



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Edward D. Maloney

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

Amends the Code of Criminal Procedure of 1963. Provides that upon the filing of a written request demonstrating reasonable cause, the State's Attorney may request a source of bail hearing either before or after the posting of any funds. Provides that if the hearing is granted, before the posting of any bail, the accused must file a written notice requesting that the court conduct a source of bail hearing. Establishes factors that the court must consider at the hearing. Effective immediately.

LRB093 20986 RLC 46985 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 110-5 as follows:

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

7 Sec. 110-5. Determining the amount of bail and conditions
8 of release.

9 (a) In determining the amount of monetary bail or
10 conditions of release, if any, which will reasonably assure the
11 appearance of a defendant as required or the safety of any
12 other person or the community and the likelihood of compliance
13 by the defendant with all the conditions of bail, the court
14 shall, on the basis of available information, take into account
15 such matters as the nature and circumstances of the offense
16 charged, whether the evidence shows that as part of the offense
17 there was a use of violence or threatened use of violence,
18 whether the offense involved corruption of public officials or
19 employees, whether there was physical harm or threats of
20 physical harm to any public official, public employee, judge,
21 prosecutor, juror or witness, senior citizen, child or
22 handicapped person, whether evidence shows that during the
23 offense or during the arrest the defendant possessed or used a
24 firearm, machine gun, explosive or metal piercing ammunition or
25 explosive bomb device or any military or paramilitary armament,
26 whether the evidence shows that the offense committed was
27 related to or in furtherance of the criminal activities of an
28 organized gang or was motivated by the defendant's membership
29 in or allegiance to an organized gang, the condition of the
30 victim, any written statement submitted by the victim or
31 proffer or representation by the State regarding the impact
32 which the alleged criminal conduct has had on the victim and

1 the victim's concern, if any, with further contact with the
2 defendant if released on bail, whether the offense was based on
3 racial, religious, sexual orientation or ethnic hatred, the
4 likelihood of the filing of a greater charge, the likelihood of
5 conviction, the sentence applicable upon conviction, the
6 weight of the evidence against such defendant, whether there
7 exists motivation or ability to flee, whether there is any
8 verification as to prior residence, education, or family ties
9 in the local jurisdiction, in another county, state or foreign
10 country, the defendant's employment, financial resources,
11 character and mental condition, past conduct, prior use of
12 alias names or dates of birth, and length of residence in the
13 community, the consent of the defendant to periodic drug
14 testing in accordance with Section 110-6.5, whether a foreign
15 national defendant is lawfully admitted in the United States of
16 America, whether the government of the foreign national
17 maintains an extradition treaty with the United States by which
18 the foreign government will extradite to the United States its
19 national for a trial for a crime allegedly committed in the
20 United States, whether the defendant is currently subject to
21 deportation or exclusion under the immigration laws of the
22 United States, whether the defendant, although a United States
23 citizen, is considered under the law of any foreign state a
24 national of that state for the purposes of extradition or
25 non-extradition to the United States, the amount of unrecovered
26 proceeds lost as a result of the alleged offense, the source of
27 bail funds tendered or sought to be tendered for bail, whether
28 from the totality of the court's consideration, the loss of
29 funds posted or sought to be posted for bail will not deter the
30 defendant from flight, whether the evidence shows that the
31 defendant is engaged in significant possession, manufacture,
32 or delivery of a controlled substance or cannabis, either
33 individually or in consort with others, whether at the time of
34 the offense charged he was on bond or pre-trial release pending
35 trial, probation, periodic imprisonment or conditional
36 discharge pursuant to this Code or the comparable Code of any

1 other state or federal jurisdiction, whether the defendant is
2 on bond or pre-trial release pending the imposition or
3 execution of sentence or appeal of sentence for any offense
4 under the laws of Illinois or any other state or federal
5 jurisdiction, whether the defendant is under parole or
6 mandatory supervised release or work release from the Illinois
7 Department of Corrections or any penal institution or
8 corrections department of any state or federal jurisdiction,
9 the defendant's record of convictions, whether the defendant
10 has been convicted of a misdemeanor or ordinance offense in
11 Illinois or similar offense in other state or federal
12 jurisdiction within the 10 years preceding the current charge
13 or convicted of a felony in Illinois, whether the defendant was
14 convicted of an offense in another state or federal
15 jurisdiction that would be a felony if committed in Illinois
16 within the 20 years preceding the current charge or has been
17 convicted of such felony and released from the penitentiary
18 within 20 years preceding the current charge if a penitentiary
19 sentence was imposed in Illinois or other state or federal
20 jurisdiction, the defendant's records of juvenile adjudication
21 of delinquency in any jurisdiction, any record of appearance or
22 failure to appear by the defendant at court proceedings,
23 whether there was flight to avoid arrest or prosecution,
24 whether the defendant escaped or attempted to escape to avoid
25 arrest, whether the defendant refused to identify himself, or
26 whether there was a refusal by the defendant to be
27 fingerprinted as required by law. Information used by the court
28 in its findings or stated in or offered in connection with this
29 Section may be by way of proffer based upon reliable
30 information offered by the State or defendant. All evidence
31 shall be admissible if it is relevant and reliable regardless
32 of whether it would be admissible under the rules of evidence
33 applicable at criminal trials. If the State presents evidence
34 that the offense committed by the defendant was related to or
35 in furtherance of the criminal activities of an organized gang
36 or was motivated by the defendant's membership in or allegiance

1 to an organized gang, and if the court determines that the
2 evidence may be substantiated, the court shall prohibit the
3 defendant from associating with other members of the organized
4 gang as a condition of bail or release. For the purposes of
5 this Section, "organized gang" has the meaning ascribed to it
6 in Section 10 of the Illinois Streetgang Terrorism Omnibus
7 Prevention Act.

8 (b) The amount of bail shall be:

9 (1) Sufficient to assure compliance with the
10 conditions set forth in the bail bond, which shall include
11 the defendant's current address with a written
12 admonishment to the defendant that he or she must comply
13 with the provisions of Section 110-12 regarding any change
14 in his or her address. The defendant's address shall at all
15 times remain a matter of public record with the clerk of
16 the court.

17 (2) Not oppressive.

18 (3) Considerate of the financial ability of the
19 accused.

20 (4) When a person is charged with a drug related
21 offense involving possession or delivery of cannabis or
22 possession or delivery of a controlled substance as defined
23 in the Cannabis Control Act, as amended, or the Illinois
24 Controlled Substances Act, as amended, the full street
25 value of the drugs seized shall be considered. "Street
26 value" shall be determined by the court on the basis of a
27 proffer by the State based upon reliable information of a
28 law enforcement official contained in a written report as
29 to the amount seized and such proffer may be used by the
30 court as to the current street value of the smallest unit
31 of the drug seized.

32 (b-5) Upon the filing of a written request demonstrating
33 reasonable cause, the State's Attorney may request a source of
34 bail hearing either before or after the posting of any funds.
35 If the hearing is granted, before the posting of any bail, the
36 accused must file a written notice requesting that the court

1 conduct a source of bail hearing. The notice must be
2 accompanied by justifying affidavits stating the legitimate
3 and lawful source of funds for bail. At the hearing, the court
4 shall inquire into any matters stated in any justifying
5 affidavits, and may also inquire into matters appropriate to
6 the determination which shall include, but are not limited to,
7 the following:

8 (1) the background, character, reputation, and
9 relationship to the accused of any surety; and

10 (2) the source of any money or property deposited by
11 any surety, and whether any such money or property
12 constitutes the fruits of criminal or unlawful conduct; and

13 (3) the source of any money posted as cash bail, and
14 whether any such money constitutes the fruits of criminal
15 or unlawful conduct; and

16 (4) the background, character, reputation, and
17 relationship to the accused of the person posting cash
18 bail.

19 Upon setting the hearing, the court shall examine, under
20 oath, any persons who may possess material information.

21 The State's Attorney has a right to attend the hearing, to
22 call witnesses and to examine any witness in the proceeding.
23 The court shall, upon request of the State's Attorney, continue
24 the proceedings for a reasonable period to allow the State's
25 Attorney to investigate the matter raised in any testimony or
26 affidavit. If the hearing is granted after the accused has
27 posted bail, the court shall conduct a hearing consistent with
28 this subsection (b-5). At the conclusion of the hearing, the
29 court must issue an order either approving or disapproving the
30 bail.

31 (c) When a person is charged with an offense punishable by
32 fine only the amount of the bail shall not exceed double the
33 amount of the maximum penalty.

34 (d) When a person has been convicted of an offense and only
35 a fine has been imposed the amount of the bail shall not exceed
36 double the amount of the fine.

1 (e) The State may appeal any order granting bail or setting
2 a given amount for bail.

3 (Source: P.A. 93-254, eff. 1-1-04.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.