

1 AN ACT in relation to 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 110-6.5 as follows:

6 (725 ILCS 5/110-6.5)

7 Sec. 110-6.5. Drug testing program. The Chief Judge of  
8 the circuit may establish a drug testing program as provided  
9 by this Section in any county in the circuit if the county  
10 board has approved the establishment of the program and the  
11 county probation department or pretrial services agency has  
12 consented to administer it. The drug testing program must  
13 ~~shall~~ be conducted under the following provisions:

14 (a) The court, in the case of a defendant charged with a  
15 felony offense or any offense involving the possession or  
16 delivery of cannabis or a controlled substance, shall:

17 (1) not consider the release of the defendant on  
18 his or her own recognizance, unless the defendant  
19 consents to periodic drug testing during the period of  
20 release on his or her own recognizance, in accordance  
21 with this Section;

22 (2) consider the consent of the defendant to  
23 periodic drug testing during the period of release on  
24 bail in accordance with this Section as a favorable  
25 factor for the defendant in determining the amount of  
26 bail, the conditions of release or in considering the  
27 defendant's motion to reduce the amount of bail.

28 (b) The drug testing shall be conducted by the pretrial  
29 services agency or under the direction of the probation  
30 department when a pretrial services agency does not exist in  
31 accordance with this Section.

1           (c) A defendant who consents to periodic drug testing as  
2 set forth in this Section shall sign an agreement with the  
3 court that, during the period of release, the defendant shall  
4 refrain from using illegal drugs and that the defendant will  
5 comply with the conditions of the testing program. The  
6 agreement shall be on a form prescribed by the court and  
7 shall be executed at the time of the bail hearing. This  
8 agreement shall be made a specific condition of bail.

9           (d) The drug testing program shall be conducted as  
10 follows:

11           (1) The testing shall be done by urinalysis for the  
12 detection of phencyclidine, heroin, cocaine, methadone  
13 and amphetamines.

14           (2) The collection of samples shall be performed  
15 under reasonable and sanitary conditions.

16           (3) Samples shall be collected and tested with due  
17 regard for the privacy of the individual being tested and  
18 in a manner reasonably calculated to prevent  
19 substitutions or interference with the collection or  
20 testing of reliable samples.

21           (4) Sample collection shall be documented, and the  
22 documentation procedures shall include:

23           (i) Labeling of samples so as to reasonably  
24 preclude the probability of erroneous identification  
25 of test results; and

26           (ii) An opportunity for the defendant to  
27 provide information on the identification of  
28 prescription or nonprescription drugs used in  
29 connection with a medical condition.

30           (5) Sample collection, storage, and transportation  
31 to the place of testing shall be performed so as to  
32 reasonably preclude the probability of sample  
33 contamination or adulteration.

34           (6) Sample testing shall conform to scientifically

1           accepted analytical methods and procedures. Testing  
2           shall include verification or confirmation of any  
3           positive test result by a reliable analytical method  
4           before the result of any test may be used as a basis for  
5           any action by the court.

6           (e) The initial sample shall be collected before the  
7           defendant's release on bail. Thereafter, the defendant shall  
8           report to the pretrial services agency or probation  
9           department as required by the agency or department. The  
10          pretrial services agency or probation department shall  
11          immediately notify the court of any defendant who fails to  
12          report for testing.

13          (f) After the initial test, a subsequent confirmed  
14          positive test result indicative of continued drug use shall  
15          result in the following:

16                 (1) Upon the first confirmed positive test result,  
17                 the pretrial services agency or probation department,  
18                 shall place the defendant on a more frequent testing  
19                 schedule and shall warn the defendant of the consequences  
20                 of continued drug use.

21                 (2) A second confirmed positive test result shall  
22                 be grounds for a hearing before the judge who authorized  
23                 the release of the defendant in accordance with the  
24                 provisions of subsection (g) of this Section.

25           (g) The court shall, upon motion of the State or upon  
26           its own motion, conduct a hearing in connection with any  
27           defendant who fails to appear for testing, fails to cooperate  
28           with the persons conducting the testing program, attempts to  
29           submit a sample not his or her own or has had a confirmed  
30           positive test result indicative of continued drug use for the  
31           second or subsequent time after the initial test. The  
32           hearing shall be conducted in accordance with the procedures  
33           of Section 110-6.

34           Upon a finding by the court that the State has

1 established by clear and convincing evidence that the  
2 defendant has violated the drug testing conditions of bail,  
3 the court may consider any of the following sanctions:

4 (1) increase the amount of the defendant's bail or  
5 conditions of release;

6 (2) impose a jail sentence of up to 5 days;

7 (3) revoke the defendant's bail; or

8 (4) enter such other orders which are within the  
9 power of the court as deemed appropriate.

10 (h) The results of any drug testing conducted under this  
11 Section shall not be admissible on the issue of the  
12 defendant's guilt in connection with any criminal charge.

13 (i) The court may require that the defendant pay for the  
14 cost of drug testing.

15 (Source: P.A. 88-677, eff. 12-15-94.)