

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 110-4 and by adding Section 110-6.4  
6 as follows:

7 (725 ILCS 5/110-4) (from Ch. 38, par. 110-4)

8 Sec. 110-4. Bailable Offenses.

9 (a) All persons shall be bailable before conviction, except  
10 the following offenses where the proof is evident or the  
11 presumption great that the defendant is guilty of the offense:  
12 capital offenses; offenses for which a sentence of life  
13 imprisonment may be imposed as a consequence of conviction;  
14 felony offenses for which a sentence of imprisonment, without  
15 conditional and revocable release, shall be imposed by law as a  
16 consequence of conviction, where the court after a hearing,  
17 determines that the release of the defendant would pose a real  
18 and present threat to the physical safety of any person or  
19 persons; stalking or aggravated stalking, where the court,  
20 after a hearing, determines that the release of the defendant  
21 would pose a real and present threat to the physical safety of  
22 the alleged victim of the offense and denial of bail is  
23 necessary to prevent fulfillment of the threat upon which the  
24 charge is based; or unlawful use of weapons in violation of  
25 item (4) of subsection (a) of Section 24-1 of the Criminal Code  
26 of 1961 when that offense occurred in a school or in any  
27 conveyance owned, leased, or contracted by a school to  
28 transport students to or from school or a school-related  
29 activity, or on any public way within 1,000 feet of real  
30 property comprising any school, where the court, after a  
31 hearing, determines that the release of the defendant would  
32 pose a real and present threat to the physical safety of any

1 person and denial of bail is necessary to prevent fulfillment  
2 of that threat; or an offense for which the person, upon  
3 conviction, would be subject to registration under the Arsonist  
4 Registration Act if the person has previously been convicted of  
5 any of the following offenses: (i) arson, (ii) aggravated  
6 arson, (iii) residential arson, (iv) place of worship arson,  
7 (v) possession of explosives or explosive or incendiary  
8 devices, or (vi) an attempt to commit any of these offenses and  
9 if the the court, after a hearing, determines that the release  
10 of the defendant would pose a real and present threat to the  
11 physical safety of any person and denial of bail is necessary  
12 to prevent fulfillment of that threat.

13 (b) A person seeking release on bail who is charged with a  
14 capital offense or an offense for which a sentence of life  
15 imprisonment may be imposed shall not be bailable until a  
16 hearing is held wherein such person has the burden of  
17 demonstrating that the proof of his guilt is not evident and  
18 the presumption is not great.

19 (c) Where it is alleged that bail should be denied to a  
20 person upon the grounds that the person presents a real and  
21 present threat to the physical safety of any person or persons,  
22 the burden of proof of such allegations shall be upon the  
23 State.

24 (d) When it is alleged that bail should be denied to a  
25 person charged with stalking or aggravated stalking upon the  
26 grounds set forth in Section 110-6.3 of this Code, the burden  
27 of proof of those allegations shall be upon the State.

28 (e) When it is alleged that bail should be denied to a  
29 person charged with arson, aggravated arson, residential  
30 arson, place of worship arson, possession of explosives or  
31 explosive or incendiary devices, or an attempt to commit any of  
32 these offenses upon the grounds set forth in Section 110-6.4 of  
33 this Code, the burden of proof of those allegations shall be  
34 upon the State.

35 (Source: P.A. 91-11, eff. 6-4-99.)

1 (725 ILCS 5/110-6.4 new)

2 Sec. 110-6.4. Denial of bail for certain arson offenses.

3 (a) Upon verified petition by the State, the court shall  
4 hold a hearing to determine whether bail should be denied to a  
5 defendant who is charged with an offense for which the person,  
6 upon conviction, would be subject to registration under the  
7 Arsonist Registration Act if the person has previously been  
8 convicted of any of the following offenses: (i) arson, (ii)  
9 aggravated arson, (iii) residential arson, (iv) place of  
10 worship arson, (v) possession of explosives or explosive or  
11 incendiary devices, or (vi) an attempt to commit any of these  
12 offenses, when it is alleged that the defendant's admission to  
13 bail poses a real and present threat to the physical safety of  
14 any person, and denial of release on bail or personal  
15 recognizance is necessary to prevent fulfillment of the threat  
16 upon which the charge is based.

17 (1) A petition may be filed without prior notice to the  
18 defendant at the first appearance before a judge, or within  
19 21 calendar days, except as provided in Section 110-6,  
20 after arrest and release of the defendant upon reasonable  
21 notice to the defendant; provided that while the petition  
22 is pending before the court, the defendant if previously  
23 released shall not be detained.

24 (2) The hearing shall be held immediately upon the  
25 defendant's appearance before the court, unless for good  
26 cause shown the defendant or the State seeks a continuance.  
27 A continuance on motion of the defendant may not exceed 5  
28 calendar days, and the defendant may be held in custody  
29 during the continuance. A continuance on the motion of the  
30 State may not exceed 3 calendar days.

31 (b) The court may deny bail to the defendant when, after  
32 the hearing, it is determined that:

33 (1) the proof is evident or the presumption great that  
34 the defendant has committed the offense of arson,  
35 aggravated arson, residential arson, place of worship  
36 arson, possession of explosives or explosive or incendiary

1 devices, or an attempt to commit any of these offenses; and

2 (2) the defendant poses a real and present threat to  
3 the physical safety of any person; and

4 (3) the denial of release on bail or personal  
5 recognizance is necessary to prevent fulfillment of the  
6 threat upon which the charge is based; and

7 (4) the court finds that no condition or combination of  
8 conditions set forth in subsection (b) of Section 110-10 of  
9 this Code, including mental health treatment at a community  
10 mental health center, hospital, or facility of the  
11 Department of Human Services, can reasonably assure the  
12 physical safety of any person.

13 (c) Conduct of the hearings.

14 (1) The hearing on the defendant's culpability and  
15 threat to the public shall be conducted in accordance with  
16 the following provisions:

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

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

26 (2) The facts relied upon by the court to support a  
27 finding that:

28 (A) the defendant poses a real and present threat  
29 to the physical safety of any person; and

30 (B) the denial of release on bail or personal  
31 recognizance is necessary to prevent fulfillment of  
32 the threat upon which the charge is based;

33 shall be supported by clear and convincing evidence  
34 presented by the State.

35 (d) Factors to be considered in making a determination of  
36 the threat to the public. The court may, in determining whether

1 the defendant poses, at the time of the hearing, a real and  
2 present threat to the physical safety of any person, consider  
3 but shall not be limited to evidence or testimony concerning:

4 (1) the nature and circumstances of the offense  
5 charged;

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

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

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

18 (3) the nature of the threat which is the basis of the  
19 charge against the defendant;

20 (4) any statements made by, or attributed to the  
21 defendant, together with the circumstances surrounding  
22 them;

23 (5) whether the defendant is known to possess or have  
24 access to any weapon or weapons;

25 (6) whether, at the time of the current offense or any  
26 other offense or arrest, the defendant was on probation,  
27 parole, mandatory supervised release or other release from  
28 custody pending trial, sentencing, appeal or completion of  
29 sentence for an offense under federal or state law;

30 (7) any other factors, including those listed in  
31 Section 110-5 of this Code, deemed by the court to have a  
32 reasonable bearing upon the defendant's propensity or  
33 reputation for violent, abusive or assaultive behavior, or  
34 lack of that behavior.

35 (e) The court shall, in any order denying bail to a person  
36 charged with arson, aggravated arson, residential arson, place

1 of worship arson, possession of explosives or explosive or  
2 incendiary devices, or an attempt to commit any of these  
3 offenses:

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

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

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

14 (4) direct that the sheriff deliver the defendant as  
15 required for appearances in connection with court  
16 proceedings.

17 (f) If the court enters an order for the detention of the  
18 defendant under subsection (e) of this Section, the defendant  
19 shall be brought to trial on the offense for which he or she is  
20 detained within 90 days after the date on which the order for  
21 detention was entered. If the defendant is not brought to trial  
22 within the 90 day period required by this subsection (f), he or  
23 she shall not be held longer without bail. In computing the 90  
24 day period, the court shall omit any period of delay resulting  
25 from a continuance granted at the request of the defendant. The  
26 court shall immediately notify the alleged victim of the  
27 offense that the defendant has been admitted to bail under this  
28 subsection.

29 (g) Any person shall be entitled to appeal any order  
30 entered under this Section denying bail to the defendant.

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

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