



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB3091

Introduced 1/29/2026, 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 18936 RLC 32381 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 Sec. 110-6.1. Denial of pretrial release.

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

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

1 (1.5) the defendant's pretrial release poses a real
2 and present threat to the safety of any person or persons
3 or the community, based on the specific articulable facts
4 of the case, and the defendant is charged with a forcible
5 felony, which as used in this Section, means treason,
6 first degree murder, second degree murder, predatory
7 criminal sexual assault of a child, aggravated criminal
8 sexual assault, criminal sexual assault, armed robbery,
9 aggravated robbery, robbery, burglary where there is use
10 of force against another person, residential burglary,
11 home invasion, vehicular invasion, aggravated arson,
12 arson, aggravated kidnaping, kidnaping, aggravated battery
13 resulting in great bodily harm or permanent disability or
14 disfigurement, or any other felony which involves the
15 threat of or infliction of great bodily harm or permanent
16 disability or disfigurement;

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

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

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

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

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

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

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

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

5 (B) Section 24-1.2-5 (aggravated discharge of a
6 machine gun or a firearm equipped with a device
7 designed or used for silencing the report of a
8 firearm);

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

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

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
6 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 possession
9 of a 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 except as otherwise provided in
26 subsection (e-1), the State shall bear the burden of proving

1 by clear and convincing evidence that:

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

5 (2) for offenses listed in paragraphs (1) through (7)
6 of subsection (a), the defendant poses a real and present
7 threat to the safety of any person or persons or the
8 community, based on the specific articulable facts of the
9 case, by conduct which may include, but is not limited to,
10 a forcible felony, the obstruction of justice,
11 intimidation, injury, or abuse as defined by paragraph (1)
12 of Section 103 of the Illinois Domestic Violence Act of
13 1986, and

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

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

1 present threat to the safety of any person or persons or
2 the community, based on the specific articulable facts of
3 the case, and the defendant poses a serious risk to not
4 appear in court as required.

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

17 (f) Conduct of the hearings.

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

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

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

16 (3.5) A hearing at which pretrial release may be
17 denied must be conducted in person (and not by way of 2-way
18 audio visual communication) unless the accused waives the
19 right to be present physically in court, the court
20 determines that the physical health and safety of any
21 person necessary to the proceedings would be endangered by
22 appearing in court, or the chief judge of the circuit
23 orders use of that system due to operational challenges in
24 conducting the hearing in person. Such operational
25 challenges must be documented and approved by the chief
26 judge of the circuit, and a plan to address the challenges

1 through reasonable efforts must be presented and approved
2 by the Administrative Office of the Illinois Courts every
3 6 months.

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

1 do not apply. The State shall tender to the defendant,
2 prior to the hearing, copies, if any, of the defendant's
3 criminal history, if available, and any written or
4 recorded statements and the substance of any oral
5 statements made by any person, if in the State's
6 Attorney's possession at the time of the hearing.

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

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

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

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

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

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

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

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

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

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

1 them.

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

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

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

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

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

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

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

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

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

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

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

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

1 specific articulable facts of the case, or to prevent the
2 defendant's willful flight from prosecution.

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

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

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

13 (m) Interest of victims.

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

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

23 (Source: P.A. 103-822, eff. 1-1-25; 104-417, eff. 8-15-25.)