



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB5710

by Rep. Emily McAsey

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. In determining the amount of bail on a person charged with a violation of an order of protection, a pretrial service agency or probation department shall have access to victim interviews and access for a direct interview of the victim (rather than denied access to victim interviews or information). Effective immediately.

LRB098 18643 MRW 53786 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 110-5 as follows:

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

7 Sec. 110-5. Determining the amount of bail and conditions  
8 of release.

9 (a) In determining the amount of monetary bail or  
10 conditions of release, if any, which will reasonably assure the  
11 appearance of a defendant as required or the safety of any  
12 other person or the community and the likelihood of compliance  
13 by the defendant with all the conditions of bail, the court  
14 shall, on the basis of available information, take into account  
15 such matters as the nature and circumstances of the offense  
16 charged, whether the evidence shows that as part of the offense  
17 there was a use of violence or threatened use of violence,  
18 whether the offense involved corruption of public officials or  
19 employees, whether there was physical harm or threats of  
20 physical harm to any public official, public employee, judge,  
21 prosecutor, juror or witness, senior citizen, child or  
22 handicapped person, whether evidence shows that during the  
23 offense or during the arrest the defendant possessed or used a

1 firearm, machine gun, explosive or metal piercing ammunition or  
2 explosive bomb device or any military or paramilitary armament,  
3 whether the evidence shows that the offense committed was  
4 related to or in furtherance of the criminal activities of an  
5 organized gang or was motivated by the defendant's membership  
6 in or allegiance to an organized gang, the condition of the  
7 victim, any written statement submitted by the victim or  
8 proffer or representation by the State regarding the impact  
9 which the alleged criminal conduct has had on the victim and  
10 the victim's concern, if any, with further contact with the  
11 defendant if released on bail, whether the offense was based on  
12 racial, religious, sexual orientation or ethnic hatred, the  
13 likelihood of the filing of a greater charge, the likelihood of  
14 conviction, the sentence applicable upon conviction, the  
15 weight of the evidence against such defendant, whether there  
16 exists motivation or ability to flee, whether there is any  
17 verification as to prior residence, education, or family ties  
18 in the local jurisdiction, in another county, state or foreign  
19 country, the defendant's employment, financial resources,  
20 character and mental condition, past conduct, prior use of  
21 alias names or dates of birth, and length of residence in the  
22 community, the consent of the defendant to periodic drug  
23 testing in accordance with Section 110-6.5, whether a foreign  
24 national defendant is lawfully admitted in the United States of  
25 America, whether the government of the foreign national  
26 maintains an extradition treaty with the United States by which

1 the foreign government will extradite to the United States its  
2 national for a trial for a crime allegedly committed in the  
3 United States, whether the defendant is currently subject to  
4 deportation or exclusion under the immigration laws of the  
5 United States, whether the defendant, although a United States  
6 citizen, is considered under the law of any foreign state a  
7 national of that state for the purposes of extradition or  
8 non-extradition to the United States, the amount of unrecovered  
9 proceeds lost as a result of the alleged offense, the source of  
10 bail funds tendered or sought to be tendered for bail, whether  
11 from the totality of the court's consideration, the loss of  
12 funds posted or sought to be posted for bail will not deter the  
13 defendant from flight, whether the evidence shows that the  
14 defendant is engaged in significant possession, manufacture,  
15 or delivery of a controlled substance or cannabis, either  
16 individually or in consort with others, whether at the time of  
17 the offense charged he or she was on bond or pre-trial release  
18 pending trial, probation, periodic imprisonment or conditional  
19 discharge pursuant to this Code or the comparable Code of any  
20 other state or federal jurisdiction, whether the defendant is  
21 on bond or pre-trial release pending the imposition or  
22 execution of sentence or appeal of sentence for any offense  
23 under the laws of Illinois or any other state or federal  
24 jurisdiction, whether the defendant is under parole, aftercare  
25 release, mandatory supervised release, or work release from the  
26 Illinois Department of Corrections or Illinois Department of

1 Juvenile Justice or any penal institution or corrections  
2 department of any state or federal jurisdiction, the  
3 defendant's record of convictions, whether the defendant has  
4 been convicted of a misdemeanor or ordinance offense in  
5 Illinois or similar offense in other state or federal  
6 jurisdiction within the 10 years preceding the current charge  
7 or convicted of a felony in Illinois, whether the defendant was  
8 convicted of an offense in another state or federal  
9 jurisdiction that would be a felony if committed in Illinois  
10 within the 20 years preceding the current charge or has been  
11 convicted of such felony and released from the penitentiary  
12 within 20 years preceding the current charge if a penitentiary  
13 sentence was imposed in Illinois or other state or federal  
14 jurisdiction, the defendant's records of juvenile adjudication  
15 of delinquency in any jurisdiction, any record of appearance or  
16 failure to appear by the defendant at court proceedings,  
17 whether there was flight to avoid arrest or prosecution,  
18 whether the defendant escaped or attempted to escape to avoid  
19 arrest, whether the defendant refused to identify himself or  
20 herself, or whether there was a refusal by the defendant to be  
21 fingerprinted as required by law. Information used by the court  
22 in its findings or stated in or offered in connection with this  
23 Section may be by way of proffer based upon reliable  
24 information offered by the State or defendant. All evidence  
25 shall be admissible if it is relevant and reliable regardless  
26 of whether it would be admissible under the rules of evidence

1 applicable at criminal trials. If the State presents evidence  
2 that the offense committed by the defendant was related to or  
3 in furtherance of the criminal activities of an organized gang  
4 or was motivated by the defendant's membership in or allegiance  
5 to an organized gang, and if the court determines that the  
6 evidence may be substantiated, the court shall prohibit the  
7 defendant from associating with other members of the organized  
8 gang as a condition of bail or release. For the purposes of  
9 this Section, "organized gang" has the meaning ascribed to it  
10 in Section 10 of the Illinois Streetgang Terrorism Omnibus  
11 Prevention Act.

12 (b) The amount of bail shall be:

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

21 (2) Not oppressive.

22 (3) Considerate of the financial ability of the  
23 accused.

24 (4) When a person is charged with a drug related  
25 offense involving possession or delivery of cannabis or  
26 possession or delivery of a controlled substance as defined

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

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

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

25 (2) the source of any money or property deposited by  
26 any surety, and whether any such money or property

1 constitutes the fruits of criminal or unlawful conduct; and

2 (3) the source of any money posted as cash bail, and  
3 whether any such money constitutes the fruits of criminal  
4 or unlawful conduct; and

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

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

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

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

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

26 (e) The State may appeal any order granting bail or setting



1 a given amount for bail.

2 (f) When a person is charged with a violation of an order  
3 of protection under Section 12-3.4 or 12-30 of the Criminal  
4 Code of 1961 or the Criminal Code of 2012,

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

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

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

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

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

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

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

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

1           (9) whether a separation of the person from the alleged  
2           victim or a termination of the relationship between the  
3           person and the alleged victim has recently occurred or is  
4           pending;

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

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

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

15          the court may, in its discretion, order the respondent to  
16          undergo a risk assessment evaluation conducted by an Illinois  
17          Department of Human Services approved partner abuse  
18          intervention program provider, pretrial service, probation, or  
19          parole agency. These agencies shall have access to summaries of  
20          the defendant's criminal history, which shall not include  
21          victim interviews or information, for the risk evaluation,  
22          except that a pretrial service agency or probation department  
23          shall have access to victim interviews and access for a direct  
24          interview of the victim for the purpose of determining bail.

25          Based on the information collected from the 12 points to be  
26          considered at a bail hearing for a violation of an order of

1 protection, the results of any risk evaluation conducted and  
2 the other circumstances of the violation, the court may order  
3 that the person, as a condition of bail, be placed under  
4 electronic surveillance as provided in Section 5-8A-7 of the  
5 Unified Code of Corrections.

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

7 Section 99. Effective date. This Act takes effect upon  
8 becoming law.