



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB0113

Introduced 1/17/2025, by Sen. Sue Rezin

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-2	from Ch. 38, par. 110-2
725 ILCS 5/110-6.1	from Ch. 38, par. 110-6.1

Amends the Code of Criminal Procedure of 1963. Provides that notwithstanding any other provisions of the Code, if the defendant is charged with a violation of the Illinois Controlled Substances Act involving the manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance, a counterfeit substance, or controlled substance analog of 15 grams or more of a substance containing fentanyl, or an analog thereof, then the burden of proof is on the defendant to show by clear and convincing evidence that the defendant's pretrial release does not pose a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case.

LRB104 03070 RLC 13088 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 110-2 and 110-6.1 as follows:

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

8 (a) All persons charged with an offense shall be eligible
9 for pretrial release before conviction. It is presumed that a
10 defendant is entitled to release on personal recognizance on
11 the condition that the defendant attend all required court
12 proceedings and the defendant does not commit any criminal
13 offense, and complies with all terms of pretrial release,
14 including, but not limited to, orders of protection under both
15 Section 112A-4 of this Code and Section 214 of the Illinois
16 Domestic Violence Act of 1986, all civil no contact orders,
17 and all stalking no contact orders. Pretrial release may be
18 denied only if a person is charged with an offense listed in
19 Section 110-6.1 and after the court has held a hearing under
20 Section 110-6.1, and in a manner consistent with subsections
21 (b), (c), and (d) of this Section.

22 (b) At all pretrial hearings, the prosecution shall have
23 the burden to prove by clear and convincing evidence that any

1 condition of release is necessary.

2 (c) When it is alleged that pretrial release should be
3 denied to a person upon the grounds that the person presents a
4 real and present threat to the safety of any person or persons
5 or the community, based on the specific articulable facts of
6 the case, the burden of proof of such allegations shall be upon
7 the State.

8 (d) Except as otherwise provided in subsection (d-1), when
9 ~~when~~ it is alleged that pretrial release should be denied to a
10 person charged with stalking or aggravated stalking upon the
11 grounds set forth in Section 110-6.3, the burden of proof of
12 those allegations shall be upon the State.

13 (d-1) Notwithstanding any other provisions of this
14 Section, if the defendant is charged with a violation of
15 Section 401 of the Illinois Controlled Substances Act
16 involving the manufacture or delivery, or possession with
17 intent to manufacture or deliver, a controlled substance, a
18 counterfeit substance, or controlled substance analog of 15
19 grams or more of a substance containing fentanyl, or an analog
20 thereof, then the burden of proof is on the defendant to show
21 by clear and convincing evidence that the defendant's pretrial
22 release does not pose a real and present threat to the safety
23 of any person or persons or the community, based on the
24 specific articulable facts of the case.

25 (e) This Section shall be liberally construed to
26 effectuate the purpose of relying on pretrial release by

1 nonmonetary means to reasonably ensure an eligible person's
2 appearance in court, the protection of the safety of any other
3 person or the community, that the person will not attempt or
4 obstruct the criminal justice process, and the person's
5 compliance with all conditions of release, while authorizing
6 the court, upon motion of a prosecutor, to order pretrial
7 detention of the person under Section 110-6.1 when it finds
8 clear and convincing evidence that no condition or combination
9 of conditions can reasonably ensure the effectuation of these
10 goals.

11 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)

12 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

13 (Text of Section before amendment by P.A. 103-822)

14 Sec. 110-6.1. Denial of pretrial release.

15 (a) Upon verified petition by the State, the court shall
16 hold a hearing and may deny a defendant pretrial release only
17 if:

18 (1) the defendant is charged with a felony offense
19 other than a forcible felony for which, based on the
20 charge or the defendant's criminal history, a sentence of
21 imprisonment, without probation, periodic imprisonment or
22 conditional discharge, is required by law upon conviction,
23 and it is alleged that the defendant's pretrial release
24 poses a real and present threat to the safety of any person
25 or persons or the community, based on the specific

1 articulable facts of the case;

2 (1.5) the defendant's pretrial release poses a real
3 and present threat to the safety of any person or persons
4 or the community, based on the specific articulable facts
5 of the case, and the defendant is charged with a forcible
6 felony, which as used in this Section, means treason,
7 first degree murder, second degree murder, predatory
8 criminal sexual assault of a child, aggravated criminal
9 sexual assault, criminal sexual assault, armed robbery,
10 aggravated robbery, robbery, burglary where there is use
11 of force against another person, residential burglary,
12 home invasion, vehicular invasion, aggravated arson,
13 arson, aggravated kidnaping, kidnaping, aggravated battery
14 resulting in great bodily harm or permanent disability or
15 disfigurement or any other felony which involves the
16 threat of or infliction of great bodily harm or permanent
17 disability or disfigurement;

18 (2) the defendant is charged with stalking or
19 aggravated stalking, and it is alleged that the
20 defendant's pre-trial release poses a real and present
21 threat to the safety of a victim of the alleged offense,
22 and denial of release is necessary to prevent fulfillment
23 of the threat upon which the charge is based;

24 (3) the defendant is charged with a violation of an
25 order of protection issued under Section 112A-14 of this
26 Code or Section 214 of the Illinois Domestic Violence Act

1 of 1986, a stalking no contact order under Section 80 of
2 the Stalking No Contact Order Act, or of a civil no contact
3 order under Section 213 of the Civil No Contact Order Act,
4 and it is alleged that the defendant's pretrial release
5 poses a real and present threat to the safety of any person
6 or persons or the community, based on the specific
7 articulable facts of the case;

8 (4) the defendant is charged with domestic battery or
9 aggravated domestic battery under Section 12-3.2 or 12-3.3
10 of the Criminal Code of 2012 and it is alleged that the
11 defendant's pretrial release poses a real and present
12 threat to the safety of any person or persons or the
13 community, based on the specific articulable facts of the
14 case;

15 (5) the defendant is charged with any offense under
16 Article 11 of the Criminal Code of 2012, except for
17 Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35,
18 11-40, and 11-45 of the Criminal Code of 2012, or similar
19 provisions of the Criminal Code of 1961 and it is alleged
20 that the defendant's pretrial release poses a real and
21 present threat to the safety of any person or persons or
22 the community, based on the specific articulable facts of
23 the case;

24 (6) the defendant is charged with any of the following
25 offenses under the Criminal Code of 2012, and it is
26 alleged that the defendant's pretrial release poses a real

1 and present threat to the safety of any person or persons
2 or the community, based on the specific articulable facts
3 of the case:

4 (A) Section 24-1.2 (aggravated discharge of a
5 firearm);

6 (B) Section 24-2.5 (aggravated discharge of a
7 machine gun or a firearm equipped with a device
8 designed or use for silencing the report of a
9 firearm);

10 (C) Section 24-1.5 (reckless discharge of a
11 firearm);

12 (D) Section 24-1.7 (armed habitual criminal);

13 (E) Section 24-2.2 (manufacture, sale or transfer
14 of bullets or shells represented to be armor piercing
15 bullets, dragon's breath shotgun shells, bolo shells,
16 or flechette shells);

17 (F) Section 24-3 (unlawful sale or delivery of
18 firearms);

19 (G) Section 24-3.3 (unlawful sale or delivery of
20 firearms on the premises of any school);

21 (H) Section 24-34 (unlawful sale of firearms by
22 liquor license);

23 (I) Section 24-3.5 (unlawful purchase of a
24 firearm);

25 (J) Section 24-3A (gunrunning);

26 (K) Section 24-3B (firearms trafficking);

- 1 (L) Section 10-9 (b) (involuntary servitude);
- 2 (M) Section 10-9 (c) (involuntary sexual servitude
3 of a minor);
- 4 (N) Section 10-9(d) (trafficking in persons);
- 5 (O) Non-probationable violations: (i) unlawful use
6 or possession of weapons by felons or persons in the
7 Custody of the Department of Corrections facilities
8 (Section 24-1.1), (ii) aggravated unlawful use of a
9 weapon (Section 24-1.6), or (iii) aggravated
10 possession of a stolen firearm (Section 24-3.9);
- 11 (P) Section 9-3 (reckless homicide and involuntary
12 manslaughter);
- 13 (Q) Section 19-3 (residential burglary);
- 14 (R) Section 10-5 (child abduction);
- 15 (S) Felony violations of Section 12C-5 (child
16 endangerment);
- 17 (T) Section 12-7.1 (hate crime);
- 18 (U) Section 10-3.1 (aggravated unlawful
19 restraint);
- 20 (V) Section 12-9 (threatening a public official);
- 21 (W) Subdivision (f)(1) of Section 12-3.05
22 (aggravated battery with a deadly weapon other than by
23 discharge of a firearm);
- 24 (6.5) the defendant is charged with any of the
25 following offenses, and it is alleged that the defendant's
26 pretrial release poses a real and present threat to the

1 safety of any person or persons or the community, based on
2 the specific articulable facts of the case:

3 (A) Felony violations of Sections 3.01, 3.02, or
4 3.03 of the Humane Care for Animals Act (cruel
5 treatment, aggravated cruelty, and animal torture);

6 (B) Subdivision (d) (1) (B) of Section 11-501 of the
7 Illinois Vehicle Code (aggravated driving under the
8 influence while operating a school bus with
9 passengers);

10 (C) Subdivision (d) (1) (C) of Section 11-501 of the
11 Illinois Vehicle Code (aggravated driving under the
12 influence causing great bodily harm);

13 (D) Subdivision (d) (1) (D) of Section 11-501 of the
14 Illinois Vehicle Code (aggravated driving under the
15 influence after a previous reckless homicide
16 conviction);

17 (E) Subdivision (d) (1) (F) of Section 11-501 of the
18 Illinois Vehicle Code (aggravated driving under the
19 influence leading to death); or

20 (F) Subdivision (d) (1) (J) of Section 11-501 of the
21 Illinois Vehicle Code (aggravated driving under the
22 influence that resulted in bodily harm to a child
23 under the age of 16);

24 (7) the defendant is charged with an attempt to commit
25 any charge listed in paragraphs (1) through (6.5), and it
26 is alleged that the defendant's pretrial release poses a

1 real and present threat to the safety of any person or
2 persons or the community, based on the specific
3 articulable facts of the case; or

4 (8) the person has a high likelihood of willful flight
5 to avoid prosecution and is charged with:

6 (A) Any felony described in subdivisions (a)(1)
7 through (a)(7) of this Section; or

8 (B) A felony offense other than a Class 4 offense.

9 (b) If the charged offense is a felony, as part of the
10 detention hearing, the court shall determine whether there is
11 probable cause the defendant has committed an offense, unless
12 a hearing pursuant to Section 109-3 of this Code has already
13 been held or a grand jury has returned a true bill of
14 indictment against the defendant. If there is a finding of no
15 probable cause, the defendant shall be released. No such
16 finding is necessary if the defendant is charged with a
17 misdemeanor.

18 (c) Timing of petition.

19 (1) A petition may be filed without prior notice to
20 the defendant at the first appearance before a judge, or
21 within the 21 calendar days, except as provided in Section
22 110-6, after arrest and release of the defendant upon
23 reasonable notice to defendant; provided that while such
24 petition is pending before the court, the defendant if
25 previously released shall not be detained.

26 (2) Upon filing, the court shall immediately hold a

1 hearing on the petition unless a continuance is requested.
2 If a continuance is requested and granted, the hearing
3 shall be held within 48 hours of the defendant's first
4 appearance if the defendant is charged with first degree
5 murder or a Class X, Class 1, Class 2, or Class 3 felony,
6 and within 24 hours if the defendant is charged with a
7 Class 4 or misdemeanor offense. The Court may deny or
8 grant the request for continuance. If the court decides to
9 grant the continuance, the Court retains the discretion to
10 detain or release the defendant in the time between the
11 filing of the petition and the hearing.

12 (d) Contents of petition.

13 (1) The petition shall be verified by the State and
14 shall state the grounds upon which it contends the
15 defendant should be denied pretrial release, including the
16 real and present threat to the safety of any person or
17 persons or the community, based on the specific
18 articulable facts or flight risk, as appropriate.

19 (2) If the State seeks to file a second or subsequent
20 petition under this Section, the State shall be required
21 to present a verified application setting forth in detail
22 any new facts not known or obtainable at the time of the
23 filing of the previous petition.

24 (e) Eligibility: All defendants shall be presumed eligible
25 for pretrial release, and the State shall bear the burden of
26 proving by clear and convincing evidence that:

1 (1) the proof is evident or the presumption great that
2 the defendant has committed an offense listed in
3 subsection (a), and

4 (2) for offenses listed in paragraphs (1) through (7)
5 of subsection (a), the defendant poses a real and present
6 threat to the safety of any person or persons or the
7 community, based on the specific articulable facts of the
8 case, by conduct which may include, but is not limited to,
9 a forcible felony, the obstruction of justice,
10 intimidation, injury, or abuse as defined by paragraph (1)
11 of Section 103 of the Illinois Domestic Violence Act of
12 1986, and

13 (3) no condition or combination of conditions set
14 forth in subsection (b) of Section 110-10 of this Article
15 can mitigate (i) the real and present threat to the safety
16 of any person or persons or the community, based on the
17 specific articulable facts of the case, for offenses
18 listed in paragraphs (1) through (7) of subsection (a), or
19 (ii) the defendant's willful flight for offenses listed in
20 paragraph (8) of subsection (a), and

21 (4) for offenses under subsection (b) of Section 407
22 of the Illinois Controlled Substances Act that are subject
23 to paragraph (1) of subsection (a), no condition or
24 combination of conditions set forth in subsection (b) of
25 Section 110-10 of this Article can mitigate the real and
26 present threat to the safety of any person or persons or

1 the community, based on the specific articulable facts of
2 the case, and the defendant poses a serious risk to not
3 appear in court as required.

4 (f) Conduct of the hearings.

5 (1) Prior to the hearing, the State shall tender to
6 the defendant copies of the defendant's criminal history
7 available, any written or recorded statements, and the
8 substance of any oral statements made by any person, if
9 relied upon by the State in its petition, and any police
10 reports in the prosecutor's possession at the time of the
11 hearing.

12 (2) The State or defendant may present evidence at the
13 hearing by way of proffer based upon reliable information.

14 (3) The defendant has the right to be represented by
15 counsel, and if he or she is indigent, to have counsel
16 appointed for him or her. The defendant shall have the
17 opportunity to testify, to present witnesses on his or her
18 own behalf, and to cross-examine any witnesses that are
19 called by the State. Defense counsel shall be given
20 adequate opportunity to confer with the defendant before
21 any hearing at which conditions of release or the
22 detention of the defendant are to be considered, with an
23 accommodation for a physical condition made to facilitate
24 attorney/client consultation. If defense counsel needs to
25 confer or consult with the defendant during any hearing
26 conducted via a two-way audio-visual communication system,

1 such consultation shall not be recorded and shall be
2 undertaken consistent with constitutional protections.

3 (3.5) A hearing at which pretrial release may be
4 denied must be conducted in person (and not by way of
5 two-way audio visual communication) unless the accused
6 waives the right to be present physically in court, the
7 court determines that the physical health and safety of
8 any person necessary to the proceedings would be
9 endangered by appearing in court, or the chief judge of
10 the circuit orders use of that system due to operational
11 challenges in conducting the hearing in person. Such
12 operational challenges must be documented and approved by
13 the chief judge of the circuit, and a plan to address the
14 challenges through reasonable efforts must be presented
15 and approved by the Administrative Office of the Illinois
16 Courts every 6 months.

17 (4) If the defense seeks to compel the complaining
18 witness to testify as a witness in its favor, it shall
19 petition the court for permission. When the ends of
20 justice so require, the court may exercise its discretion
21 and compel the appearance of a complaining witness. The
22 court shall state on the record reasons for granting a
23 defense request to compel the presence of a complaining
24 witness only on the issue of the defendant's pretrial
25 detention. In making a determination under this Section,
26 the court shall state on the record the reason for

1 granting a defense request to compel the presence of a
2 complaining witness, and only grant the request if the
3 court finds by clear and convincing evidence that the
4 defendant will be materially prejudiced if the complaining
5 witness does not appear. Cross-examination of a
6 complaining witness at the pretrial detention hearing for
7 the purpose of impeaching the witness' credibility is
8 insufficient reason to compel the presence of the witness.
9 In deciding whether to compel the appearance of a
10 complaining witness, the court shall be considerate of the
11 emotional and physical well-being of the witness. The
12 pre-trial detention hearing is not to be used for purposes
13 of discovery, and the post arraignment rules of discovery
14 do not apply. The State shall tender to the defendant,
15 prior to the hearing, copies, if any, of the defendant's
16 criminal history, if available, and any written or
17 recorded statements and the substance of any oral
18 statements made by any person, if in the State's
19 Attorney's possession at the time of the hearing.

20 (5) The rules concerning the admissibility of evidence
21 in criminal trials do not apply to the presentation and
22 consideration of information at the hearing. At the trial
23 concerning the offense for which the hearing was conducted
24 neither the finding of the court nor any transcript or
25 other record of the hearing shall be admissible in the
26 State's case-in-chief, but shall be admissible for

1 impeachment, or as provided in Section 115-10.1 of this
2 Code, or in a perjury proceeding.

3 (6) The defendant may not move to suppress evidence or
4 a confession, however, evidence that proof of the charged
5 crime may have been the result of an unlawful search or
6 seizure, or both, or through improper interrogation, is
7 relevant in assessing the weight of the evidence against
8 the defendant.

9 (7) Decisions regarding release, conditions of
10 release, and detention prior to trial must be
11 individualized, and no single factor or standard may be
12 used exclusively to order detention. Risk assessment tools
13 may not be used as the sole basis to deny pretrial release.

14 (g) Factors to be considered in making a determination of
15 dangerousness. The court may, in determining whether the
16 defendant poses a real and present threat to the safety of any
17 person or persons or the community, based on the specific
18 articulable facts of the case, consider, but shall not be
19 limited to, evidence or testimony concerning:

20 (1) The nature and circumstances of any offense
21 charged, including whether the offense is a crime of
22 violence, involving a weapon, or a sex offense.

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

25 (A) Any evidence of the defendant's prior criminal
26 history indicative of violent, abusive or assaultive

1 behavior, or lack of such behavior. Such evidence may
2 include testimony or documents received in juvenile
3 proceedings, criminal, quasi-criminal, civil
4 commitment, domestic relations, or other proceedings.

5 (B) Any evidence of the defendant's psychological,
6 psychiatric or other similar social history which
7 tends to indicate a violent, abusive, or assaultive
8 nature, or lack of any such history.

9 (3) The identity of any person or persons to whose
10 safety the defendant is believed to pose a threat, and the
11 nature of the threat.

12 (4) Any statements made by, or attributed to the
13 defendant, together with the circumstances surrounding
14 them.

15 (5) The age and physical condition of the defendant.

16 (6) The age and physical condition of any victim or
17 complaining witness.

18 (7) Whether the defendant is known to possess or have
19 access to any weapon or weapons.

20 (8) Whether, at the time of the current offense or any
21 other offense or arrest, the defendant was on probation,
22 parole, aftercare release, mandatory supervised release or
23 other release from custody pending trial, sentencing,
24 appeal or completion of sentence for an offense under
25 federal or state law.

26 (9) Any other factors, including those listed in

1 Section 110-5 of this Article deemed by the court to have a
2 reasonable bearing upon the defendant's propensity or
3 reputation for violent, abusive, or assaultive behavior,
4 or lack of such behavior.

5 (h) Detention order. The court shall, in any order for
6 detention:

7 (1) make a written finding summarizing the court's
8 reasons for concluding that the defendant should be denied
9 pretrial release, including why less restrictive
10 conditions would not avoid a real and present threat to
11 the safety of any person or persons or the community,
12 based on the specific articulable facts of the case, or
13 prevent the defendant's willful flight from prosecution;

14 (2) direct that the defendant be committed to the
15 custody of the sheriff for confinement in the county jail
16 pending trial;

17 (3) direct that the defendant be given a reasonable
18 opportunity for private consultation with counsel, and for
19 communication with others of his or her choice by
20 visitation, mail and telephone; and

21 (4) direct that the sheriff deliver the defendant as
22 required for appearances in connection with court
23 proceedings.

24 (i) Detention. If the court enters an order for the
25 detention of the defendant pursuant to subsection (e) of this
26 Section, the defendant shall be brought to trial on the

1 offense for which he is detained within 90 days after the date
2 on which the order for detention was entered. If the defendant
3 is not brought to trial within the 90-day period required by
4 the preceding sentence, he shall not be denied pretrial
5 release. In computing the 90-day period, the court shall omit
6 any period of delay resulting from a continuance granted at
7 the request of the defendant and any period of delay resulting
8 from a continuance granted at the request of the State with
9 good cause shown pursuant to Section 103-5.

10 (i-5) At each subsequent appearance of the defendant
11 before the court, the judge must find that continued detention
12 is necessary to avoid a real and present threat to the safety
13 of any person or persons or the community, based on the
14 specific articulable facts of the case, or to prevent the
15 defendant's willful flight from prosecution.

16 (j) Rights of the defendant. The defendant shall be
17 entitled to appeal any order entered under this Section
18 denying his or her pretrial release.

19 (k) Appeal. The State may appeal any order entered under
20 this Section denying any motion for denial of pretrial
21 release.

22 (l) Presumption of innocence. Nothing in this Section
23 shall be construed as modifying or limiting in any way the
24 defendant's presumption of innocence in further criminal
25 proceedings.

26 (m) Interest of victims.

1 (1) Crime victims shall be given notice by the State's
2 Attorney's office of this hearing as required in paragraph (1)
3 of subsection (b) of Section 4.5 of the Rights of Crime Victims
4 and Witnesses Act and shall be informed of their opportunity
5 at this hearing to obtain a protective order.

6 (2) If the defendant is denied pretrial release, the court
7 may impose a no contact provision with the victim or other
8 interested party that shall be enforced while the defendant
9 remains in custody.

10 (Source: P.A. 101-652, eff. 1-1-23; 102-1104, eff. 1-1-23.)

11 (Text of Section after amendment by P.A. 103-822)

12 Sec. 110-6.1. Denial of pretrial release.

13 (a) Upon verified petition by the State, the court shall
14 hold a hearing and may deny a defendant pretrial release only
15 if:

16 (1) the defendant is charged with a felony offense
17 other than a forcible felony for which, based on the
18 charge or the defendant's criminal history, a sentence of
19 imprisonment, without probation, periodic imprisonment or
20 conditional discharge, is required by law upon conviction,
21 and it is alleged that the defendant's pretrial release
22 poses a real and present threat to the safety of any person
23 or persons or the community, based on the specific
24 articulable facts of the case;

25 (1.5) the defendant's pretrial release poses a real

1 and present threat to the safety of any person or persons
2 or the community, based on the specific articulable facts
3 of the case, and the defendant is charged with a forcible
4 felony, which as used in this Section, means treason,
5 first degree murder, second degree murder, predatory
6 criminal sexual assault of a child, aggravated criminal
7 sexual assault, criminal sexual assault, armed robbery,
8 aggravated robbery, robbery, burglary where there is use
9 of force against another person, residential burglary,
10 home invasion, vehicular invasion, aggravated arson,
11 arson, aggravated kidnaping, kidnaping, aggravated battery
12 resulting in great bodily harm or permanent disability or
13 disfigurement or any other felony which involves the
14 threat of or infliction of great bodily harm or permanent
15 disability or disfigurement;

16 (2) the defendant is charged with stalking or
17 aggravated stalking, and it is alleged that the
18 defendant's pre-trial release poses a real and present
19 threat to the safety of a victim of the alleged offense,
20 and denial of release is necessary to prevent fulfillment
21 of the threat upon which the charge is based;

22 (3) the defendant is charged with a violation of an
23 order of protection issued under Section 112A-14 of this
24 Code or Section 214 of the Illinois Domestic Violence Act
25 of 1986, a stalking no contact order under Section 80 of
26 the Stalking No Contact Order Act, or of a civil no contact

1 order under Section 213 of the Civil No Contact Order Act,
2 and it is alleged that the defendant's pretrial release
3 poses a real and present threat to the safety of any person
4 or persons or the community, based on the specific
5 articulable facts of the case;

6 (4) the defendant is charged with domestic battery or
7 aggravated domestic battery under Section 12-3.2 or 12-3.3
8 of the Criminal Code of 2012 and it is alleged that the
9 defendant's pretrial release poses a real and present
10 threat to the safety of any person or persons or the
11 community, based on the specific articulable facts of the
12 case;

13 (5) the defendant is charged with any offense under
14 Article 11 of the Criminal Code of 2012, except for
15 Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35,
16 11-40, and 11-45 of the Criminal Code of 2012, or similar
17 provisions of the Criminal Code of 1961 and it is alleged
18 that the defendant's pretrial release poses a real and
19 present threat to the safety of any person or persons or
20 the community, based on the specific articulable facts of
21 the case;

22 (6) the defendant is charged with any of the following
23 offenses under the Criminal Code of 2012, and it is
24 alleged that the defendant's pretrial release poses a real
25 and present threat to the safety of any person or persons
26 or the community, based on the specific articulable facts

1 of the case:

2 (A) Section 24-1.2 (aggravated discharge of a
3 firearm);

4 (B) Section 24-2.5 (aggravated discharge of a
5 machine gun or a firearm equipped with a device
6 designed or use for silencing the report of a
7 firearm);

8 (C) Section 24-1.5 (reckless discharge of a
9 firearm);

10 (D) Section 24-1.7 (unlawful possession of a
11 firearm by a repeat felony offender);

12 (E) Section 24-2.2 (manufacture, sale or transfer
13 of bullets or shells represented to be armor piercing
14 bullets, dragon's breath shotgun shells, bolo shells,
15 or flechette shells);

16 (F) Section 24-3 (unlawful sale or delivery of
17 firearms);

18 (G) Section 24-3.3 (unlawful sale or delivery of
19 firearms on the premises of any school);

20 (H) Section 24-34 (unlawful sale of firearms by
21 liquor license);

22 (I) Section 24-3.5 (unlawful purchase of a
23 firearm);

24 (J) Section 24-3A (gunrunning);

25 (K) Section 24-3B (firearms trafficking);

26 (L) Section 10-9 (b) (involuntary servitude);

1 (M) Section 10-9 (c) (involuntary sexual servitude
2 of a minor);

3 (N) Section 10-9(d) (trafficking in persons);

4 (O) Non-probationable violations: (i) unlawful
5 possession of weapons by felons or persons in the
6 Custody of the Department of Corrections facilities
7 (Section 24-1.1), (ii) aggravated unlawful possession
8 of a weapon (Section 24-1.6), or (iii) aggravated
9 possession of a stolen firearm (Section 24-3.9);

10 (P) Section 9-3 (reckless homicide and involuntary
11 manslaughter);

12 (Q) Section 19-3 (residential burglary);

13 (R) Section 10-5 (child abduction);

14 (S) Felony violations of Section 12C-5 (child
15 endangerment);

16 (T) Section 12-7.1 (hate crime);

17 (U) Section 10-3.1 (aggravated unlawful
18 restraint);

19 (V) Section 12-9 (threatening a public official);

20 (W) Subdivision (f)(1) of Section 12-3.05
21 (aggravated battery with a deadly weapon other than by
22 discharge of a firearm);

23 (6.5) the defendant is charged with any of the
24 following offenses, and it is alleged that the defendant's
25 pretrial release poses a real and present threat to the
26 safety of any person or persons or the community, based on

1 the specific articulable facts of the case:

2 (A) Felony violations of Sections 3.01, 3.02, or
3 3.03 of the Humane Care for Animals Act (cruel
4 treatment, aggravated cruelty, and animal torture);

5 (B) Subdivision (d) (1) (B) of Section 11-501 of the
6 Illinois Vehicle Code (aggravated driving under the
7 influence while operating a school bus with
8 passengers);

9 (C) Subdivision (d) (1) (C) of Section 11-501 of the
10 Illinois Vehicle Code (aggravated driving under the
11 influence causing great bodily harm);

12 (D) Subdivision (d) (1) (D) of Section 11-501 of the
13 Illinois Vehicle Code (aggravated driving under the
14 influence after a previous reckless homicide
15 conviction);

16 (E) Subdivision (d) (1) (F) of Section 11-501 of the
17 Illinois Vehicle Code (aggravated driving under the
18 influence leading to death); or

19 (F) Subdivision (d) (1) (J) of Section 11-501 of the
20 Illinois Vehicle Code (aggravated driving under the
21 influence that resulted in bodily harm to a child
22 under the age of 16);

23 (7) the defendant is charged with an attempt to commit
24 any charge listed in paragraphs (1) through (6.5), and it
25 is alleged that the defendant's pretrial release poses a
26 real and present threat to the safety of any person or

1 persons or the community, based on the specific
2 articulable facts of the case; or

3 (8) the person has a high likelihood of willful flight
4 to avoid prosecution and is charged with:

5 (A) Any felony described in subdivisions (a)(1)
6 through (a)(7) of this Section; or

7 (B) A felony offense other than a Class 4 offense.

8 (b) If the charged offense is a felony, as part of the
9 detention hearing, the court shall determine whether there is
10 probable cause the defendant has committed an offense, unless
11 a hearing pursuant to Section 109-3 of this Code has already
12 been held or a grand jury has returned a true bill of
13 indictment against the defendant. If there is a finding of no
14 probable cause, the defendant shall be released. No such
15 finding is necessary if the defendant is charged with a
16 misdemeanor.

17 (c) Timing of petition.

18 (1) A petition may be filed without prior notice to
19 the defendant at the first appearance before a judge, or
20 within the 21 calendar days, except as provided in Section
21 110-6, after arrest and release of the defendant upon
22 reasonable notice to defendant; provided that while such
23 petition is pending before the court, the defendant if
24 previously released shall not be detained.

25 (2) Upon filing, the court shall immediately hold a
26 hearing on the petition unless a continuance is requested.

1 If a continuance is requested and granted, the hearing
2 shall be held within 48 hours of the defendant's first
3 appearance if the defendant is charged with first degree
4 murder or a Class X, Class 1, Class 2, or Class 3 felony,
5 and within 24 hours if the defendant is charged with a
6 Class 4 or misdemeanor offense. The Court may deny or
7 grant the request for continuance. If the court decides to
8 grant the continuance, the Court retains the discretion to
9 detain or release the defendant in the time between the
10 filing of the petition and the hearing.

11 (d) Contents of petition.

12 (1) The petition shall be verified by the State and
13 shall state the grounds upon which it contends the
14 defendant should be denied pretrial release, including the
15 real and present threat to the safety of any person or
16 persons or the community, based on the specific
17 articulable facts or flight risk, as appropriate.

18 (2) If the State seeks to file a second or subsequent
19 petition under this Section, the State shall be required
20 to present a verified application setting forth in detail
21 any new facts not known or obtainable at the time of the
22 filing of the previous petition.

23 (e) Eligibility: All defendants shall be presumed eligible
24 for pretrial release, and except as otherwise provided in
25 subsection (e-1), the State shall bear the burden of proving
26 by clear and convincing evidence that:

1 (1) the proof is evident or the presumption great that
2 the defendant has committed an offense listed in
3 subsection (a), and

4 (2) for offenses listed in paragraphs (1) through (7)
5 of subsection (a), the defendant poses a real and present
6 threat to the safety of any person or persons or the
7 community, based on the specific articulable facts of the
8 case, by conduct which may include, but is not limited to,
9 a forcible felony, the obstruction of justice,
10 intimidation, injury, or abuse as defined by paragraph (1)
11 of Section 103 of the Illinois Domestic Violence Act of
12 1986, and

13 (3) no condition or combination of conditions set
14 forth in subsection (b) of Section 110-10 of this Article
15 can mitigate (i) the real and present threat to the safety
16 of any person or persons or the community, based on the
17 specific articulable facts of the case, for offenses
18 listed in paragraphs (1) through (7) of subsection (a), or
19 (ii) the defendant's willful flight for offenses listed in
20 paragraph (8) of subsection (a), and

21 (4) for offenses under subsection (b) of Section 407
22 of the Illinois Controlled Substances Act that are subject
23 to paragraph (1) of subsection (a), no condition or
24 combination of conditions set forth in subsection (b) of
25 Section 110-10 of this Article can mitigate the real and
26 present threat to the safety of any person or persons or

1 the community, based on the specific articulable facts of
2 the case, and the defendant poses a serious risk to not
3 appear in court as required.

4 (e-1) Notwithstanding any other provisions of this
5 Section, if the defendant is charged with a violation of
6 Section 401 of the Illinois Controlled Substances Act
7 involving the manufacture or delivery, or possession with
8 intent to manufacture or deliver, a controlled substance, a
9 counterfeit substance, or controlled substance analog of 15
10 grams or more of a substance containing fentanyl, or an analog
11 thereof, then the burden of proof is on the defendant to show
12 by clear and convincing evidence that the defendant's pretrial
13 release does not pose a real and present threat to the safety
14 of any person or persons or the community, based on the
15 specific articulable facts of the case.

16 (f) Conduct of the hearings.

17 (1) Prior to the hearing, the State shall tender to
18 the defendant copies of the defendant's criminal history
19 available, any written or recorded statements, and the
20 substance of any oral statements made by any person, if
21 relied upon by the State in its petition, and any police
22 reports in the prosecutor's possession at the time of the
23 hearing.

24 (2) The State or defendant may present evidence at the
25 hearing by way of proffer based upon reliable information.

26 (3) The defendant has the right to be represented by

1 counsel, and if he or she is indigent, to have counsel
2 appointed for him or her. The defendant shall have the
3 opportunity to testify, to present witnesses on his or her
4 own behalf, and to cross-examine any witnesses that are
5 called by the State. Defense counsel shall be given
6 adequate opportunity to confer with the defendant before
7 any hearing at which conditions of release or the
8 detention of the defendant are to be considered, with an
9 accommodation for a physical condition made to facilitate
10 attorney/client consultation. If defense counsel needs to
11 confer or consult with the defendant during any hearing
12 conducted via a two-way audio-visual communication system,
13 such consultation shall not be recorded and shall be
14 undertaken consistent with constitutional protections.

15 (3.5) A hearing at which pretrial release may be
16 denied must be conducted in person (and not by way of
17 two-way audio visual communication) unless the accused
18 waives the right to be present physically in court, the
19 court determines that the physical health and safety of
20 any person necessary to the proceedings would be
21 endangered by appearing in court, or the chief judge of
22 the circuit orders use of that system due to operational
23 challenges in conducting the hearing in person. Such
24 operational challenges must be documented and approved by
25 the chief judge of the circuit, and a plan to address the
26 challenges through reasonable efforts must be presented

1 and approved by the Administrative Office of the Illinois
2 Courts every 6 months.

3 (4) If the defense seeks to compel the complaining
4 witness to testify as a witness in its favor, it shall
5 petition the court for permission. When the ends of
6 justice so require, the court may exercise its discretion
7 and compel the appearance of a complaining witness. The
8 court shall state on the record reasons for granting a
9 defense request to compel the presence of a complaining
10 witness only on the issue of the defendant's pretrial
11 detention. In making a determination under this Section,
12 the court shall state on the record the reason for
13 granting a defense request to compel the presence of a
14 complaining witness, and only grant the request if the
15 court finds by clear and convincing evidence that the
16 defendant will be materially prejudiced if the complaining
17 witness does not appear. Cross-examination of a
18 complaining witness at the pretrial detention hearing for
19 the purpose of impeaching the witness' credibility is
20 insufficient reason to compel the presence of the witness.
21 In deciding whether to compel the appearance of a
22 complaining witness, the court shall be considerate of the
23 emotional and physical well-being of the witness. The
24 pre-trial detention hearing is not to be used for purposes
25 of discovery, and the post arraignment rules of discovery
26 do not apply. The State shall tender to the defendant,

1 prior to the hearing, copies, if any, of the defendant's
2 criminal history, if available, and any written or
3 recorded statements and the substance of any oral
4 statements made by any person, if in the State's
5 Attorney's possession at the time of the hearing.

6 (5) The rules concerning the admissibility of evidence
7 in criminal trials do not apply to the presentation and
8 consideration of information at the hearing. At the trial
9 concerning the offense for which the hearing was conducted
10 neither the finding of the court nor any transcript or
11 other record of the hearing shall be admissible in the
12 State's case-in-chief, but shall be admissible for
13 impeachment, or as provided in Section 115-10.1 of this
14 Code, or in a perjury proceeding.

15 (6) The defendant may not move to suppress evidence or
16 a confession, however, evidence that proof of the charged
17 crime may have been the result of an unlawful search or
18 seizure, or both, or through improper interrogation, is
19 relevant in assessing the weight of the evidence against
20 the defendant.

21 (7) Decisions regarding release, conditions of
22 release, and detention prior to trial must be
23 individualized, and no single factor or standard may be
24 used exclusively to order detention. Risk assessment tools
25 may not be used as the sole basis to deny pretrial release.

26 (g) Factors to be considered in making a determination of

1 dangerousness. The court may, in determining whether the
2 defendant poses a real and present threat to the safety of any
3 person or persons or the community, based on the specific
4 articulable facts of the case, consider, but shall not be
5 limited to, evidence or testimony concerning:

6 (1) The nature and circumstances of any offense
7 charged, including whether the offense is a crime of
8 violence, involving a weapon, or a sex offense.

9 (2) The history and characteristics of the defendant
10 including:

11 (A) Any evidence of the defendant's prior criminal
12 history indicative of violent, abusive or assaultive
13 behavior, or lack of such behavior. Such evidence may
14 include testimony or documents received in juvenile
15 proceedings, criminal, quasi-criminal, civil
16 commitment, domestic relations, or other proceedings.

17 (B) Any evidence of the defendant's psychological,
18 psychiatric or other similar social history which
19 tends to indicate a violent, abusive, or assaultive
20 nature, or lack of any such history.

21 (3) The identity of any person or persons to whose
22 safety the defendant is believed to pose a threat, and the
23 nature of the threat.

24 (4) Any statements made by, or attributed to the
25 defendant, together with the circumstances surrounding
26 them.

1 (5) The age and physical condition of the defendant.

2 (6) The age and physical condition of any victim or
3 complaining witness.

4 (7) Whether the defendant is known to possess or have
5 access to any weapon or weapons.

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

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

17 (h) Detention order. The court shall, in any order for
18 detention:

19 (1) make a written finding summarizing the court's
20 reasons for concluding that the defendant should be denied
21 pretrial release, including why less restrictive
22 conditions would not avoid a real and present threat to
23 the safety of any person or persons or the community,
24 based on the specific articulable facts of the case, or
25 prevent the defendant's willful flight from prosecution;

26 (2) direct that the defendant be committed to the

1 custody of the sheriff for confinement in the county jail
2 pending trial;

3 (3) direct that the defendant be given a reasonable
4 opportunity for private consultation with counsel, and for
5 communication with others of his or her choice by
6 visitation, mail and telephone; and

7 (4) direct that the sheriff deliver the defendant as
8 required for appearances in connection with court
9 proceedings.

10 (i) Detention. If the court enters an order for the
11 detention of the defendant pursuant to subsection (e) of this
12 Section, the defendant shall be brought to trial on the
13 offense for which he is detained within 90 days after the date
14 on which the order for detention was entered. If the defendant
15 is not brought to trial within the 90-day period required by
16 the preceding sentence, he shall not be denied pretrial
17 release. In computing the 90-day period, the court shall omit
18 any period of delay resulting from a continuance granted at
19 the request of the defendant and any period of delay resulting
20 from a continuance granted at the request of the State with
21 good cause shown pursuant to Section 103-5.

22 (i-5) At each subsequent appearance of the defendant
23 before the court, the judge must find that continued detention
24 is necessary to avoid a real and present threat to the safety
25 of any person or persons or the community, based on the
26 specific articulable facts of the case, or to prevent the

1 defendant's willful flight from prosecution.

2 (j) Rights of the defendant. The defendant shall be
3 entitled to appeal any order entered under this Section
4 denying his or her pretrial release.

5 (k) Appeal. The State may appeal any order entered under
6 this Section denying any motion for denial of pretrial
7 release.

8 (l) Presumption of innocence. Nothing in this Section
9 shall be construed as modifying or limiting in any way the
10 defendant's presumption of innocence in further criminal
11 proceedings.

12 (m) Interest of victims.

13 (1) Crime victims shall be given notice by the State's
14 Attorney's office of this hearing as required in paragraph (1)
15 of subsection (b) of Section 4.5 of the Rights of Crime Victims
16 and Witnesses Act and shall be informed of their opportunity
17 at this hearing to obtain a protective order.

18 (2) If the defendant is denied pretrial release, the court
19 may impose a no contact provision with the victim or other
20 interested party that shall be enforced while the defendant
21 remains in custody.

22 (Source: P.A. 102-1104, eff. 1-1-23; 103-822, eff. 1-1-25.)

23 Section 95. No acceleration or delay. Where this Act makes
24 changes in a statute that is represented in this Act by text
25 that is not yet or no longer in effect (for example, a Section

1 represented by multiple versions), the use of that text does
2 not accelerate or delay the taking effect of (i) the changes
3 made by this Act or (ii) provisions derived from any other
4 Public Act.