



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5130

Introduced 2/8/2024, by Rep. Dan Ugaste - Dennis Tipsword, Jr.
- David Friess and Dave Severin

SYNOPSIS AS INTRODUCED:

725 ILCS 5/109-1

from Ch. 38, par. 109-1

Amends the Code of Criminal Procedure of 1963. Provides that law enforcement shall issue a citation in lieu of custodial arrest, upon proper identification, for those accused of any offense that is not a felony or Class A or B misdemeanor (rather than any offense that is not a felony or Class A misdemeanor) unless (i) a law enforcement officer reasonably believes the accused poses a threat to the community or any person, (ii) a custodial arrest is necessary because the criminal activity persists after the issuance of a citation, or (iii) the accused has an obvious medical or mental health issue that poses a risk to the accused's own safety. Provides that nothing in this provision requires arrest in the case of Class A or B (rather than a Class A) misdemeanor and felony offenses, or otherwise limits existing law enforcement discretion to decline to effect a custodial arrest.

LRB103 35872 RLC 65957 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 109-1 as follows:

6 (725 ILCS 5/109-1) (from Ch. 38, par. 109-1)

7 Sec. 109-1. Person arrested; release from law enforcement
8 custody and court appearance; geographic constraints prevent
9 in-person appearances.

10 (a) A person arrested with or without a warrant for an
11 offense for which pretrial release may be denied under
12 paragraphs (1) through (6) of Section 110-6.1 shall be taken
13 without unnecessary delay before the nearest and most
14 accessible judge in that county, except when such county is a
15 participant in a regional jail authority, in which event such
16 person may be taken to the nearest and most accessible judge,
17 irrespective of the county where such judge presides, within
18 48 hours, and a charge shall be filed. Whenever a person
19 arrested either with or without a warrant is required to be
20 taken before a judge, a charge may be filed against such person
21 by way of a two-way audio-visual communication system, except
22 that a hearing to deny pretrial release to the defendant may
23 not be conducted by two-way audio-visual communication system

1 unless the accused waives the right to be present physically
2 in court, the court determines that the physical health and
3 safety of any person necessary to the proceedings would be
4 endangered by appearing in court, or the chief judge of the
5 circuit orders use of that system due to operational
6 challenges in conducting the hearing in person. Such
7 operational challenges must be documented and approved by the
8 chief judge of the circuit, and a plan to address the
9 challenges through reasonable efforts must be presented and
10 approved by the Administrative Office of the Illinois Courts
11 every 6 months.

12 (a-1) Law enforcement shall issue a citation in lieu of
13 custodial arrest, upon proper identification, for those
14 accused of any offense that is not a felony or Class A or B
15 misdemeanor unless (i) a law enforcement officer reasonably
16 believes the accused poses a threat to the community or any
17 person, (ii) a custodial arrest is necessary because the
18 criminal activity persists after the issuance of a citation,
19 or (iii) the accused has an obvious medical or mental health
20 issue that poses a risk to the accused's own safety. Nothing in
21 this Section requires arrest in the case of Class A or B
22 misdemeanor and felony offenses, or otherwise limits existing
23 law enforcement discretion to decline to effect a custodial
24 arrest.

25 (a-3) A person arrested with or without a warrant for an
26 offense for which pretrial release may not be denied may,

1 except as otherwise provided in this Code, be released by a law
2 enforcement officer without appearing before a judge. A
3 presumption in favor of pretrial release shall be applied by
4 an arresting officer in the exercise of his or her discretion
5 under this Section.

6 (a-5) A person charged with an offense shall be allowed
7 counsel at the hearing at which pretrial release is determined
8 under Article 110 of this Code. If the defendant desires
9 counsel for his or her initial appearance but is unable to
10 obtain counsel, the court shall appoint a public defender or
11 licensed attorney at law of this State to represent him or her.

12 (b) Upon initial appearance of a person before the court,
13 the judge shall:

14 (1) inform the defendant of the charge against him and
15 shall provide him with a copy of the charge;

16 (2) advise the defendant of his right to counsel and
17 if indigent shall appoint a public defender or licensed
18 attorney at law of this State to represent him in
19 accordance with the provisions of Section 113-3 of this
20 Code;

21 (3) schedule a preliminary hearing in appropriate
22 cases;

23 (4) admit the defendant to pretrial release in
24 accordance with the provisions of Article 110 of this
25 Code, or upon verified petition of the State, proceed with
26 the setting of a detention hearing as provided in Section

1 110-6.1; and

2 (5) order the confiscation of the person's passport or
3 impose travel restrictions on a defendant arrested for
4 first degree murder or other violent crime as defined in
5 Section 3 of the Rights of Crime Victims and Witnesses
6 Act, if the judge determines, based on the factors in
7 Section 110-5 of this Code, that this will reasonably
8 ensure the appearance of the defendant and compliance by
9 the defendant with all conditions of release.

10 (c) The court may issue an order of protection in
11 accordance with the provisions of Article 112A of this Code.
12 Crime victims shall be given notice by the State's Attorney's
13 office of this hearing as required in paragraph (2) of
14 subsection (b) of Section 4.5 of the Rights of Crime Victims
15 and Witnesses Act and shall be informed of their opportunity
16 at this hearing to obtain an order of protection under Article
17 112A of this Code.

18 (d) At the initial appearance of a defendant in any
19 criminal proceeding, the court must advise the defendant in
20 open court that any foreign national who is arrested or
21 detained has the right to have notice of the arrest or
22 detention given to his or her country's consular
23 representatives and the right to communicate with those
24 consular representatives if the notice has not already been
25 provided. The court must make a written record of so advising
26 the defendant.

1 (e) If consular notification is not provided to a
2 defendant before his or her first appearance in court, the
3 court shall grant any reasonable request for a continuance of
4 the proceedings to allow contact with the defendant's
5 consulate. Any delay caused by the granting of the request by a
6 defendant shall temporarily suspend for the time of the delay
7 the period within which a person shall be tried as prescribed
8 by subsection (a), (b), or (e) of Section 103-5 of this Code
9 and on the day of the expiration of delay the period shall
10 continue at the point at which it was suspended.

11 (f) At the hearing at which conditions of pretrial release
12 are determined, the person charged shall be present in person
13 rather than by two-way audio-video communication system unless
14 the accused waives the right to be present physically in
15 court, the court determines that the physical health and
16 safety of any person necessary to the proceedings would be
17 endangered by appearing in court, or the chief judge of the
18 circuit orders use of that system due to operational
19 challenges in conducting the hearing in person. Such
20 operational challenges must be documented and approved by the
21 chief judge of the circuit, and a plan to address the
22 challenges through reasonable efforts must be presented and
23 approved by the Administrative Office of the Illinois Courts
24 every 6 months.

25 (g) Defense counsel shall be given adequate opportunity to
26 confer with the defendant prior to any hearing in which

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

8 (Source: P.A. 101-652, eff. 1-1-23; 102-813, eff. 5-13-22;
9 102-1104, eff. 1-1-23.)