



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4886

Introduced 1/19/2006, by Rep. Michael P. McAuliffe

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-4

from Ch. 38, par. 110-4

725 ILCS 5/110-6.4 new

Amends the Code of Criminal Procedure of 1963. Provides that a person charged with an offense for which the person, upon conviction, would be subject to registration under the Arsonist Registration Act if the person has previously been convicted of any of the following offenses: (i) arson, (ii) aggravated arson, (iii) residential arson, (iv) place of worship arson, (v) possession of explosives or explosive or incendiary devices, (vi) aggravated participation in methamphetamine manufacturing under subparagraph (F) of paragraph (1) of subsection (b) of Section 15 of the Methamphetamine Control and Community Protection Act (participation in the manufacture of methamphetamine with the intent that methamphetamine or a substance containing methamphetamine be produced and the methamphetamine manufacturing in which the person participates is a contributing cause to a fire or explosion that damages property belonging to another person), or (vii) an attempt to commit any of these offenses and if the the court, after a hearing, determines that the release of the defendant would pose a real and present threat to the physical safety of any person and denial of bail is necessary to prevent fulfillment of that threat, bail may be denied. Establishes procedures for that hearing.

LRB094 16022 RLC 51257 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 110-4 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, (vi) aggravated participation in methamphetamine  
9 manufacturing under subparagraph (F) of paragraph (1) of  
10 subsection (b) of Section 15 of the Methamphetamine Control and  
11 Community Protection Act, or (vii) an attempt to commit any of  
12 these offenses and if the the court, after a hearing,  
13 determines that the release of the defendant would pose a real  
14 and present threat to the physical safety of any person and  
15 denial of bail is necessary to prevent fulfillment of that  
16 threat.

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

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

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

32 (e) When it is alleged that bail should be denied to a  
33 person charged with arson, aggravated arson, residential  
34 arson, place of worship arson, possession of explosives or  
35 explosive or incendiary devices, aggravated participation in  
36 methamphetamine manufacturing under subparagraph (F) of

1 paragraph (1) of subsection (b) of Section 15 of the  
2 Methamphetamine Control and Community Protection Act  
3 (participation in the manufacture of methamphetamine with the  
4 intent that methamphetamine or a substance containing  
5 methamphetamine be produced and the methamphetamine  
6 manufacturing in which the person participates is a  
7 contributing cause to a fire or explosion that damages property  
8 belonging to another person), or an attempt to commit any of  
9 these offenses upon the grounds set forth in Section 110-6.4 of  
10 this Code, the burden of proof of those allegations shall be  
11 upon the State.

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

13 (725 ILCS 5/110-6.4 new)

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

15 (a) Upon verified petition by the State, the court shall  
16 hold a hearing to determine whether bail should be denied to a  
17 defendant who is charged with an offense for which the person,  
18 upon conviction, would be subject to registration under the  
19 Arsonist Registration Act if the person has previously been  
20 convicted of any of the following offenses: (i) arson, (ii)  
21 aggravated arson, (iii) residential arson, (iv) place of  
22 worship arson, (v) possession of explosives or explosive or  
23 incendiary devices, (vi) aggravated participation in  
24 methamphetamine manufacturing under subparagraph (F) of  
25 paragraph (1) of subsection (b) of Section 15 of the  
26 Methamphetamine Control and Community Protection Act, or (vii)  
27 an attempt to commit any of these offenses, when it is alleged  
28 that the defendant's admission to bail poses a real and present  
29 threat to the physical safety of any person, and denial of  
30 release on bail or personal recognizance is necessary to  
31 prevent fulfillment of the threat upon which the charge is  
32 based.

33 (1) A petition may be filed without prior notice to the  
34 defendant at the first appearance before a judge, or within  
35 21 calendar days, except as provided in Section 110-6,

1 after arrest and release of the defendant upon reasonable  
2 notice to the defendant; provided that while the petition  
3 is pending before the court, the defendant if previously  
4 released shall not be detained.

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

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

14 (1) the proof is evident or the presumption great that  
15 the defendant has committed the offense of arson,  
16 aggravated arson, residential arson, place of worship  
17 arson, possession of explosives or explosive or incendiary  
18 devices, aggravated participation in methamphetamine  
19 manufacturing under subparagraph (F) of paragraph (1) of  
20 subsection (b) of Section 15 of the Methamphetamine Control  
21 and Community Protection Act, or an attempt to commit any  
22 of these offenses; and

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

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

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

34 (c) Conduct of the hearings.

35 (1) The hearing on the defendant's culpability and  
36 threat to the public shall be conducted in accordance with

1       the following provisions:

2               (A) Information used by the court in its findings  
3       or stated in or offered at the hearing may be by way of  
4       proffer based upon reliable information offered by the  
5       State or by the defendant. The defendant has the right  
6       to be represented by counsel, and if he or she is  
7       indigent, to have counsel appointed for him or her. The  
8       defendant shall have the opportunity to testify, to  
9       present witnesses in his or her own behalf, and to  
10       cross-examine witnesses if any are called by the State.  
11       The defendant has the right to present witnesses in his  
12       or her favor. When the ends of justice so require, the  
13       court may exercise its discretion and compel the  
14       appearance of a complaining witness. The court shall  
15       state on the record reasons for granting a defense  
16       request to compel the presence of a complaining  
17       witness. Cross-examination of a complaining witness at  
18       the pretrial detention hearing for the purpose of  
19       impeaching the witness' credibility is insufficient  
20       reason to compel the presence of the witness. In  
21       deciding whether to compel the appearance of a  
22       complaining witness, the court shall be considerate of  
23       the emotional and physical well-being of the witness.  
24       The pretrial detention hearing is not to be used for  
25       the purposes of discovery, and the post arraignment  
26       rules of discovery do not apply. The State shall tender  
27       to the defendant, prior to the hearing, copies of  
28       defendant's criminal history, if any, if available,  
29       and any written or recorded statements and the  
30       substance of any oral statements made by any person, if  
31       relied upon by the State. The rules concerning the  
32       admissibility of evidence in criminal trials do not  
33       apply to the presentation and consideration of  
34       information at the hearing. At the trial concerning the  
35       offense for which the hearing was conducted neither the  
36       finding of the court nor any transcript or other record

1 of the hearing shall be admissible in the State's case  
2 in chief, but shall be admissible for impeachment, or  
3 as provided in Section 115-10.1 of this Code, or in a  
4 perjury proceeding.

5 (B) A motion by the defendant to suppress evidence  
6 or to suppress a confession shall not be entertained.  
7 Evidence that proof may have been obtained as the  
8 result of an unlawful search and seizure or through  
9 improper interrogation is not relevant to this state of  
10 the prosecution.

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

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

15 (B) the denial of release on bail or personal  
16 recognizance is necessary to prevent fulfillment of  
17 the threat upon which the charge is based;

18 shall be supported by clear and convincing evidence  
19 presented by the State.

20 (d) Factors to be considered in making a determination of  
21 the threat to the public. The court may, in determining whether  
22 the defendant poses, at the time of the hearing, a real and  
23 present threat to the physical safety of any person, consider  
24 but shall not be limited to evidence or testimony concerning:

25 (1) the nature and circumstances of the offense  
26 charged;

27 (2) the history and characteristics of the defendant  
28 including:

29 (A) any evidence of the defendant's prior criminal  
30 history indicative of violent, abusive or assaultive  
31 behavior, or lack of that behavior. The evidence may  
32 include testimony or documents received in juvenile  
33 proceedings, criminal, quasi-criminal, civil  
34 commitment, domestic relations or other proceedings;

35 (B) any evidence of the defendant's psychological,  
36 psychiatric or other similar social history that tends

1 to indicate a violent, abusive, or assaultive nature,  
2 or lack of any such history.

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

5 (4) any statements made by, or attributed to the  
6 defendant, together with the circumstances surrounding  
7 them;

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

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

15 (7) any other factors, including those listed in  
16 Section 110-5 of this Code, 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 that behavior.

20 (e) The court shall, in any order denying bail to a person  
21 charged with arson, aggravated arson, residential arson, place  
22 of worship arson, possession of explosives or explosive or  
23 incendiary devices, aggravated participation in  
24 methamphetamine manufacturing under subparagraph (F) of  
25 paragraph (1) of subsection (b) of Section 15 of the  
26 Methamphetamine Control and Community Protection Act, or an  
27 attempt to commit any of these offenses:

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

31 (2) direct that the defendant be committed to the  
32 custody of the sheriff for confinement in the county jail  
33 pending trial;

34 (3) direct that the defendant be given a reasonable  
35 opportunity for private consultation with counsel, and for  
36 communication with others of his choice by visitation, mail



1 and telephone; and

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

5 (f) If the court enters an order for the detention of the  
6 defendant under subsection (e) of this Section, the defendant  
7 shall be brought to trial on the offense for which he or she is  
8 detained within 90 days after the date on which the order for  
9 detention was entered. If the defendant is not brought to trial  
10 within the 90 day period required by this subsection (f), he or  
11 she shall not be held longer without bail. In computing the 90  
12 day period, the court shall omit any period of delay resulting  
13 from a continuance granted at the request of the defendant. The  
14 court shall immediately notify the alleged victim of the  
15 offense that the defendant has been admitted to bail under this  
16 subsection.

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

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

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