



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5121

Introduced 2/8/2024, by Rep. David Friess - Amy L. Grant - Dan Ugaste and Dave Severin

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6

from Ch. 38, par. 110-6

Amends the Code of Criminal Procedure of 1963. Provides that when a defendant has previously been granted pretrial release for any offense (rather than for a felony or Class A misdemeanor), that pretrial release shall (rather than may) be revoked if the defendant is charged with an offense that is alleged to have occurred during the defendant's pretrial release, regardless of the classification of offense (rather than charged with a felony or Class A misdemeanor) after a hearing on the court's own motion or upon the filing of a verified petition by the State.

LRB103 35870 RLC 66918 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 110-6 as follows:

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

7 Sec. 110-6. Revocation of pretrial release, modification
8 of conditions of pretrial release, and sanctions for
9 violations of conditions of pretrial release.

10 (a) When a defendant has previously been granted pretrial
11 release under this Article for any offense ~~Section for a~~
12 ~~felony or Class A misdemeanor~~, that pretrial release shall ~~may~~
13 be revoked ~~only~~ if the defendant is charged with an offense
14 that is alleged to have occurred during the defendant's
15 pretrial release, regardless of the classification of offense,
16 ~~is charged with a felony or Class A misdemeanor that is alleged~~
17 ~~to have occurred during the defendant's pretrial release~~ after
18 a hearing on the court's own motion or upon the filing of a
19 verified petition by the State.

20 When a defendant released pretrial is charged with a
21 violation of a protective order or was previously convicted of
22 a violation of a protective order and the subject of the
23 protective order is the same person as the victim in the

1 current underlying matter, the State shall file a verified
2 petition seeking revocation of pretrial release.

3 Upon the filing of a petition or upon motion of the court
4 seeking revocation, the court shall order the transfer of the
5 defendant and the petition or motion to the court before which
6 the previous felony or Class A misdemeanor is pending. The
7 defendant may be held in custody pending transfer to and a
8 hearing before such court. The defendant shall be transferred
9 to the court before which the previous matter is pending
10 without unnecessary delay, and the revocation hearing shall
11 occur within 72 hours of the filing of the State's petition or
12 the court's motion for revocation.

13 A hearing at which pretrial release may be revoked must be
14 conducted in person (and not by way of two-way audio-visual
15 communication) unless the accused waives the right to be
16 present physically in court, the court determines that the
17 physical health and safety of any person necessary to the
18 proceedings would be endangered by appearing in court, or the
19 chief judge of the circuit orders use of that system due to
20 operational challenges in conducting the hearing in person.
21 Such operational challenges must be documented and approved by
22 the chief judge of the circuit, and a plan to address the
23 challenges through reasonable efforts must be presented and
24 approved by the Administrative Office of the Illinois Courts
25 every 6 months.

26 The court before which the previous felony matter or Class

1 A misdemeanor is pending may revoke the defendant's pretrial
2 release after a hearing. During the hearing for revocation,
3 the defendant shall be represented by counsel and have an
4 opportunity to be heard regarding the violation and evidence
5 in mitigation. The court shall consider all relevant
6 circumstances, including, but not limited to, the nature and
7 seriousness of the violation or criminal act alleged. The
8 State shall bear the burden of proving, by clear and
9 convincing evidence, that no condition or combination of
10 conditions of release would reasonably ensure the appearance
11 of the defendant for later hearings or prevent the defendant
12 from being charged with a subsequent felony or Class A
13 misdemeanor.

14 In lieu of revocation, the court may release the defendant
15 pre-trial, with or without modification of conditions of
16 pretrial release.

17 If the case that caused the revocation is dismissed, the
18 defendant is found not guilty in the case causing the
19 revocation, or the defendant completes a lawfully imposed
20 sentence on the case causing the revocation, the court shall,
21 without unnecessary delay, hold a hearing on conditions of
22 pretrial release pursuant to Section 110-5 and release the
23 defendant with or without modification of conditions of
24 pretrial release.

25 Both the State and the defendant may appeal an order
26 revoking pretrial release or denying a petition for revocation

1 of release.

2 (b) If a defendant previously has been granted pretrial
3 release under this Section for a Class B or Class C misdemeanor
4 offense, a petty or business offense, or an ordinance
5 violation and if the defendant is subsequently charged with a
6 felony that is alleged to have occurred during the defendant's
7 pretrial release or a Class A misdemeanor offense that is
8 alleged to have occurred during the defendant's pretrial
9 release, such pretrial release may not be revoked, but the
10 court may impose sanctions under subsection (c).

11 (c) The court shall follow the procedures set forth in
12 Section 110-3 to ensure the defendant's appearance in court if
13 the defendant:

14 (1) fails to appear in court as required by the
15 defendant's conditions of release;

16 (2) is charged with a felony or Class A misdemeanor
17 offense that is alleged to have occurred during the
18 defendant's pretrial release after having been previously
19 granted pretrial release for a Class B or Class C
20 misdemeanor, a petty or business offense, or an ordinance
21 violation that is alleged to have occurred during the
22 defendant's pretrial release;

23 (3) is charged with a Class B or C misdemeanor
24 offense, petty or business offense, or ordinance violation
25 that is alleged to have occurred during the defendant's
26 pretrial release; or

1 (4) violates any other condition of pretrial release
2 set by the court.

3 In response to a violation described in this subsection,
4 the court may issue a warrant specifying that the defendant
5 must appear before the court for a hearing for sanctions and
6 may not be released by law enforcement before that appearance.

7 (d) When a defendant appears in court pursuant to a
8 summons or warrant issued in accordance with Section 110-3 or
9 after being arrested for an offense that is alleged to have
10 occurred during the defendant's pretrial release, the State
11 may file a verified petition requesting a hearing for
12 sanctions.

13 (e) During the hearing for sanctions, the defendant shall
14 be represented by counsel and have an opportunity to be heard
15 regarding the violation and evidence in mitigation. The State
16 shall bear the burden of proving by clear and convincing
17 evidence that:

18 (1) the defendant committed an act that violated a
19 term of the defendant's pretrial release;

20 (2) the defendant had actual knowledge that the
21 defendant's action would violate a court order;

22 (3) the violation of the court order was willful; and

23 (4) the violation was not caused by a lack of access to
24 financial monetary resources.

25 (f) Sanctions for violations of pretrial release may
26 include:

- 1 (1) a verbal or written admonishment from the court;
- 2 (2) imprisonment in the county jail for a period not
- 3 exceeding 30 days;
- 4 (3) (Blank); or
- 5 (4) a modification of the defendant's pretrial
- 6 conditions.

7 (g) The court may, at any time, after motion by either

8 party or on its own motion, remove previously set conditions

9 of pretrial release, subject to the provisions in this

10 subsection. The court may only add or increase conditions of

11 pretrial release at a hearing under this Section.

12 The court shall not remove a previously set condition of

13 pretrial release regulating contact with a victim or witness

14 in the case, unless the subject of the condition has been given

15 notice of the hearing as required in paragraph (1) of

16 subsection (b) of Section 4.5 of the Rights of Crime Victims

17 and Witnesses Act. If the subject of the condition of release

18 is not present, the court shall follow the procedures of

19 paragraph (10) of subsection (c-1) of the Rights of Crime

20 Victims and Witnesses Act.

21 (h) Crime victims shall be given notice by the State's

22 Attorney's office of all hearings under this Section as

23 required in paragraph (1) of subsection (b) of Section 4.5 of

24 the Rights of Crime Victims and Witnesses Act and shall be

25 informed of their opportunity at these hearings to obtain a

26 protective order.

1 (i) Nothing in this Section shall be construed to limit
2 the State's ability to file a verified petition seeking denial
3 of pretrial release under subsection (a) of Section 110-6.1 or
4 subdivision (d) (2) of Section 110-6.1.

5 (j) At each subsequent appearance of the defendant before
6 the court, the judge must find that continued detention under
7 this Section is necessary to reasonably ensure the appearance
8 of the defendant for later hearings or to prevent the
9 defendant from being charged with a subsequent felony or Class
10 A misdemeanor.

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