed an offense listed in  
21 subsection (a), and

22 (2) for offenses listed in paragraphs (1) through (7)  
23 of subsection (a), the defendant poses a real and present  
24 threat to the safety of any person or persons or the  
25 community, based on the specific articulable facts of the  
26 case, by conduct which may include, but is not limited to,

1 a forcible felony, the obstruction of justice,  
2 intimidation, injury, or abuse as defined by paragraph (1)  
3 of Section 103 of the Illinois Domestic Violence Act of  
4 1986, and

5 (3) no condition or combination of conditions set  
6 forth in subsection (b) of Section 110-10 of this Article  
7 can mitigate (i) the real and present threat to the safety  
8 of any person or persons or the community, based on the  
9 specific articulable facts of the case, for offenses  
10 listed in paragraphs (1) through (7) of subsection (a), or  
11 (ii) the defendant's willful flight for offenses listed in  
12 paragraph (8) of subsection (a), and

13 (4) for offenses under subsection (b) of Section 407  
14 of the Illinois Controlled Substances Act that are subject  
15 to paragraph (1) of subsection (a), no condition or  
16 combination of conditions set forth in subsection (b) of  
17 Section 110-10 of this Article can mitigate the real and  
18 present threat to the safety of any person or persons or  
19 the community, based on the specific articulable facts of  
20 the case, and the defendant poses a serious risk to not  
21 appear in court as required.

22 (f) Conduct of the hearings.

23 (1) Prior to the hearing, the State shall tender to  
24 the defendant copies of the defendant's criminal history  
25 available, any written or recorded statements, and the  
26 substance of any oral statements made by any person, if

1           relied upon by the State in its petition, and any police  
2           reports in the prosecutor's possession at the time of the  
3           hearing.

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

6           (3) The defendant has the right to be represented by  
7           counsel, and if he or she is indigent, to have counsel  
8           appointed for him or her. The defendant shall have the  
9           opportunity to testify, to present witnesses on his or her  
10          own behalf, and to cross-examine any witnesses that are  
11          called by the State. Defense counsel shall be given  
12          adequate opportunity to confer with the defendant before  
13          any hearing at which conditions of release or the  
14          detention of the defendant are to be considered, with an  
15          accommodation for a physical condition made to facilitate  
16          attorney/client consultation. If defense counsel needs to  
17          confer or consult with the defendant during any hearing  
18          conducted via a two-way audio-visual communication system,  
19          such consultation shall not be recorded and shall be  
20          undertaken consistent with constitutional protections.

21          (3.5) A hearing at which pretrial release may be  
22          denied must be conducted in person (and not by way of  
23          two-way audio visual communication) unless the accused  
24          waives the right to be present physically in court, the  
25          court determines that the physical health and safety of  
26          any person necessary to the proceedings would be

1           endangered by appearing in court, or the chief judge of  
2           the circuit orders use of that system due to operational  
3           challenges in conducting the hearing in person. Such  
4           operational challenges must be documented and approved by  
5           the chief judge of the circuit, and a plan to address the  
6           challenges through reasonable efforts must be presented  
7           and approved by the Administrative Office of the Illinois  
8           Courts every 6 months.

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

1 ~~In deciding whether to compel the appearance of a~~  
2 ~~complaining witness, the court shall be considerate of the~~  
3 ~~emotional and physical well-being of the witness.~~ The  
4 pre-trial detention hearing is not to be used for purposes  
5 of discovery, and the post arraignment rules of discovery  
6 do not apply. The State shall tender to the defendant,  
7 prior to the hearing, copies, if any, of the defendant's  
8 criminal history, if available, and any written or  
9 recorded statements and the substance of any oral  
10 statements made by any person, if in the State's  
11 Attorney's possession at the time of the hearing.

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

21 (6) The defendant may not move to suppress evidence or  
22 a confession, however, evidence that proof of the charged  
23 crime may have been the result of an unlawful search or  
24 seizure, or both, or through improper interrogation, is  
25 relevant in assessing the weight of the evidence against  
26 the defendant.

1 (7) Decisions regarding release, conditions of  
2 release, and detention prior to trial must be  
3 individualized, and no single factor or standard may be  
4 used exclusively to order detention. Risk assessment tools  
5 may not be used as the sole basis to deny pretrial release.

6 (g) Factors to be considered in making a determination of  
7 dangerousness. The court may, in determining whether the  
8 defendant poses a real and present threat to the safety of any  
9 person or persons or the community, based on the specific  
10 articulable facts of the case, consider, but shall not be  
11 limited to, evidence or testimony concerning:

12 (1) The nature and circumstances of any offense  
13 charged, including whether the offense is a crime of  
14 violence, involving a weapon, or a sex offense.

15 (2) The history and characteristics of the defendant  
16 including:

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

23 (B) Any evidence of the defendant's psychological,  
24 psychiatric or other similar social history which  
25 tends to indicate a violent, abusive, or assaultive  
26 nature, or lack of any such history.

1           (3) The identity of any person or persons to whose  
2 safety the defendant is believed to pose a threat, and the  
3 nature of the threat.

4           (4) Any statements made by, or attributed to the  
5 defendant, together with the circumstances surrounding  
6 them.

7           (5) The age and physical condition of the defendant.

8           (6) The age and physical condition of any victim or  
9 complaining witness.

10          (7) Whether the defendant is known to possess or have  
11 access to any weapon or weapons.

12          (8) Whether, at the time of the current offense or any  
13 other offense or arrest, the defendant was on probation,  
14 parole, aftercare release, mandatory supervised release or  
15 other release from custody pending trial, sentencing,  
16 appeal or completion of sentence for an offense under  
17 federal or state law.

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

23          (h) Detention order. The court shall, in any order for  
24 detention:

25               (1) make a written finding summarizing the court's  
26 reasons for concluding that the defendant should be denied



1 pretrial release, including why less restrictive  
2 conditions would not avoid a real and present threat to  
3 the safety of any person or persons or the community,  
4 based on the specific articulable facts of the case, or  
5 prevent the defendant's willful flight from prosecution;

6 (2) direct that the defendant be committed to the  
7 custody of the sheriff for confinement in the county jail  
8 pending trial;

9 (3) direct that the defendant be given a reasonable  
10 opportunity for private consultation with counsel, and for  
11 communication with others of his or her choice by  
12 visitation, mail and telephone; and

13 (4) direct that the sheriff deliver the defendant as  
14 required for appearances in connection with court  
15 proceedings.

16 (i) Detention. If the court enters an order for the  
17 detention of the defendant pursuant to subsection (e) of this  
18 Section, the defendant shall be brought to trial on the  
19 offense for which he is detained within 90 days after the date  
20 on which the order for detention was entered. If the defendant  
21 is not brought to trial within the 90-day period required by  
22 the preceding sentence, he shall not be denied pretrial  
23 release. In computing the 90-day period, the court shall omit  
24 any period of delay resulting from a continuance granted at  
25 the request of the defendant and any period of delay resulting  
26 from a continuance granted at the request of the State with

1 good cause shown pursuant to Section 103-5.

2 (i-5) At each subsequent appearance of the defendant  
3 before the court, the judge must find that continued detention  
4 is necessary to avoid a real and present threat to the safety  
5 of any person or persons or the community, based on the  
6 specific articulable facts of the case, or to prevent the  
7 defendant's willful flight from prosecution.

8 (j) Rights of the defendant. The defendant shall be  
9 entitled to appeal any order entered under this Section  
10 denying his or her pretrial release.

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

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

18 (m) Interest of victims.

19 (1) Crime victims shall be given notice by the State's  
20 Attorney's office of this hearing as required in paragraph (1)  
21 of subsection (b) of Section 4.5 of the Rights of Crime Victims  
22 and Witnesses Act and shall be informed of their opportunity  
23 at this hearing to obtain a protective order.

24 (2) If the defendant is denied pretrial release, the court  
25 may impose a no contact provision with the victim or other  
26 interested party that shall be enforced while the defendant

1 remains in custody.

2 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)