



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5120

Introduced 2/8/2024, by Rep. Patrick Windhorst - Dan Ugaste - Amy L. Grant - John M. Cabello and Dave Severin

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 upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release if: (1) the defendant is charged with a felony offense (rather than specified felonies) and it is alleged that the defendant's pretrial release poses 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; (2) the defendant is charged with a felony offense (rather than specific felonies) and has a high likelihood of willful flight to avoid prosecution; or (3) the defendant has been convicted of 2 or more of the same felonies or misdemeanors and either: (i) it is alleged that the defendant's pretrial release poses 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; or (ii) the defendant has a high likelihood of willful flight to avoid prosecution. Changes the State's burden of proof in a pretrial detention hearing seeking the defendant's detention from clear and convincing evidence to a preponderance of the evidence.

LRB103 35871 RLC 65956 b

1 AN ACT concerning criminal law.

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

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

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

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

8 (a) Upon verified petition by the State, the court shall
9 hold a hearing and may deny a defendant pretrial release only
10 if:

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

20 (1.5) (blank); ~~the defendant's pretrial release poses~~
21 ~~a real and present threat to the safety of any person or~~
22 ~~persons or the community, based on the specific~~
23 ~~articulable facts of the case, and the defendant is~~

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

13 (2) (blank); ~~the defendant is charged with stalking or~~
14 ~~aggravated stalking, and it is alleged that the~~
15 ~~defendant's pre-trial release poses a real and present~~
16 ~~threat to the 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 defendant is charged with a violation of an
20 order of protection issued under Section 112A-14 of this
21 Code or Section 214 of the Illinois Domestic Violence Act
22 of 1986, a stalking no contact order under Section 80 of
23 the Stalking No Contact Order Act, or of a civil no contact
24 order under Section 213 of the Civil No Contact Order Act,
25 and it is alleged that the defendant's pretrial release
26 poses a real and present threat to the safety of any person

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

3 (4) the defendant is charged with misdemeanor domestic
4 battery ~~or aggravated domestic battery~~ under Section
5 12-3.2 ~~or 12-3.3~~ of the Criminal Code of 2012 and it is
6 alleged that the defendant's pretrial release poses a real
7 and present threat to the safety of any person or persons
8 or the community, based on the specific articulable facts
9 of the case;

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

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

25 ~~(A) Section 24-1.2 (aggravated discharge of a~~
26 ~~firearm);~~

1 ~~(B) Section 24-2.5 (aggravated discharge of a~~
2 ~~machine gun or a firearm equipped with a device~~
3 ~~designed or use for silencing the report of a~~
4 ~~firearm);~~

5 ~~(C) Section 24-1.5 (reckless discharge of a~~
6 ~~firearm);~~

7 ~~(D) Section 24-1.7 (armed habitual criminal);~~

8 ~~(E) Section 24-2.2 (manufacture, sale or transfer~~
9 ~~of bullets or shells represented to be armor piercing~~
10 ~~bullets, dragon's breath shotgun shells, bolo shells,~~
11 ~~or flechette shells);~~

12 ~~(F) Section 24-3 (unlawful sale or delivery of~~
13 ~~firearms);~~

14 ~~(G) Section 24-3.3 (unlawful sale or delivery of~~
15 ~~firearms on the premises of any school);~~

16 ~~(H) Section 24-34 (unlawful sale of firearms by~~
17 ~~liquor license);~~

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

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

21 ~~(K) Section 24-3B (firearms trafficking);~~

22 ~~(L) Section 10-9 (b) (involuntary servitude);~~

23 ~~(M) Section 10-9 (c) (involuntary sexual servitude~~
24 ~~of a minor);~~

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

26 ~~(O) Non probationable violations: (i) unlawful use~~

1 ~~or possession of weapons by felons or persons in the~~
2 ~~Custody of the Department of Corrections facilities~~
3 ~~(Section 24-1.1), (ii) aggravated unlawful use of a~~
4 ~~weapon (Section 24-1.6), or (iii) aggravated~~
5 ~~possession of a stolen firearm (Section 24-3.9);~~

6 ~~(P) Section 9-3 (reckless homicide and involuntary~~
7 ~~manslaughter);~~

8 ~~(Q) Section 19-3 (residential burglary);~~

9 ~~(R) Section 10-5 (child abduction);~~

10 ~~(S) Felony violations of Section 12C-5 (child~~
11 ~~endangerment);~~

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

13 ~~(U) Section 10-3.1 (aggravated unlawful~~
14 ~~restraint);~~

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

16 ~~(W) Subdivision (f) (1) of Section 12-3.05~~
17 ~~(aggravated battery with a deadly weapon other than by~~
18 ~~discharge of a firearm);~~

19 (6.5) (blank); ~~the defendant is charged with any of~~
20 ~~the following offenses, and it is alleged that the~~
21 ~~defendant's pretrial release poses a real and present~~
22 ~~threat to the safety of any person or persons or the~~
23 ~~community, based on the specific articulable facts of the~~
24 ~~case;~~

25 ~~(A) Felony violations of Sections 3.01, 3.02, or~~
26 ~~3.03 of the Humane Care for Animals Act (cruel~~

1 ~~treatment, aggravated cruelty, and animal torture);~~

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

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

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

13 ~~(E) Subdivision (d) (1) (F) of Section 11-501 of the~~
14 ~~Illinois Vehicle Code (aggravated driving under the~~
15 ~~influence leading to death); or~~

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

20 (7) the defendant is charged with an attempt to commit
21 any charge listed in paragraphs (1) through (5) ~~(6.5)~~, and
22 it is alleged that the defendant's pretrial release poses
23 a real and present threat to the safety of any person or
24 persons or the community, based on the specific
25 articulable facts of the case; ~~or~~

26 (8) the person has a high likelihood of willful flight

1 to avoid prosecution and is charged with a felony; or

2 (9) the defendant has been convicted of 2 or more of
3 the same felonies or misdemeanors and either:

4 (A) it is alleged that the defendant's pretrial
5 release poses a real and present threat to the safety
6 of any person or persons or the community, based on the
7 specific articulable facts of the case; or

8 (B) the defendant has a high likelihood of willful
9 flight to avoid prosecution. †

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

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

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

22 (c) Timing of petition.

23 (1) A petition may be filed without prior notice to
24 the defendant at the first appearance before a judge, or
25 within the 21 calendar days, except as provided in Section
26 110-6, after arrest and release of the defendant upon

1 reasonable notice to defendant; provided that while such
2 petition is pending before the court, the defendant if
3 previously released shall not be detained.

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

16 (d) Contents of petition.

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

23 (2) If the State seeks to file a second or subsequent
24 petition under this Section, the State shall be required
25 to present a verified application setting forth in detail
26 any new facts not known or obtainable at the time of the

1 filing of the previous petition.

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

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

9 (2) for offenses listed in paragraphs (1) through (7)
10 of subsection (a), the defendant 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, by conduct which may include, but is not limited to,
14 a forcible felony, the obstruction of justice,
15 intimidation, injury, or abuse as defined by paragraph (1)
16 of Section 103 of the Illinois Domestic Violence Act of
17 1986, and

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

26 (4) for offenses under subsection (b) of Section 407

1 of the Illinois Controlled Substances Act that are subject
2 to paragraph (1) of subsection (a), no condition or
3 combination of conditions set forth in subsection (b) of
4 Section 110-10 of this Article can mitigate the real and
5 present threat to the safety of any person or persons or
6 the community, based on the specific articulable facts of
7 the case, and the defendant poses a serious risk to not
8 appear in court as required.

9 (f) Conduct of the hearings.

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

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

19 (3) The defendant has the right to be represented by
20 counsel, and if he or she is indigent, to have counsel
21 appointed for him or her. The defendant shall have the
22 opportunity to testify, to present witnesses on his or her
23 own behalf, and to cross-examine any witnesses that are
24 called by the State. Defense counsel shall be given
25 adequate opportunity to confer with the defendant before
26 any hearing at which conditions of release or the

1 detention of the defendant are to be considered, with an
2 accommodation for a physical condition made to facilitate
3 attorney/client consultation. If defense counsel needs to
4 confer or consult with the defendant during any hearing
5 conducted via a two-way audio-visual communication system,
6 such consultation shall not be recorded and shall be
7 undertaken consistent with constitutional protections.

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

22 (4) If the defense seeks to compel the complaining
23 witness to testify as a witness in its favor, it shall
24 petition the court for permission. When the ends of
25 justice so require, the court may exercise its discretion
26 and compel the appearance of a complaining witness. The

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

25 (5) The rules concerning the admissibility of evidence
26 in criminal trials do not apply to the presentation and

1 consideration of information at the hearing. At the trial
2 concerning the offense for which the hearing was conducted
3 neither the finding of the court nor any transcript or
4 other record of the hearing shall be admissible in the
5 State's case-in-chief, but shall be admissible for
6 impeachment, or as provided in Section 115-10.1 of this
7 Code, or in a perjury proceeding.

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

14 (7) Decisions regarding release, conditions of
15 release, and detention prior to trial must be
16 individualized, and no single factor or standard may be
17 used exclusively to order detention. Risk assessment tools
18 may not be used as the sole basis to deny pretrial release.

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

25 (1) The nature and circumstances of any offense
26 charged, including whether the offense is a crime of

1 violence, involving a weapon, or a sex offense.

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

4 (A) Any evidence of the defendant's prior criminal
5 history indicative of violent, abusive or assaultive
6 behavior, or lack of such behavior. Such evidence may
7 include testimony or documents received in juvenile
8 proceedings, criminal, quasi-criminal, civil
9 commitment, domestic relations, or other proceedings.

10 (B) Any evidence of the defendant's psychological,
11 psychiatric or other similar social history which
12 tends to indicate a violent, abusive, or assaultive
13 nature, or lack of any such history.

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

17 (4) Any statements made by, or attributed to the
18 defendant, together with the circumstances surrounding
19 them.

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

21 (6) The age and physical condition of any victim or
22 complaining witness.

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

25 (8) Whether, at the time of the current offense or any
26 other offense or arrest, the defendant was on probation,

1 parole, aftercare release, mandatory supervised release or
2 other release from custody pending trial, sentencing,
3 appeal or completion of sentence for an offense under
4 federal or state law.

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

10 (h) Detention order. The court shall, in any order for
11 detention:

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

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

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

26 (4) direct that the sheriff deliver the defendant as

1 required for appearances in connection with court
2 proceedings.

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

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

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

24 (k) Appeal. The State may appeal any order entered under
25 this Section denying any motion for denial of pretrial
26 release.

1 (1) Presumption of innocence. Nothing in this Section
2 shall be construed as modifying or limiting in any way the
3 defendant's presumption of innocence in further criminal
4 proceedings.

5 (m) Interest of victims.

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

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

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