



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1881

Introduced 1/10/2008, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-4
725 ILCS 5/110-7

from Ch. 38, par. 110-4
from Ch. 38, par. 110-7

Amends the Code of Criminal Procedure of 1963. Provides that the offense of making a terrorist threat or an attempt to commit the offense of making a terrorist threat is non-bailable, where the proof is evident or the presumption great that the defendant is guilty of the offense and where the court, after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of any person and denial of bail is necessary to prevent fulfillment of that threat. Provides that when a person is charged with the offense of making a terrorist threat or an attempt to commit the offense of making a terrorist threat and bail has been set, the court may require the defendant to deposit a sum equal to 100% of the bail. Effective immediately.

LRB095 14274 RLC 40151 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 Sections 110-4 and 110-7 as follows:

6 (725 ILCS 5/110-4) (from Ch. 38, par. 110-4)

7 Sec. 110-4. Bailable Offenses.

8 (a) All persons shall be bailable before conviction, except
9 the following offenses where the proof is evident or the
10 presumption great that the defendant is guilty of the offense:
11 capital offenses; offenses for which a sentence of life
12 imprisonment may be imposed as a consequence of conviction;
13 felony offenses for which a sentence of imprisonment, without
14 conditional and revocable release, shall be imposed by law as a
15 consequence of conviction, where the court after a hearing,
16 determines that the release of the defendant would pose a real
17 and present threat to the physical safety of any person or
18 persons; stalking or aggravated stalking, where the court,
19 after a hearing, determines that the release of the defendant
20 would pose a real and present threat to the physical safety of
21 the alleged victim of the offense and denial of bail is
22 necessary to prevent fulfillment of the threat upon which the
23 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 making a terrorist threat in violation of
11 Section 29D-20 of the Criminal Code of 1961 or an attempt to
12 commit the offense of making a terrorist threat, where the
13 court, after a hearing, determines that the release of the
14 defendant would pose a real and present threat to the physical
15 safety of any person and denial of bail is necessary to prevent
16 fulfillment of that threat.

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

23 (c) Where it is alleged that bail should be denied to a
24 person upon the grounds that the person presents a real and
25 present threat to the physical safety of any person or persons,
26 the burden of proof of such allegations shall be upon the

1 State.

2 (d) When it is alleged that bail should be denied to a
3 person charged with stalking or aggravated stalking upon the
4 grounds set forth in Section 110-6.3 of this Code, the burden
5 of proof of those allegations shall be upon the State.

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

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

8 Sec. 110-7. Deposit of Bail Security.

9 (a) The person for whom bail has been set shall execute the
10 bail bond and deposit with the clerk of the court before which
11 the proceeding is pending a sum of money equal to 10% of the
12 bail, but in no event shall such deposit be less than \$25. The
13 clerk of the court shall provide a space on each form for a
14 person other than the accused who has provided the money for
15 the posting of bail to so indicate and a space signed by an
16 accused who has executed the bail bond indicating whether a
17 person other than the accused has provided the money for the
18 posting of bail. The form shall also include a written notice
19 to such person who has provided the defendant with the money
20 for the posting of bail indicating that the bail may be used to
21 pay costs, attorney's fees, fines, or other purposes authorized
22 by the court and if the defendant fails to comply with the
23 conditions of the bail bond, the court shall enter an order
24 declaring the bail to be forfeited. The written notice must be:
25 (1) distinguishable from the surrounding text; (2) in bold type

1 or underscored; and (3) in a type size at least 2 points larger
2 than the surrounding type. When a person for whom bail has been
3 set is charged with an offense under the Illinois Controlled
4 Substances Act or the Methamphetamine Control and Community
5 Protection Act which is a Class X felony, or making a terrorist
6 threat in violation of Section 29D-20 of the Criminal Code of
7 1961 or an attempt to commit the offense of making a terrorist
8 threat, the court may require the defendant to deposit a sum
9 equal to 100% of the bail. Where any person is charged with a
10 forcible felony while free on bail and is the subject of
11 proceedings under Section 109-3 of this Code the judge
12 conducting the preliminary examination may also conduct a
13 hearing upon the application of the State pursuant to the
14 provisions of Section 110-6 of this Code to increase or revoke
15 the bail for that person's prior alleged offense.

16 (b) Upon depositing this sum and any bond fee authorized by
17 law, the person shall be released from custody subject to the
18 conditions of the bail bond.

19 (c) Once bail has been given and a charge is pending or is
20 thereafter filed in or transferred to a court of competent
21 jurisdiction the latter court shall continue the original bail
22 in that court subject to the provisions of Section 110-6 of
23 this Code.

24 (d) After conviction the court may order that the original
25 bail stand as bail pending appeal or deny, increase or reduce
26 bail subject to the provisions of Section 110-6.2.

1 (e) After the entry of an order by the trial court allowing
2 or denying bail pending appeal either party may apply to the
3 reviewing court having jurisdiction or to a justice thereof
4 sitting in vacation for an order increasing or decreasing the
5 amount of bail or allowing or denying bail pending appeal
6 subject to the provisions of Section 110-6.2.

7 (f) When the conditions of the bail bond have been
8 performed and the accused has been discharged from all
9 obligations in the cause the clerk of the court shall return to
10 the accused or to the defendant's designee by an assignment
11 executed at the time the bail amount is deposited, unless the
12 court orders otherwise, 90% of the sum which had been deposited
13 and shall retain as bail bond costs 10% of the amount
14 deposited. However, in no event shall the amount retained by
15 the clerk as bail bond costs be less than \$5. Bail bond
16 deposited by or on behalf of a defendant in one case may be
17 used, in the court's discretion, to satisfy financial
18 obligations of that same defendant incurred in a different case
19 due to a fine, court costs, restitution or fees of the
20 defendant's attorney of record. In counties with a population
21 of 3,000,000 or more, the court shall not order bail bond
22 deposited by or on behalf of a defendant in one case to be used
23 to satisfy financial obligations of that same defendant in a
24 different case until the bail bond is first used to satisfy
25 court costs and attorney's fees in the case in which the bail
26 bond has been deposited and any other unpaid child support

1 obligations are satisfied. In counties with a population of
2 less than 3,000,000, the court shall not order bail bond
3 deposited by or on behalf of a defendant in one case to be used
4 to satisfy financial obligations of that same defendant in a
5 different case until the bail bond is first used to satisfy
6 court costs in the case in which the bail bond has been
7 deposited.

8 At the request of the defendant the court may order such
9 90% of defendant's bail deposit, or whatever amount is
10 repayable to defendant from such deposit, to be paid to
11 defendant's attorney of record.

12 (g) If the accused does not comply with the conditions of
13 the bail bond the court having jurisdiction shall enter an
14 order declaring the bail to be forfeited. Notice of such order
15 of forfeiture shall be mailed forthwith to the accused at his
16 last known address. If the accused does not appear and
17 surrender to the court having jurisdiction within 30 days from
18 the date of the forfeiture or within such period satisfy the
19 court that appearance and surrender by the accused is
20 impossible and without his fault the court shall enter judgment
21 for the State if the charge for which the bond was given was a
22 felony or misdemeanor, or if the charge was quasi-criminal or
23 traffic, judgment for the political subdivision of the State
24 which prosecuted the case, against the accused for the amount
25 of the bail and costs of the court proceedings; however, in
26 counties with a population of less than 3,000,000, instead of

1 the court entering a judgment for the full amount of the bond
2 the court may, in its discretion, enter judgment for the cash
3 deposit on the bond, less costs, retain the deposit for further
4 disposition or, if a cash bond was posted for failure to appear
5 in a matter involving enforcement of child support or
6 maintenance, the amount of the cash deposit on the bond, less
7 outstanding costs, may be awarded to the person or entity to
8 whom the child support or maintenance is due. The deposit made
9 in accordance with paragraph (a) shall be applied to the
10 payment of costs. If judgment is entered and any amount of such
11 deposit remains after the payment of costs it shall be applied
12 to payment of the judgment and transferred to the treasury of
13 the municipal corporation wherein the bond was taken if the
14 offense was a violation of any penal ordinance of a political
15 subdivision of this State, or to the treasury of the county
16 wherein the bond was taken if the offense was a violation of
17 any penal statute of this State. The balance of the judgment
18 may be enforced and collected in the same manner as a judgment
19 entered in a civil action.

20 (h) After a judgment for a fine and court costs or either
21 is entered in the prosecution of a cause in which a deposit had
22 been made in accordance with paragraph (a) the balance of such
23 deposit, after deduction of bail bond costs, shall be applied
24 to the payment of the judgment.

25 (Source: P.A. 93-371, eff. 1-1-04; 93-760, eff. 1-1-05; 94-556,
26 eff. 9-11-05.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.