



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3488

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. Provides that when a person is charged with a violation of an order of protection or when a person is charged with domestic battery, aggravated domestic battery, kidnapping, aggravated kidnapping, unlawful restraint, aggravated unlawful restraint, stalking, aggravated stalking, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against an intimate partner regardless whether an order of protection has been issued against the person and the court orders the respondent to undergo a risk assessment, a pretrial service agency or probation department shall have access to victim interviews conducted by law enforcement agencies and access for a direct interview of the victim for the purpose of determining bail. Provides that a probation officer shall not have access to any confidential communications protected the Illinois Domestic Violence Act of 1986 concerning communications between domestic violence counselors and victims. Provides that prior to any direct interview of a victim by a probation department of pretrial services agency, a victim must be informed of his or her right to decline the interview by the official who is to conduct the interview. Provides that communications between a domestic violence victim and the probation department or pretrial services agency are protected under the Code of Civil Procedure.

LRB099 10765 RLC 31068 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 or when a person is
5 charged with domestic battery, aggravated domestic battery,
6 kidnapping, aggravated kidnaping, unlawful restraint,
7 aggravated unlawful restraint, stalking, aggravated stalking,
8 cyberstalking, harassment by telephone, harassment through
9 electronic communications, or an attempt to commit first degree
10 murder committed against an intimate partner regardless
11 whether an order of protection has been issued against the
12 person,

13 (1) whether the alleged incident involved harassment
14 or abuse, as defined in the Illinois Domestic Violence Act
15 of 1986;

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

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

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

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

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

26 (7) whether the person has a history of abusing alcohol

1 or any controlled substance;

2 (8) based on the severity of the alleged incident that
3 is the basis of the alleged offense, including, but not
4 limited to, the duration of the current incident, and
5 whether the alleged incident involved the use of a weapon,
6 physical injury, sexual assault, strangulation, abuse
7 during the alleged victim's pregnancy, abuse of pets, or
8 forcible entry to gain access to the alleged victim;

9 (9) whether a separation of the person from the alleged
10 victim or a termination of the relationship between the
11 person and the alleged victim has recently occurred or is
12 pending;

13 (10) whether the person has exhibited obsessive or
14 controlling behaviors toward the alleged victim,
15 including, but not limited to, stalking, surveillance, or
16 isolation of the alleged victim or victim's family member
17 or members;

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

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

23 the court may, in its discretion, order the respondent to
24 undergo a risk assessment evaluation using a recognized,
25 evidence-based instrument conducted by an Illinois Department
26 of Human Services approved partner abuse intervention program

1 provider, pretrial service, probation, or parole agency. These
2 agencies shall have access to summaries of the defendant's
3 criminal history, which shall not include victim interviews or
4 information, for the risk evaluation, except that a pretrial
5 service agency or probation department shall have access to
6 victim interviews conducted by law enforcement agencies and
7 access for a direct interview of the victim for the purpose of
8 determining bail. A probation officer shall not have access to
9 any confidential communications protected under Section 227 of
10 the Illinois Domestic Violence Act of 1986. Prior to any direct
11 interview of a victim by a probation department or pretrial
12 services agency, a victim must be informed of his or her right
13 to decline the interview by the official who is to conduct the
14 interview. Communications between a domestic violence victim
15 and the probation department or pretrial services agency are
16 protected under the Code of Civil Procedure. Based on the
17 information collected from the 12 points to be considered at a
18 bail hearing under this subsection (f), the results of any risk
19 evaluation conducted and the other circumstances of the
20 violation, the court may order that the person, as a condition
21 of bail, be placed under electronic surveillance as provided in
22 Section 5-8A-7 of the Unified Code of Corrections. Upon making
23 a determination whether or not to order the respondent to
24 undergo a risk assessment evaluation or to be placed under
25 electronic surveillance and risk assessment, the court shall
26 document in the record the court's reasons for making those

1 determinations. The cost of the electronic surveillance and
2 risk assessment shall be paid by, or on behalf, of the
3 defendant. As used in this subsection (f), "intimate partner"
4 means a spouse or a current or former partner in a cohabitation
5 or dating relationship.

6 (Source: P.A. 97-1150, eff. 1-25-13; 98-558, eff. 1-1-14;
7 98-1012, eff. 1-1-15.)