



Rep. Michael P. McAuliffe

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LRB094 05421 RLC 42974 a

1 AMENDMENT TO HOUSE BILL 2900

2 AMENDMENT NO. _____. Amend House Bill 2900 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 110-4 and by adding Section 110-6.4
6 as follows:

7 (725 ILCS 5/110-4) (from Ch. 38, par. 110-4)

8 Sec. 110-4. Bailable Offenses.

9 (a) All persons shall be bailable before conviction, except
10 the following offenses where the proof is evident or the
11 presumption great that the defendant is guilty of the offense:
12 capital offenses; offenses for which a sentence of life
13 imprisonment may be imposed as a consequence of conviction;
14 felony offenses for which a sentence of imprisonment, without
15 conditional and revocable release, shall be imposed by law as a
16 consequence of conviction, where the court after a hearing,
17 determines that the release of the defendant would pose a real
18 and present threat to the physical safety of any person or
19 persons; stalking or aggravated stalking, where the court,
20 after a hearing, determines that the release of the defendant
21 would pose a real and present threat to the physical safety of
22 the alleged victim of the offense and denial of bail is
23 necessary to prevent fulfillment of the threat upon which the
24 charge is based; or unlawful use of weapons in violation of

1 item (4) of subsection (a) of Section 24-1 of the Criminal Code
2 of 1961 when that offense occurred in a school or in any
3 conveyance owned, leased, or contracted by a school to
4 transport students to or from school or a school-related
5 activity, or on any public way within 1,000 feet of real
6 property comprising any school, where the court, after a
7 hearing, determines that the release of the defendant would
8 pose a real and present threat to the physical safety of any
9 person and denial of bail is necessary to prevent fulfillment
10 of that threat; or an offense for which the person, upon
11 conviction, would be subject to registration under the Arsonist
12 Registration Act if the person has previously been convicted of
13 any of the following offenses: (i) arson, (ii) aggravated
14 arson, (iii) residential arson, (iv) place of worship arson,
15 (v) possession of explosives or explosive or incendiary
16 devices, or (vi) an attempt to commit any of these offenses and
17 if the the court, after a hearing, determines that the release
18 of the defendant would pose a real and present threat to the
19 physical safety of any person and denial of bail is necessary
20 to prevent fulfillment of that threat.

21 (b) A person seeking release on bail who is charged with a
22 capital offense or an offense for which a sentence of life
23 imprisonment may be imposed shall not be bailable until a
24 hearing is held wherein such person has the burden of
25 demonstrating that the proof of his guilt is not evident and
26 the presumption is not great.

27 (c) Where it is alleged that bail should be denied to a
28 person upon the grounds that the person presents a real and
29 present threat to the physical safety of any person or persons,
30 the burden of proof of such allegations shall be upon the
31 State.

32 (d) When it is alleged that bail should be denied to a
33 person charged with stalking or aggravated stalking upon the
34 grounds set forth in Section 110-6.3 of this Code, the burden

1 of proof of those allegations shall be upon the State.

2 (e) When it is alleged that bail should be denied to a
3 person charged with arson, aggravated arson, residential
4 arson, place of worship arson, possession of explosives or
5 explosive or incendiary devices, or an attempt to commit any of
6 these offenses upon the grounds set forth in Section 110-6.4 of
7 this Code, the burden of proof of those allegations shall be
8 upon the State.

9 (Source: P.A. 91-11, eff. 6-4-99.)

10 (725 ILCS 5/110-6.4 new)

11 Sec. 110-6.4. Denial of bail for certain arson offenses.

12 (a) Upon verified petition by the State, the court shall
13 hold a hearing to determine whether bail should be denied to a
14 defendant who is charged with an offense for which the person,
15 upon conviction, would be subject to registration under the
16 Arsonist Registration Act if the person has previously been
17 convicted of any of the following offenses: (i) arson, (ii)
18 aggravated arson, (iii) residential arson, (iv) place of
19 worship arson, (v) possession of explosives or explosive or
20 incendiary devices, or (vi) an attempt to commit any of these
21 offenses, when it is alleged that the defendant's admission to
22 bail poses a real and present threat to the physical safety of
23 any person, and denial of release on bail or personal
24 recognizance is necessary to prevent fulfillment of the threat
25 upon which the charge is based.

26 (1) A petition may be filed without prior notice to the
27 defendant at the first appearance before a judge, or within
28 21 calendar days, except as provided in Section 110-6,
29 after arrest and release of the defendant upon reasonable
30 notice to the defendant; provided that while the petition
31 is pending before the court, the defendant if previously
32 released shall not be detained.

33 (2) The hearing shall be held immediately upon the

1 defendant's appearance before the court, unless for good
2 cause shown the defendant or the State seeks a continuance.
3 A continuance on motion of the defendant may not exceed 5
4 calendar days, and the defendant may be held in custody
5 during the continuance. A continuance on the motion of the
6 State may not exceed 3 calendar days.

7 (b) The court may deny bail to the defendant when, after
8 the hearing, it is determined that:

9 (1) the proof is evident or the presumption great that
10 the defendant has committed the offense of arson,
11 aggravated arson, residential arson, place of worship
12 arson, possession of explosives or explosive or incendiary
13 devices, or an attempt to commit any of these offenses; and

14 (2) the defendant poses a real and present threat to
15 the physical safety of any person; and

16 (3) the denial of release on bail or personal
17 recognizance is necessary to prevent fulfillment of the
18 threat upon which the charge is based; and

19 (4) the court finds that no condition or combination of
20 conditions set forth in subsection (b) of Section 110-10 of
21 this Code, including mental health treatment at a community
22 mental health center, hospital, or facility of the
23 Department of Human Services, can reasonably assure the
24 physical safety of any person.

25 (c) Conduct of the hearings.

26 (1) The hearing on the defendant's culpability and
27 threat to the public shall be conducted in accordance with
28 the following provisions:

29 (A) Information used by the court in its findings
30 or stated in or offered at the hearing may be by way of
31 proffer based upon reliable information offered by the
32 State or by defendant. The defendant has the right to
33 be represented by counsel, and if he or she is
34 indigent, to have counsel appointed for him or her. The

1 defendant shall have the opportunity to testify, to
2 present witnesses in his or her own behalf, and to
3 cross-examine witnesses if any are called by the State.
4 The defendant has the right to present witnesses in his
5 or her favor. When the ends of justice so require, the
6 court may exercise its discretion and compel the
7 appearance of a complaining witness. The court shall
8 state on the record reasons for granting a defense
9 request to compel the presence of a complaining
10 witness. Cross-examination of a complaining witness at
11 the pretrial detention hearing for the purpose of
12 impeaching the witness' credibility is insufficient
13 reason to compel the presence of the witness. In
14 deciding whether to compel the appearance of a
15 complaining witness, the court shall be considerate of
16 the emotional and physical well-being of the witness.
17 The pretrial detention hearing is not to be used for
18 the purposes of discovery, and the post arraignment
19 rules of discovery do not apply. The State shall tender
20 to the defendant, prior to the hearing, copies of
21 defendant's criminal history, if any, if available,
22 and any written or recorded statements and the
23 substance of any oral statements made by any person, if
24 relied upon by the State. The rules concerning the
25 admissibility of evidence in criminal trials do not
26 apply to the presentation and consideration of
27 information at the hearing. At the trial concerning the
28 offense for which the hearing was conducted neither the
29 finding of the court nor any transcript or other record
30 of the hearing shall be admissible in the State's case
31 in chief, but shall be admissible for impeachment, or
32 as provided in Section 115-10.1 of this Code, or in a
33 perjury proceeding.

34 (B) A motion by the defendant to suppress evidence

1 or to suppress a confession shall not be entertained.
2 Evidence that proof may have been obtained as the
3 result of an unlawful search and seizure or through
4 improper interrogation is not relevant to this state of
5 the prosecution.

6 (2) The facts relied upon by the court to support a
7 finding that:

8 (A) the defendant poses a real and present threat
9 to the physical safety of any person; and

10 (B) the denial of release on bail or personal
11 recognizance is necessary to prevent fulfillment of
12 the threat upon which the charge is based;

13 shall be supported by clear and convincing evidence
14 presented by the State.

15 (d) Factors to be considered in making a determination of
16 the threat to the public. The court may, in determining whether
17 the defendant poses, at the time of the hearing, a real and
18 present threat to the physical safety of any person, consider
19 but shall not be limited to evidence or testimony concerning:

20 (1) the nature and circumstances of the offense
21 charged;

22 (2) the history and characteristics of the defendant
23 including:

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

30 (B) any evidence of the defendant's psychological,
31 psychiatric or other similar social history that tends
32 to indicate a violent, abusive, or assaultive nature,
33 or lack of any such history.

34 (3) the nature of the threat which is the basis of the

1 charge against the defendant;

2 (4) any statements made by, or attributed to the
3 defendant, together with the circumstances surrounding
4 them;

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

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

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

17 (e) The court shall, in any order denying bail to a person
18 charged with arson, aggravated arson, residential arson, place
19 of worship arson, possession of explosives or explosive or
20 incendiary devices, or an attempt to commit any of these
21 offenses:

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

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

28 (3) direct that the defendant be given a reasonable
29 opportunity for private consultation with counsel, and for
30 communication with others of his choice by visitation, mail
31 and telephone; and

32 (4) direct that the sheriff deliver the defendant as
33 required for appearances in connection with court
34 proceedings.

1 (f) If the court enters an order for the detention of the
2 defendant under subsection (e) of this Section, the defendant
3 shall be brought to trial on the offense for which he or she is
4 detained within 90 days after the date on which the order for
5 detention was entered. If the defendant is not brought to trial
6 within the 90 day period required by this subsection (f), he or
7 she shall not be held longer without bail. In computing the 90
8 day period, the court shall omit any period of delay resulting
9 from a continuance granted at the request of the defendant. The
10 court shall immediately notify the alleged victim of the
11 offense that the defendant has been admitted to bail under this
12 subsection.

13 (g) Any person shall be entitled to appeal any order
14 entered under this Section denying bail to the defendant.

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

17 (i) Nothing in this Section shall be construed as modifying
18 or limiting in any way the defendant's presumption of innocence
19 in further criminal proceedings."