

# HB3388



## 96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

**HB3388**

Introduced 2/24/2009, by Rep. Tom Cross

### SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-6.5

Amends the Code of Criminal Procedure of 1963. Makes a technical change in a Section concerning a drug testing program.

LRB096 07927 RLC 18030 b

A BILL FOR

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 110-6.5 as follows:

6 (725 ILCS 5/110-6.5)

7 Sec. 110-6.5. Drug testing program. The ~~The~~ Chief Judge of  
8 the circuit may establish a drug testing program as provided by  
9 this Section in any county in the circuit if the county board  
10 has approved the establishment of the program and the county  
11 probation department or pretrial services agency has consented  
12 to administer it. The drug testing program shall be conducted  
13 under the following provisions:

14 (a) The court, in the case of a defendant charged with a  
15 felony offense or any offense involving the possession or  
16 delivery of cannabis or a controlled substance, shall:

17 (1) not consider the release of the defendant on his or  
18 her own recognizance, unless the defendant consents to  
19 periodic drug testing during the period of release on his  
20 or her own recognizance, in accordance with this Section;

21 (2) consider the consent of the defendant to periodic  
22 drug testing during the period of release on bail in  
23 accordance with this Section as a favorable factor for the

1 defendant in determining the amount of bail, the conditions  
2 of release or in considering the defendant's motion to  
3 reduce the amount of bail.

4 (b) The drug testing shall be conducted by the pretrial  
5 services agency or under the direction of the probation  
6 department when a pretrial services agency does not exist in  
7 accordance with this Section.

8 (c) A defendant who consents to periodic drug testing as  
9 set forth in this Section shall sign an agreement with the  
10 court that, during the period of release, the defendant shall  
11 refrain from using illegal drugs and that the defendant will  
12 comply with the conditions of the testing program. The  
13 agreement shall be on a form prescribed by the court and shall  
14 be executed at the time of the bail hearing. This agreement  
15 shall be made a specific condition of bail.

16 (d) The drug testing program shall be conducted as follows:

17 (1) The testing shall be done by urinalysis for the  
18 detection of phencyclidine, heroin, cocaine, methadone and  
19 amphetamines.

20 (2) The collection of samples shall be performed under  
21 reasonable and sanitary conditions.

22 (3) Samples shall be collected and tested with due  
23 regard for the privacy of the individual being tested and  
24 in a manner reasonably calculated to prevent substitutions  
25 or interference with the collection or testing of reliable  
26 samples.

1           (4) Sample collection shall be documented, and the  
2 documentation procedures shall include:

3                 (i) Labeling of samples so as to reasonably  
4 preclude the probability of erroneous identification  
5 of test results; and

6                 (ii) An opportunity for the defendant to provide  
7 information on the identification of prescription or  
8 nonprescription drugs used in connection with a  
9 medical condition.

10           (5) Sample collection, storage, and transportation to  
11 the place of testing shall be performed so as to reasonably  
12 preclude the probability of sample contamination or  
13 adulteration.

14           (6) Sample testing shall conform to scientifically  
15 accepted analytical methods and procedures. Testing shall  
16 include verification or confirmation of any positive test  
17 result by a reliable analytical method before the result of  
18 any test may be used as a basis for any action by the  
19 court.

20           (e) The initial sample shall be collected before the  
21 defendant's release on bail. Thereafter, the defendant shall  
22 report to the pretrial services agency or probation department  
23 as required by the agency or department. The pretrial services  
24 agency or probation department shall immediately notify the  
25 court of any defendant who fails to report for testing.

26           (f) After the initial test, a subsequent confirmed positive

1 test result indicative of continued drug use shall result in  
2 the following:

3 (1) Upon the first confirmed positive test result, the  
4 pretrial services agency or probation department, shall  
5 place the defendant on a more frequent testing schedule and  
6 shall warn the defendant of the consequences of continued  
7 drug use.

8 (2) A second confirmed positive test result shall be  
9 grounds for a hearing before the judge who authorized the  
10 release of the defendant in accordance with the provisions  
11 of subsection (g) of this Section.

12 (g) The court shall, upon motion of the State or upon its  
13 own motion, conduct a hearing in connection with any defendant  
14 who fails to appear for testing, fails to cooperate with the  
15 persons conducting the testing program, attempts to submit a  
16 sample not his or her own or has had a confirmed positive test  
17 result indicative of continued drug use for the second or  
18 subsequent time after the initial test. The hearing shall be  
19 conducted in accordance with the procedures of Section 110-6.

20 Upon a finding by the court that the State has established  
21 by clear and convincing evidence that the defendant has  
22 violated the drug testing conditions of bail, the court may  
23 consider any of the following sanctions:

24 (1) increase the amount of the defendant's bail or  
25 conditions of release;

26 (2) impose a jail sentence of up to 5 days;

1           (3) revoke the defendant's bail; or

2           (4) enter such other orders which are within the power  
3 of the court as deemed appropriate.

4           (h) The results of any drug testing conducted under this  
5 Section shall not be admissible on the issue of the defendant's  
6 guilt in connection with any criminal charge.

7           (i) The court may require that the defendant pay for the  
8 cost of drug testing.

9           (Source: P.A. 88-677, eff. 12-15-94.)