



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4482

Introduced 1/17/2024, by Rep. Paul Jacobs

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. In the provision that states if a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention, provides that the 48-hour time limit does not apply if the person has been found to be in need of mental health treatment or services upon release. Provides that the court shall hold a hearing every 7 to 10 days of the person's pretrial detention to be reevaluated every 7 to 10 days until adequate mental health treatment or services may be obtained after the defendant's release from pretrial detention.

LRB103 36505 RLC 66611 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 which conditions of pretrial release,
10 if any, will reasonably ensure the appearance of a defendant
11 as required or the safety of any other person or the community
12 and the likelihood of compliance by the defendant with all the
13 conditions of pretrial release, the court shall, on the basis
14 of available information, take into account such matters as:

15 (1) the nature and circumstances of the offense
16 charged;

17 (2) the weight of the evidence against the defendant,
18 except that the court may consider the admissibility of
19 any evidence sought to be excluded;

20 (3) the history and characteristics of the defendant,
21 including:

22 (A) the defendant's character, physical and mental
23 condition, family ties, employment, financial

1 resources, length of residence in the community,
2 community ties, past relating to drug or alcohol
3 abuse, conduct, history criminal history, and record
4 concerning appearance at court proceedings; and

5 (B) whether, at the time of the current offense or
6 arrest, the defendant was on probation, parole, or on
7 other release pending trial, sentencing, appeal, or
8 completion of sentence for an offense under federal
9 law, or the law of this or any other state;

10 (4) the nature and seriousness of the real and present
11 threat to the safety of any person or persons or the
12 community, based on the specific articulable facts of the
13 case, that would be posed by the defendant's release, if
14 applicable, as required under paragraph (7.5) of Section 4
15 of the Rights of Crime Victims and Witnesses Act;

16 (5) the nature and seriousness of the risk of
17 obstructing or attempting to obstruct the criminal justice
18 process that would be posed by the defendant's release, if
19 applicable;

20 (6) when a person is charged with a violation of a
21 protective order, domestic battery, aggravated domestic
22 battery, kidnapping, aggravated kidnaping, unlawful
23 restraint, aggravated unlawful restraint, cyberstalking,
24 harassment by telephone, harassment through electronic
25 communications, or an attempt to commit first degree
26 murder committed against a spouse or a current or former

1 partner in a cohabitation or dating relationship,
2 regardless of whether an order of protection has been
3 issued against the person, the court may consider the
4 following additional factors:

5 (A) whether the alleged incident involved
6 harassment or abuse, as defined in the Illinois
7 Domestic Violence Act of 1986;

8 (B) whether the person has a history of domestic
9 violence, as defined in the Illinois Domestic Violence
10 Act of 1986, or a history of other criminal acts;

11 (C) the mental health of the person;

12 (D) whether the person has a history of violating
13 the orders of any court or governmental entity;

14 (E) whether the person has been, or is,
15 potentially a threat to any other person;

16 (F) whether the person has access to deadly
17 weapons or a history of using deadly weapons;

18 (G) whether the person has a history of abusing
19 alcohol or any controlled substance;

20 (H) the severity of the alleged incident that is
21 the basis of the alleged offense, including, but not
22 limited to, the duration of the current incident, and
23 whether the alleged incident involved the use of a
24 weapon, physical injury, sexual assault,
25 strangulation, abuse during the alleged victim's
26 pregnancy, abuse of pets, or forcible entry to gain

1 access to the alleged victim;

2 (I) whether a separation of the person from the
3 victim of abuse or a termination of the relationship
4 between the person and the victim of abuse has
5 recently occurred or is pending;

6 (J) whether the person has exhibited obsessive or
7 controlling behaviors toward the victim of abuse,
8 including, but not limited to, stalking, surveillance,
9 or isolation of the victim of abuse or the victim's
10 family member or members;

11 (K) whether the person has expressed suicidal or
12 homicidal ideations; and

13 (L) any other factors deemed by the court to have a
14 reasonable bearing upon the defendant's propensity or
15 reputation for violent, abusive, or assaultive
16 behavior, or lack of that behavior.

17 (7) in cases of stalking or aggravated stalking under
18 Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the
19 court may consider the factors listed in paragraph (6) and
20 the following additional factors:

21 (A) any evidence of the defendant's prior criminal
22 history indicative of violent, abusive or assaultive
23 behavior, or lack of that behavior; the evidence may
24 include testimony or documents received in juvenile
25 proceedings, criminal, quasi-criminal, civil
26 commitment, domestic relations, or other proceedings;

1 (B) any evidence of the defendant's psychological,
2 psychiatric, or other similar social history that
3 tends to indicate a violent, abusive, or assaultive
4 nature, or lack of any such history;

5 (C) the nature of the threat that is the basis of
6 the charge against the defendant;

7 (D) any statements made by, or attributed to, the
8 defendant, together with the circumstances surrounding
9 them;

10 (E) the age and physical condition of any person
11 allegedly assaulted by the defendant;

12 (F) whether the defendant is known to possess or
13 have access to any weapon or weapons; and

14 (G) any other factors deemed by the court to have a
15 reasonable bearing upon the defendant's propensity or
16 reputation for violent, abusive, or assaultive
17 behavior, or lack of that behavior.

18 (b) The court may use a regularly validated risk
19 assessment tool to aid its determination of appropriate
20 conditions of release as provided under Section 110-6.4. If a
21 risk assessment tool is used, the defendant's counsel shall be
22 provided with the information and scoring system of the risk
23 assessment tool used to arrive at the determination. The
24 defendant retains the right to challenge the validity of a
25 risk assessment tool used by the court and to present evidence
26 relevant to the defendant's challenge.

1 (c) The court shall impose any conditions that are
2 mandatory under subsection (a) of Section 110-10. The court
3 may impose any conditions that are permissible under
4 subsection (b) of Section 110-10. The conditions of release
5 imposed shall be the least restrictive conditions or
6 combination of conditions necessary to reasonably ensure the
7 appearance of the defendant as required or the safety of any
8 other person or persons or the community.

9 (d) When a person is charged with a violation of a
10 protective order, the court may order the defendant placed
11 under electronic surveillance as a condition of pretrial
12 release, as provided in Section 5-8A-7 of the Unified Code of
13 Corrections, based on the information collected under
14 paragraph (6) of subsection (a) of this Section, the results
15 of any assessment conducted, or other circumstances of the
16 violation.

17 (e) If a person remains in pretrial detention 48 hours
18 after having been ordered released with pretrial conditions,
19 the court shall hold a hearing to determine the reason for
20 continued detention. If the reason for continued detention is
21 due to the unavailability or the defendant's ineligibility for
22 one or more pretrial conditions previously ordered by the
23 court or directed by a pretrial services agency, the court
24 shall reopen the conditions of release hearing to determine
25 what available pretrial conditions exist that will reasonably
26 ensure the appearance of a defendant as required, the safety

1 of any other person, and the likelihood of compliance by the
2 defendant with all the conditions of pretrial release. The
3 inability of the defendant to pay for a condition of release or
4 any other ineligibility for a condition of pretrial release
5 shall not be used as a justification for the pretrial
6 detention of that defendant. The 48-hour time limit does not
7 apply if the person has been found to be in need of mental
8 health treatment or services upon release. The court shall
9 hold a hearing every 7 to 10 days of the person's pretrial
10 detention to be reevaluated every 7 to 10 days until adequate
11 mental health treatment or services may be obtained after the
12 defendant's release from pretrial detention.

13 (f) Prior to the defendant's first appearance, and with
14 sufficient time for meaningful attorney-client contact to
15 gather information in order to advocate effectively for the
16 defendant's pretrial release, the court shall appoint the
17 public defender or a licensed attorney at law of this State to
18 represent the defendant for purposes of that hearing, unless
19 the defendant has obtained licensed counsel. Defense counsel
20 shall have access to the same documentary information relied
21 upon by the prosecution and presented to the court.

22 (f-5) At each subsequent appearance of the defendant
23 before the court, the judge must find that the current
24 conditions imposed are necessary to reasonably ensure the
25 appearance of the defendant as required, the safety of any
26 other person, and the compliance of the defendant with all the

1 conditions of pretrial release. The court is not required to
2 be presented with new information or a change in circumstance
3 to remove pretrial conditions.

4 (g) Electronic monitoring, GPS monitoring, or home
5 confinement can only be imposed as a condition of pretrial
6 release if a no less restrictive condition of release or
7 combination of less restrictive condition of release would
8 reasonably ensure the appearance of the defendant for later
9 hearings or protect an identifiable person or persons from
10 imminent threat of serious physical harm.

11 (h) If the court imposes electronic monitoring, GPS
12 monitoring, or home confinement, the court shall set forth in
13 the record the basis for its finding. A defendant shall be
14 given custodial credit for each day he or she was subjected to
15 home confinement, at the same rate described in subsection (b)
16 of Section 5-4.5-100 of the Unified Code of Corrections. The
17 court may give custodial credit to a defendant for each day the
18 defendant was subjected to GPS monitoring without home
19 confinement or electronic monitoring without home confinement.

20 (i) If electronic monitoring, GPS monitoring, or home
21 confinement is imposed, the court shall determine every 60
22 days if no less restrictive condition of release or
23 combination of less restrictive conditions of release would
24 reasonably ensure the appearance, or continued appearance, of
25 the defendant for later hearings or protect an identifiable
26 person or persons from imminent threat of serious physical

1 harm. If the court finds that there are less restrictive
2 conditions of release, the court shall order that the
3 condition be removed. This subsection takes effect January 1,
4 2022.

5 (j) Crime Victims shall be given notice by the State's
6 Attorney's office of this hearing as required in paragraph (1)
7 of subsection (b) of Section 4.5 of the Rights of Crime Victims
8 and Witnesses Act and shall be informed of their opportunity
9 at this hearing to obtain a protective order.

10 (k) The State and defendants may appeal court orders
11 imposing conditions of pretrial release.

12 (Source: P.A. 101-652, eff. 1-1-23; 102-28, eff. 6-25-21;
13 102-558, eff. 8-20-21; 102-813, eff. 5-13-22; 102-1104, eff.
14 1-1-23.)