

HB3773



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3773

by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-2	from Ch. 38, par. 110-2
725 ILCS 5/110-5	from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. Requires the court to release a defendant charged with possession of less than 1 gram of heroin, possession of less than 1 gram of cocaine, or possession of less than 10 grams of cannabis on his or own recognizance if certain criteria are met. If the release on own recognizance criteria are not met and the court finds that monetary bail is not necessary to secure the appearance of the defendant, the court may require the defendant's monitoring under electronic surveillance as a condition of his or her release.

LRB098 15189 MRW 50175 b

A BILL FOR

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 110-2 and 110-5 as follows:

6 (725 ILCS 5/110-2) (from Ch. 38, par. 110-2)

7 Sec. 110-2. Release on own recognizance.

8 (a) Except as provided in subsection (b), when ~~When~~ from
9 all the circumstances the court is of the opinion that the
10 defendant will appear as required either before or after
11 conviction and the defendant will not pose a danger to any
12 person or the community and that the defendant will comply with
13 all conditions of bond, which shall include the defendant's
14 current address with a written admonishment to the defendant
15 that he or she must comply with the provisions of Section
16 110-12 of this Code regarding any change in his or her address,
17 the defendant may be released on his or her own recognizance.

18 (b) When a defendant is charged with possession of less
19 than 1 gram of heroin, possession of less than 1 gram of
20 cocaine, or possession of less than 10 grams of cannabis,
21 unless there is a reasonable belief that there is an urgent and
22 immediate necessity for the defendant to be in custody, the
23 court shall release the defendant on his or her own

1 recognizance if the court finds that the defendant:

2 (1) is at least 18 years of age;

3 (2) was not engaged in the commission of another
4 offense other than possession of less than 1 gram of
5 heroin, possession of less than 1 gram of cocaine, or
6 possession of less than 10 grams of cannabis;

7 (3) produced satisfactory evidence of his or her
8 identity;

9 (4) has not exhibited behavior which required the
10 arresting officer, a correctional officer, or correctional
11 employee to exert physical force to effectuate the arrest
12 or control the defendant;

13 (5) has not demonstrated behavior that would pose a
14 danger to any person or the community;

15 (6) has not been convicted or found guilty in any
16 jurisdiction as an adult or juvenile for a violation
17 involving the use or threat of physical force or violence;

18 (7) is not the subject of a pending arrest warrant,
19 prosecution, order of protection, or other criminal
20 proceeding; and

21 (8) will comply with all conditions of bond, which
22 shall include the defendant's current address with a
23 written admonishment to the defendant that he or she must
24 comply with the provisions of Section 110-12 of this Code
25 regarding any change in his or her address.

26 (c) The defendant's address shall at all times remain a

1 matter of public record with the clerk of the court.

2 (d) A failure to appear as required by the ~~such~~
3 recognizance shall constitute an offense subject to the penalty
4 provided in Section 32-10 of the Criminal Code of 2012 for
5 violation of the bail bond, and any obligated sum fixed in the
6 recognizance shall be forfeited and collected in accordance
7 with subsection (g) of Section 110-7 of this Code.

8 (e) This Section shall be liberally construed to effectuate
9 the purpose of relying upon contempt of court proceedings or
10 criminal sanctions instead of financial loss to assure the
11 appearance of the defendant, and that the defendant will not
12 pose a danger to any person or the community and that the
13 defendant will comply with all conditions of bond. Monetary
14 bail should be set only when it is determined that no other
15 conditions of release will reasonably assure the defendant's
16 appearance in court, that the defendant does not present a
17 danger to any person or the community and that the defendant
18 will comply with all conditions of bond.

19 (f) The State may appeal any order permitting release by
20 personal recognizance.

21 (Source: P.A. 97-1150, eff. 1-25-13.)

22 (725 ILCS 5/110-5) (from Ch. 38, par. 110-5)

23 Sec. 110-5. Determining the amount of bail and conditions
24 of release.

25 (a) In determining the amount of monetary bail or

1 conditions of release, if any, which will reasonably assure the
2 appearance of a defendant as required or the safety of any
3 other person or the community and the likelihood of compliance
4 by the defendant with all the conditions of bail, the court
5 shall, on the basis of available information, take into account
6 such matters as the nature and circumstances of the offense
7 charged, whether the evidence shows that as part of the offense
8 there was a use of violence or threatened use of violence,
9 whether the offense involved corruption of public officials or
10 employees, whether there was physical harm or threats of
11 physical harm to any public official, public employee, judge,
12 prosecutor, juror or witness, senior citizen, child or
13 handicapped person, whether evidence shows that during the
14 offense or during the arrest the defendant possessed or used a
15 firearm, machine gun, explosive or metal piercing ammunition or
16 explosive bomb device or any military or paramilitary armament,
17 whether the evidence shows that the offense committed was
18 related to or in furtherance of the criminal activities of an
19 organized gang or was motivated by the defendant's membership
20 in or allegiance to an organized gang, the condition of the
21 victim, any written statement submitted by the victim or
22 proffer or representation by the State regarding the impact
23 which the alleged criminal conduct has had on the victim and
24 the victim's concern, if any, with further contact with the
25 defendant if released on bail, whether the offense was based on
26 racial, religious, sexual orientation or ethnic hatred, the

1 likelihood of the filing of a greater charge, the likelihood of
2 conviction, the sentence applicable upon conviction, the
3 weight of the evidence against such defendant, whether there
4 exists motivation or ability to flee, whether there is any
5 verification as to prior residence, education, or family ties
6 in the local jurisdiction, in another county, state or foreign
7 country, the defendant's employment, financial resources,
8 character and mental condition, past conduct, prior use of
9 alias names or dates of birth, and length of residence in the
10 community, the consent of the defendant to periodic drug
11 testing in accordance with Section 110-6.5, whether a foreign
12 national defendant is lawfully admitted in the United States of
13 America, whether the government of the foreign national
14 maintains an extradition treaty with the United States by which
15 the foreign government will extradite to the United States its
16 national for a trial for a crime allegedly committed in the
17 United States, whether the defendant is currently subject to
18 deportation or exclusion under the immigration laws of the
19 United States, whether the defendant, although a United States
20 citizen, is considered under the law of any foreign state a
21 national of that state for the purposes of extradition or
22 non-extradition to the United States, the amount of unrecovered
23 proceeds lost as a result of the alleged offense, the source of
24 bail funds tendered or sought to be tendered for bail, whether
25 from the totality of the court's consideration, the loss of
26 funds posted or sought to be posted for bail will not deter the

1 defendant from flight, whether the evidence shows that the
2 defendant is engaged in significant possession, manufacture,
3 or delivery of a controlled substance or cannabis, either
4 individually or in consort with others, whether at the time of
5 the offense charged he or she was on bond or pre-trial release
6 pending trial, probation, periodic imprisonment or conditional
7 discharge pursuant to this Code or the comparable Code of any
8 other state or federal jurisdiction, whether the defendant is
9 on bond or pre-trial release pending the imposition or
10 execution of sentence or appeal of sentence for any offense
11 under the laws of Illinois or any other state or federal
12 jurisdiction, whether the defendant is under parole, aftercare
13 release, mandatory supervised release, or work release from the
14 Illinois Department of Corrections or Illinois Department of
15 Juvenile Justice or any penal institution or corrections
16 department of any state or federal jurisdiction, the
17 defendant's record of convictions, whether the defendant has
18 been convicted of a misdemeanor or ordinance offense in
19 Illinois or similar offense in other state or federal
20 jurisdiction within the 10 years preceding the current charge
21 or convicted of a felony in Illinois, whether the defendant was
22 convicted of an offense in another state or federal
23 jurisdiction that would be a felony if committed in Illinois
24 within the 20 years preceding the current charge or has been
25 convicted of such felony and released from the penitentiary
26 within 20 years preceding the current charge if a penitentiary

1 sentence was imposed in Illinois or other state or federal
2 jurisdiction, the defendant's records of juvenile adjudication
3 of delinquency in any jurisdiction, any record of appearance or
4 failure to appear by the defendant at court proceedings,
5 whether there was flight to avoid arrest or prosecution,
6 whether the defendant escaped or attempted to escape to avoid
7 arrest, whether the defendant refused to identify himself or
8 herself, or whether there was a refusal by the defendant to be
9 fingerprinted as required by law. Information used by the court
10 in its findings or stated in or offered in connection with this
11 Section may be by way of proffer based upon reliable
12 information offered by the State or defendant. All evidence
13 shall be admissible if it is relevant and reliable regardless
14 of whether it would be admissible under the rules of evidence
15 applicable at criminal trials. If the State presents evidence
16 that the offense committed by the defendant was related to or
17 in furtherance of the criminal activities of an organized gang
18 or was motivated by the defendant's membership in or allegiance
19 to an organized gang, and if the court determines that the
20 evidence may be substantiated, the court shall prohibit the
21 defendant from associating with other members of the organized
22 gang as a condition of bail or release. For the purposes of
23 this Section, "organized gang" has the meaning ascribed to it
24 in Section 10 of the Illinois Streetgang Terrorism Omnibus
25 Prevention Act.

26 (a-5) When a defendant is charged with possession of less

1 than 1 gram of heroin, possession of less than 1 gram of
2 cocaine, or possession of less than 10 grams of cannabis, if
3 the court finds that the defendant does not meet the
4 requirements for release on own recognizance under subsection
5 (b) of Section 110-2 of this Code and that monetary bail is not
6 necessary to secure the appearance of the defendant, the court
7 may place the defendant on electronic monitoring as a condition
8 of his or her release under paragraph (14) of subsection (b) of
9 Section 110-10 of this Code.

10 (b) The amount of bail shall be:

11 (1) Sufficient to assure compliance with the
12 conditions set forth in the bail bond, which shall include
13 the defendant's current address with a written
14 admonishment to the defendant that he or she must comply
15 with the provisions of Section 110-12 regarding any change
16 in his or her address. The defendant's address shall at all
17 times remain a matter of public record with the clerk of
18 the court.

19 (2) Not oppressive.

20 (3) Considerate of the financial ability of the
21 accused.

22 (4) When a person is charged with a drug related
23 offense involving possession or delivery of cannabis or
24 possession or delivery of a controlled substance as defined
25 in the Cannabis Control Act, the Illinois Controlled
26 Substances Act, or the Methamphetamine Control and

1 Community Protection Act, the full street value of the
2 drugs seized shall be considered. "Street value" shall be
3 determined by the court on the basis of a proffer by the
4 State based upon reliable information of a law enforcement
5 official contained in a written report as to the amount
6 seized and such proffer may be used by the court as to the
7 current street value of the smallest unit of the drug
8 seized.

9 (b-5) Upon the filing of a written request demonstrating
10 reasonable cause, the State's Attorney may request a source of
11 bail hearing either before or after the posting of any funds.
12 If the hearing is granted, before the posting of any bail, the
13 accused must file a written notice requesting that the court
14 conduct a source of bail hearing. The notice must be
15 accompanied by justifying affidavits stating the legitimate
16 and lawful source of funds for bail. At the hearing, the court
17 shall inquire into any matters stated in any justifying
18 affidavits, and may also inquire into matters appropriate to
19 the determination which shall include, but are not limited to,
20 the following:

21 (1) the background, character, reputation, and
22 relationship to the accused of any surety; and

23 (2) the source of any money or property deposited by
24 any surety, and whether any such money or property
25 constitutes the fruits of criminal or unlawful conduct; and

26 (3) the source of any money posted as cash bail, and

1 whether any such money constitutes the fruits of criminal
2 or unlawful conduct; and

3 (4) the background, character, reputation, and
4 relationship to the accused of the person posting cash
5 bail.

6 Upon setting the hearing, the court shall examine, under
7 oath, any persons who may possess material information.

8 The State's Attorney has a right to attend the hearing, to
9 call witnesses and to examine any witness in the proceeding.
10 The court shall, upon request of the State's Attorney, continue
11 the proceedings for a reasonable period to allow the State's
12 Attorney to investigate the matter raised in any testimony or
13 affidavit. If the hearing is granted after the accused has
14 posted bail, the court shall conduct a hearing consistent with
15 this subsection (b-5). At the conclusion of the hearing, the
16 court must issue an order either approving or disapproving the
17 bail.

18 (c) When a person is charged with an offense punishable by
19 fine only the amount of the bail shall not exceed double the
20 amount of the maximum penalty.

21 (d) When a person has been convicted of an offense and only
22 a fine has been imposed the amount of the bail shall not exceed
23 double the amount of the fine.

24 (e) The State may appeal any order granting bail or setting
25 a given amount for bail.

26 (f) When a person is charged with a violation of an order

1 of protection under Section 12-3.4 or 12-30 of the Criminal
2 Code of 1961 or the Criminal Code of 2012,

3 (1) whether the alleged incident involved harassment
4 or abuse, as defined in the Illinois Domestic Violence Act
5 of 1986;

6 (2) whether the person has a history of domestic
7 violence, as defined in the Illinois Domestic Violence Act,
8 or a history of other criminal acts;

9 (3) based on the mental health of the person;

10 (4) whether the person has a history of violating the
11 orders of any court or governmental entity;

12 (5) whether the person has been, or is, potentially a
13 threat to any other person;

14 (6) whether the person has access to deadly weapons or
15 a history of using deadly weapons;

16 (7) whether the person has a history of abusing alcohol
17 or any controlled substance;

18 (8) based on the severity of the alleged incident that
19 is the basis of the alleged offense, including, but not
20 limited to, the duration of the current incident, and
21 whether the alleged incident involved physical injury,
22 sexual assault, strangulation, abuse during the alleged
23 victim's pregnancy, abuse of pets, or forcible entry to
24 gain access to the alleged victim;

25 (9) whether a separation of the person from the alleged
26 victim or a termination of the relationship between the

1 person and the alleged victim has recently occurred or is
2 pending;

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

8 (11) whether the person has expressed suicidal or
9 homicidal ideations;

10 (12) based on any information contained in the
11 complaint and any police reports, affidavits, or other
12 documents accompanying the complaint,

13 the court may, in its discretion, order the respondent to
14 undergo a risk assessment evaluation conducted by an Illinois
15 Department of Human Services approved partner abuse
16 intervention program provider, pretrial service, probation, or
17 parole agency. These agencies shall have access to summaries of
18 the defendant's criminal history, which shall not include
19 victim interviews or information, for the risk evaluation.
20 Based on the information collected from the 12 points to be
21 considered at a bail hearing for a violation of an order of
22 protection, the results of any risk evaluation conducted and
23 the other circumstances of the violation, the court may order
24 that the person, as a condition of bail, be placed under
25 electronic surveillance as provided in Section 5-8A-7 of the
26 Unified Code of Corrections.

1 (Source: P.A. 97-1150, eff. 1-25-13; 98-558, eff. 1-1-14.)