

HB5754



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5754

Introduced 11/16/2022, by Rep. Mark Luft and Daniel Swanson

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6.1

from Ch. 38, par. 110-6.1

Amends the Code of Criminal Procedure of 1963. Provides that a judge may deny bail to a defendant charged with aggravated battery to a peace officer. Effective immediately.

LRB102 27460 RJT 39254 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 110-6.1 as follows:

6 (725 ILCS 5/110-6.1) (from Ch. 38, par. 110-6.1)

7 (Text of Section before amendment by P.A. 101-652)

8 Sec. 110-6.1. Denial of bail in non-probationable felony
9 offenses.

10 (a) Upon verified petition by the State, the court shall
11 hold a hearing to determine whether bail should be denied to a
12 defendant who is charged with a felony offense for which a
13 sentence of imprisonment, without probation, periodic
14 imprisonment or conditional discharge, is required by law upon
15 conviction, when it is alleged that the defendant's admission
16 to bail poses a real and present threat to the physical safety
17 of any person or persons.

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

1 previously released shall not be detained.

2 (2) The hearing shall be held immediately upon the
3 defendant's appearance before the court, unless for good
4 cause shown the defendant or the State seeks a
5 continuance. A continuance on motion of the defendant may
6 not exceed 5 calendar days, and a continuance on the
7 motion of the State may not exceed 3 calendar days. The
8 defendant may be held in custody during such continuance.

9 (b) The court may deny bail to the defendant where, after
10 the hearing, it is determined that:

11 (1) the proof is evident or the presumption great that
12 the defendant has committed an offense for which a
13 sentence of imprisonment, without probation, periodic
14 imprisonment or conditional discharge, must be imposed by
15 law as a consequence of conviction, and

16 (2) the defendant poses a real and present threat to
17 the physical safety of any person or persons, by conduct
18 which may include, but is not limited to, a forcible
19 felony, aggravated battery to a peace officer under
20 Section 12-3.05 of the Criminal Code of 2012, the
21 obstruction of justice, intimidation, injury, physical
22 harm, an offense under the Illinois Controlled Substances
23 Act which is a Class X felony, or an offense under the
24 Methamphetamine Control and Community Protection Act which
25 is a Class X felony, and

26 (3) the court finds that no condition or combination

1 of conditions set forth in subsection (b) of Section
2 110-10 of this Article, can reasonably assure the physical
3 safety of any other person or persons.

4 (c) Conduct of the hearings.

5 (1) The hearing on the defendant's culpability and
6 dangerousness shall be conducted in accordance with the
7 following provisions:

8 (A) Information used by the court in its findings
9 or stated in or offered at such hearing may be by way
10 of proffer based upon reliable information offered by
11 the State or by defendant. Defendant has the right to
12 be represented by counsel, and if he is indigent, to
13 have counsel appointed for him. Defendant shall have
14 the opportunity to testify, to present witnesses in
15 his own behalf, and to cross-examine witnesses if any
16 are called by the State. The defendant has the right to
17 present witnesses in his favor. When the ends of
18 justice so require, the court may exercise its
19 discretion and compel the appearance of a complaining
20 witness. The court shall state on the record reasons
21 for granting a defense request to compel the presence
22 of a complaining witness. Cross-examination of a
23 complaining witness at the pretrial detention hearing
24 for the purpose of impeaching the witness' credibility
25 is insufficient reason to compel the presence of the
26 witness. In deciding whether to compel the appearance

1 of a complaining witness, the court shall be
2 considerate of the emotional and physical well-being
3 of the witness. The pre-trial detention hearing is not
4 to be used for purposes of discovery, and the post
5 arraignment rules of discovery do not apply. The State
6 shall tender to the defendant, prior to the hearing,
7 copies of defendant's criminal history, if any, if
8 available, and any written or recorded statements and
9 the substance of any oral statements made by any
10 person, if relied upon by the State in its petition.
11 The rules concerning the admissibility of evidence in
12 criminal trials do not apply to the presentation and
13 consideration of information at the hearing. At the
14 trial concerning the offense for which the hearing was
15 conducted neither the finding of the court nor any
16 transcript or other record of the hearing shall be
17 admissible in the State's case in chief, but shall be
18 admissible for impeachment, or as provided in Section
19 115-10.1 of this Code, or in a perjury proceeding.

20 (B) A motion by the defendant to suppress evidence
21 or to suppress a confession shall not be entertained.
22 Evidence that proof may have been obtained as the
23 result of an unlawful search and seizure or through
24 improper interrogation is not relevant to this state
25 of the prosecution.

26 (2) The facts relied upon by the court to support a

1 finding that the defendant poses a real and present threat
2 to the physical safety of any person or persons shall be
3 supported by clear and convincing evidence presented by
4 the State.

5 (d) Factors to be considered in making a determination of
6 dangerousness. The court may, in determining whether the
7 defendant poses a real and present threat to the physical
8 safety of any person or persons, consider but shall not be
9 limited to evidence or testimony concerning:

10 (1) The nature and circumstances of any offense
11 charged, including whether the offense is a crime of
12 violence, involving a weapon.

13 (2) The history and characteristics of the defendant
14 including:

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

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

25 (3) The identity of any person or persons to whose
26 safety the defendant is believed to pose a threat, and the

1 nature of the threat. +

2 (4) Any statements made by, or attributed to the
3 defendant, together with the circumstances surrounding
4 them. +

5 (5) The age and physical condition of any person
6 assaulted by the defendant;

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

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

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

20 (e) Detention order. The court shall, in any order for
21 detention:

22 (1) briefly summarize the evidence of the defendant's
23 culpability and its reasons for concluding that the
24 defendant should be held without bail;

25 (2) direct that the defendant be committed to the
26 custody of the sheriff for confinement in the county jail

1 pending trial;

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

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

9 (f) If the court enters an order for the detention of the
10 defendant pursuant to subsection (e) of this Section, the
11 defendant shall be brought to trial on the offense for which he
12 is detained within 90 days after the date on which the order
13 for detention was entered. If the defendant is not brought to
14 trial within the 90 day period required by the preceding
15 sentence, he shall not be held longer without bail. In
16 computing the 90 day period, the court shall omit any period of
17 delay resulting from a continuance granted at the request of
18 the defendant.

19 (g) Rights of the defendant. Any person shall be entitled
20 to appeal any order entered under this Section denying bail to
21 the defendant.

22 (h) The State may appeal any order entered under this
23 Section denying any motion for denial of bail.

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

1 (Source: P.A. 98-558, eff. 1-1-14.)

2 (Text of Section after amendment by P.A. 101-652)

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

4 (a) Upon verified petition by the State, the court shall
5 hold a hearing and may deny a defendant pretrial release only
6 if:

7 (1) the defendant is charged with a forcible felony
8 offense for which a sentence of imprisonment, without
9 probation, periodic imprisonment or conditional discharge,
10 is required by law upon conviction, and it is alleged that
11 the defendant's pretrial release poses a specific, real
12 and present threat to any person or the community-;

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

19 (3) the victim of abuse was a family or household
20 member as defined by paragraph (6) of Section 103 of the
21 Illinois Domestic Violence Act of 1986, and the person
22 charged, at the time of the alleged offense, was subject
23 to the terms of an order of protection issued under
24 Section 112A-14 of this Code, or Section 214 of the
25 Illinois Domestic Violence Act of 1986 or previously was

1 convicted of a violation of an order of protection under
2 Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the
3 Criminal Code of 2012 or a violent crime if the victim was
4 a family or household member as defined by paragraph (6)
5 of the Illinois Domestic Violence Act of 1986 at the time
6 of the offense or a violation of a substantially similar
7 municipal ordinance or law of this or any other state or
8 the United States if the victim was a family or household
9 member as defined by paragraph (6) of Section 103 of the
10 Illinois Domestic Violence Act of 1986 at the time of the
11 offense, and it is alleged that the defendant's pretrial
12 ~~pre-trial~~ release poses a real and present threat to the
13 physical safety of any person or persons;

14 (4) the defendant is charged with domestic battery or
15 aggravated domestic battery under Section 12-3.2 or 12-3.3
16 of the Criminal Code of 2012 and it is alleged that the
17 defendant's pretrial release poses a real and present
18 threat to the physical safety of any person or persons;

19 (5) the defendant is charged with any offense under
20 Article 11 of the Criminal Code of 2012, except for
21 Sections 11-30, 11-35, 11-40, and 11-45 of the Criminal
22 Code of 2012, or similar provisions of the Criminal Code
23 of 1961 and it is alleged that the defendant's pretrial
24 release poses a real and present threat to the physical
25 safety of any person or persons;

26 (6) the defendant is charged with any of these

1 violations under the Criminal Code of 2012 and it is
2 alleged that the defendant's pretrial releases poses a
3 real and present threat to the physical safety of any
4 specifically identifiable person or persons;~~:-~~

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

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

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

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

14 (E) Section 24-2.2 ~~2~~ (manufacture, sale or
15 transfer of bullets or shells represented to be armor
16 piercing bullets, dragon's breath shotgun shells, bolo
17 shells, or flechette shells);

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

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

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

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

26 (J) Section 24-3A (gunrunning); ~~or~~

1 (K) Section ~~en~~ 24-3B (firearms trafficking);
2 (L) Section 10-9 (b) (involuntary servitude);
3 (M) Section 10-9 (c) (involuntary sexual servitude
4 of a minor);

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

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

12 (6.5) the defendant is charged with aggravated battery
13 to a peace officer under Section 12-3.05 of the Criminal
14 Code of 2012;

15 (7) the person has a high likelihood of willful flight
16 to avoid prosecution and is charged with:

17 (A) Any felony described in Sections (a)(1)
18 through (a)(5) of this Section; or

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

20 (b) If the charged offense is a felony, the Court shall
21 hold a hearing pursuant to Section 109-3 of this Code to
22 determine whether there is probable cause the defendant has
23 committed an offense, unless a grand jury has returned a true
24 bill of indictment against the defendant. If there is a
25 finding of no probable cause, the defendant shall be released.
26 No such finding is necessary if the defendant is charged with a

1 misdemeanor.

2 (c) Timing of petition.

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

10 (2) ~~(2)~~ Upon filing, the court shall immediately hold
11 a hearing on the petition unless a continuance is
12 requested. If a continuance is requested, the hearing
13 shall be held within 48 hours of the defendant's first
14 appearance if the defendant is charged with a Class X,
15 Class 1, Class 2, or Class 3 felony, and within 24 hours if
16 the defendant is charged with a Class 4 or misdemeanor
17 offense. The Court may deny and or grant the request for
18 continuance. If the court decides to grant the
19 continuance, the Court retains the discretion to detain or
20 release the defendant in the time between the filing of
21 the petition and the hearing.

22 (d) Contents of petition.

23 (1) The petition shall be verified by the State and
24 shall state the grounds upon which it contends the
25 defendant should be denied pretrial release, including the
26 identity of the specific person or persons the State

1 believes the defendant poses a danger to.

2 (2) Only one petition may be filed under this Section.

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

6 (1) the proof is evident or the presumption great that
7 the defendant has committed an offense listed in
8 paragraphs (1) through (6) of subsection (a), and

9 (2) the defendant poses a real and present threat to
10 the safety of a specific, identifiable person or persons,
11 by conduct which may include, but is not limited to, a
12 forcible felony, the obstruction of justice, intimidation,
13 injury, or abuse as defined by paragraph (1) of Section
14 103 of the Illinois Domestic Violence Act of 1986, and

15 (3) no condition or combination of conditions set
16 forth in subsection (b) of Section 110-10 of this Article
17 can mitigate the real and present threat to the safety of
18 any person or persons or the defendant's willful flight.

19 (f) Conduct of the hearings.

20 (1) Prior to the hearing the State shall tender to the
21 defendant copies of defendant's criminal history
22 available, any written or recorded statements, and the
23 substance of any oral statements made by any person, if
24 relied upon by the State in its petition, and any police
25 reports in the State's Attorney's possession at the time
26 of the hearing that are required to be disclosed to the

1 defense under Illinois Supreme Court rules.

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

4 (3) The defendant has the right to be represented by
5 counsel, and if he or she is indigent, to have counsel
6 appointed for him or her. The defendant shall have the
7 opportunity to testify, to present witnesses on his or her
8 own behalf, and to cross-examine any witnesses that are
9 called by the State.

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

1 appearance of a complaining witness, the court shall be
2 considerate of the emotional and physical well-being of
3 the witness. The pretrial ~~pre-trial~~ detention hearing is
4 not to be used for purposes of discovery, and the post
5 arraignment rules of discovery do not apply.

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 release
22 and detention prior trial should be individualized, and no
23 single factor or standard should be used exclusively to
24 make a condition or detention decision.

25 (g) Factors to be considered in making a determination of
26 dangerousness. The court may, in determining whether the

1 defendant poses a specific, imminent threat of serious
2 physical harm to an identifiable person or persons, consider,l
3 but shall not be limited to,l evidence or testimony concerning:

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

7 (2) The history and characteristics of the defendant
8 including:

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

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

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

22 (4) Any statements made by, or attributed to the
23 defendant, together with the circumstances surrounding
24 them.l†

25 (5) The age and physical condition of the defendant.l†

26 (6) The age and physical condition of any victim or

1 complaining witness.~~+~~

2 (7) Whether the defendant is known to possess or have
3 access to any weapon or weapons.~~+~~

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

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

15 (h) Detention order. The court shall, in any order for
16 detention:

17 (1) briefly summarize the evidence of the defendant's
18 guilt or innocence, and the court's reasons for concluding
19 that the defendant should be denied pretrial release;

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

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

1 (4) direct that the sheriff deliver the defendant as
2 required for appearances in connection with court
3 proceedings.

4 (i) Detention. If the court enters an order for the
5 detention of the defendant pursuant to subsection (e) of this
6 Section, the defendant shall be brought to trial on the
7 offense for which he is detained within 90 days after the date
8 on which the order for detention was entered. If the defendant
9 is not brought to trial within the 90-day ~~90-day~~ period
10 required by the preceding sentence, he shall not be denied
11 pretrial release. In computing the 90-day ~~90-day~~ period, the
12 court shall omit any period of delay resulting from a
13 continuance granted at the request of the defendant.

14 (j) Rights of the defendant. Any person shall be entitled
15 to appeal any order entered under this Section denying
16 pretrial release to the defendant.

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

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

24 (m) Victim notice. ~~(1)~~ Crime victims shall be given notice
25 by the State's Attorney's office of this hearing as required
26 in paragraph (1) of subsection (b) of Section 4.5 of the Rights

1 of Crime Victims and Witnesses Act and shall be informed of
2 their opportunity at this hearing to obtain an order of
3 protection under Article 112A of this Code.

4 (Source: P.A. 101-652, eff. 1-1-23; revised 2-28-22.)

5 Section 95. No acceleration or delay. Where this Act makes
6 changes in a statute that is represented in this Act by text
7 that is not yet or no longer in effect (for example, a Section
8 represented by multiple versions), the use of that text does
9 not accelerate or delay the taking effect of (i) the changes
10 made by this Act or (ii) provisions derived from any other
11 Public Act.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.