



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5810

by Rep. Barbara Wheeler

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5

from Ch. 38, par. 110-5

725 ILCS 5/113-9 new

Amends the Code of Criminal Procedure of 1963. Provides for electronic surveillance risk assessment evaluation hearings which the State's Attorney may initiate after the defendant has been arraigned, or at any other stage in the criminal proceedings, after communication with and upon the request of the victim, if the person is charged with an attempt to commit first degree murder committed against an intimate partner, kidnapping, aggravated kidnaping, unlawful restraint, domestic battery, aggravated domestic battery, stalking, aggravated stalking, cyberstalking, harassment by telephone, or harassment through electronic communications. After the court grants a hearing, and considers various factors of the case, the court may order the defendant to undergo a risk assessment evaluation using a recognized, evidence-based instrument conducted by an Illinois Department of Human Services approved partner abuse intervention program provider, pretrial service, probation, or parole agency. Using this information and other factors of the case, the court will determine if the defendant shall be placed on electronic surveillance, and shall document appropriate findings in the record. The cost of the electronic surveillance and risk assessment shall be paid by, or on behalf, of the defendant, but under no circumstances shall be paid by the victim. Effective immediately.

LRB099 17055 SLF 41413 b

FISCAL NOTE ACT
MAY APPLY

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 110-5 and by adding Section 113-9
6 as follows:

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

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

10 (a) In determining the amount of monetary bail or
11 conditions of release, if any, which will reasonably assure the
12 appearance of a defendant as required or the safety of any
13 other person or the community and the likelihood of compliance
14 by the defendant with all the conditions of bail, the court
15 shall, on the basis of available information, take into account
16 such matters as the nature and circumstances of the offense
17 charged, whether the evidence shows that as part of the offense
18 there was a use of violence or threatened use of violence,
19 whether the offense involved corruption of public officials or
20 employees, whether there was physical harm or threats of
21 physical harm to any public official, public employee, judge,
22 prosecutor, juror or witness, senior citizen, child, or person
23 with a disability, whether evidence shows that during the

1 offense or during the arrest the defendant possessed or used a
2 firearm, machine gun, explosive or metal piercing ammunition or
3 explosive bomb device or any military or paramilitary armament,
4 whether the evidence shows that the offense committed was
5 related to or in furtherance of the criminal activities of an
6 organized gang or was motivated by the defendant's membership
7 in or allegiance to an organized gang, the condition of the
8 victim, any written statement submitted by the victim or
9 proffer or representation by the State regarding the impact
10 which the alleged criminal conduct has had on the victim and
11 the victim's concern, if any, with further contact with the
12 defendant if released on bail, whether the offense was based on
13 racial, religious, sexual orientation or ethnic hatred, the
14 likelihood of the filing of a greater charge, the likelihood of
15 conviction, the sentence applicable upon conviction, the
16 weight of the evidence against such defendant, whether there
17 exists motivation or ability to flee, whether there is any
18 verification as to prior residence, education, or family ties
19 in the local jurisdiction, in another county, state or foreign
20 country, the defendant's employment, financial resources,
21 character and mental condition, past conduct, prior use of
22 alias names or dates of birth, and length of residence in the
23 community, the consent of the defendant to periodic drug
24 testing in accordance with Section 110-6.5, whether a foreign
25 national defendant is lawfully admitted in the United States of
26 America, whether the government of the foreign national

1 maintains an extradition treaty with the United States by which
2 the foreign government will extradite to the United States its
3 national for a trial for a crime allegedly committed in the
4 United States, whether the defendant is currently subject to
5 deportation or exclusion under the immigration laws of the
6 United States, whether the defendant, although a United States
7 citizen, is considered under the law of any foreign state a
8 national of that state for the purposes of extradition or
9 non-extradition to the United States, the amount of unrecovered
10 proceeds lost as a result of the alleged offense, the source of
11 bail funds tendered or sought to be tendered for bail, whether
12 from the totality of the court's consideration, the loss of
13 funds posted or sought to be posted for bail will not deter the
14 defendant from flight, whether the evidence shows that the
15 defendant is engaged in significant possession, manufacture,
16 or delivery of a controlled substance or cannabis, either
17 individually or in consort with others, whether at the time of
18 the offense charged he or she was on bond or pre-trial release
19 pending trial, probation, periodic imprisonment or conditional
20 discharge pursuant to this Code or the comparable Code of any
21 other state or federal jurisdiction, whether the defendant is
22 on bond or pre-trial release pending the imposition or
23 execution of sentence or appeal of sentence for any offense
24 under the laws of Illinois or any other state or federal
25 jurisdiction, whether the defendant is under parole, aftercare
26 release, mandatory supervised release, or work release from the

1 Illinois Department of Corrections or Illinois Department of
2 Juvenile Justice or any penal institution or corrections
3 department of any state or federal jurisdiction, the
4 defendant's record of convictions, whether the defendant has
5 been convicted of a misdemeanor or ordinance offense in
6 Illinois or similar offense in other state or federal
7 jurisdiction within the 10 years preceding the current charge
8 or convicted of a felony in Illinois, whether the defendant was
9 convicted of an offense in another state or federal
10 jurisdiction that would be a felony if committed in Illinois
11 within the 20 years preceding the current charge or has been
12 convicted of such felony and released from the penitentiary
13 within 20 years preceding the current charge if a penitentiary
14 sentence was imposed in Illinois or other state or federal
15 jurisdiction, the defendant's records of juvenile adjudication
16 of delinquency in any jurisdiction, any record of appearance or
17 failure to appear by the defendant at court proceedings,
18 whether there was flight to avoid arrest or prosecution,
19 whether the defendant escaped or attempted to escape to avoid
20 arrest, whether the defendant refused to identify himself or
21 herself, or whether there was a refusal by the defendant to be
22 fingerprinted as required by law. Information used by the court
23 in its findings or stated in or offered in connection with this
24 Section may be by way of proffer based upon reliable
25 information offered by the State or defendant. All evidence
26 shall be admissible if it is relevant and reliable regardless

1 of whether it would be admissible under the rules of evidence
2 applicable at criminal trials. If the State presents evidence
3 that the offense committed by the defendant was related to or
4 in furtherance of the criminal activities of an organized gang
5 or was motivated by the defendant's membership in or allegiance
6 to an organized gang, and if the court determines that the
7 evidence may be substantiated, the court shall prohibit the
8 defendant from associating with other members of the organized
9 gang as a condition of bail or release. For the purposes of
10 this Section, "organized gang" has the meaning ascribed to it
11 in Section 10 of the Illinois Streetgang Terrorism Omnibus
12 Prevention Act.

13 (b) The amount of bail shall be:

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

22 (2) Not oppressive.

23 (3) Considerate of the financial ability of the
24 accused.

25 (4) When a person is charged with a drug related
26 offense involving possession or delivery of cannabis or

1 possession or delivery of a controlled substance as defined
2 in the Cannabis Control Act, the Illinois Controlled
3 Substances Act, or the Methamphetamine Control and
4 Community Protection Act, the full street value of the
5 drugs seized shall be considered. "Street value" shall be
6 determined by the court on the basis of a proffer by the
7 State based upon reliable information of a law enforcement
8 official contained in a written report as to the amount
9 seized and such proffer may be used by the court as to the
10 current street value of the smallest unit of the drug
11 seized.

12 (b-5) Upon the filing of a written request demonstrating
13 reasonable cause, the State's Attorney may request a source of
14 bail hearing either before or after the posting of any funds.
15 If the hearing is granted, before the posting of any bail, the
16 accused must file a written notice requesting that the court
17 conduct a source of bail hearing. The notice must be
18 accompanied by justifying affidavits stating the legitimate
19 and lawful source of funds for bail. At the hearing, the court
20 shall inquire into any matters stated in any justifying
21 affidavits, and may also inquire into matters appropriate to
22 the determination which shall include, but are not limited to,
23 the following:

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

26 (2) the source of any money or property deposited by

1 any surety, and whether any such money or property
2 constitutes the fruits of criminal or unlawful conduct; and

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

6 (4) the background, character, reputation, and
7 relationship to the accused of the person posting cash
8 bail.

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

11 The State's Attorney has a right to attend the hearing, to
12 call witnesses and to examine any witness in the proceeding.
13 The court shall, upon request of the State's Attorney, continue
14 the proceedings for a reasonable period to allow the State's
15 Attorney to investigate the matter raised in any testimony or
16 affidavit. If the hearing is granted after the accused has
17 posted bail, the court shall conduct a hearing consistent with
18 this subsection (b-5). At the conclusion of the hearing, the
19 court must issue an order either approving or disapproving the
20 bail.

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

24 (d) When a person has been convicted of an offense and only
25 a fine has been imposed the amount of the bail shall not exceed
26 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 (f) When a person is charged with a violation of an order
4 of protection under Section 12-3.4 or 12-30 of the Criminal
5 Code of 1961 or the Criminal Code of 2012 ~~or when a person is~~
6 ~~charged with domestic battery, aggravated domestic battery,~~
7 ~~kidnapping, aggravated kidnaping, unlawful restraint,~~
8 ~~aggravated unlawful restraint, stalking, aggravated stalking,~~
9 ~~eyberstalking, harassment by telephone, harassment through~~
10 ~~electronic communications, or an attempt to commit first degree~~
11 ~~murder committed against an intimate partner regardless~~
12 ~~whether an order of protection has been issued against the~~
13 ~~person,~~

14 (1) whether the alleged incident involved harassment
15 or abuse, as defined in the Illinois Domestic Violence Act
16 of 1986;

17 (2) whether the person has a history of domestic
18 violence, as defined in the Illinois Domestic Violence Act,
19 or a history of other criminal acts;

20 (3) based on the mental health of the person;

21 (4) whether the person has a history of violating the
22 orders of any court or governmental entity;

23 (5) whether the person has been, or is, potentially a
24 threat to any other person;

25 (6) whether the person has access to deadly weapons or
26 a history of using deadly weapons;

1 (7) whether the person has a history of abusing alcohol
2 or any controlled substance;

3 (8) based on the severity of the alleged incident that
4 is the basis of the alleged offense, including, but not
5 limited to, the duration of the current incident, and
6 whether the alleged incident involved the use of a weapon,
7 physical injury, sexual assault, strangulation, abuse
8 during the alleged victim's pregnancy, abuse of pets, or
9 forcible entry to gain access to the alleged victim;

10 (9) whether a separation of the person from the alleged
11 victim or a termination of the relationship between the
12 person and the alleged victim has recently occurred or is
13 pending;

14 (10) whether the person has exhibited obsessive or
15 controlling behaviors toward the alleged victim,
16 including, but not limited to, stalking, surveillance, or
17 isolation of the alleged victim or victim's family member
18 or members;

19 (11) whether the person has expressed suicidal or
20 homicidal ideations;

21 (12) based on any information contained in the
22 complaint and any police reports, affidavits, or other
23 documents accompanying the complaint,
24 the court may, in its discretion, order the respondent to
25 undergo a risk assessment evaluation using a recognized,
26 evidence-based instrument conducted by an Illinois Department

1 of Human Services approved partner abuse intervention program
2 provider, pretrial service, probation, or parole agency. These
3 agencies shall have access to summaries of the defendant's
4 criminal history, which shall not include victim interviews or
5 information, for the risk evaluation. Based on the information
6 collected from the 12 points to be considered at a bail hearing
7 under this subsection (f), the results of any risk evaluation
8 conducted and the other circumstances of the violation, the
9 court may order that the person, as a condition of bail, be
10 placed under electronic surveillance as provided in Section
11 5-8A-7 of the Unified Code of Corrections. Upon making a
12 determination whether or not to order the respondent to undergo
13 a risk assessment evaluation or to be placed under electronic
14 surveillance and risk assessment, the court shall document in
15 the record the court's reasons for making those determinations.
16 The cost of the electronic surveillance and risk assessment
17 shall be paid by, or on behalf, of the defendant. ~~As used in~~
18 ~~this subsection (f), "intimate partner" means a spouse or a~~
19 ~~current or former partner in a cohabitation or dating~~
20 ~~relationship.~~

21 (Source: P.A. 98-558, eff. 1-1-14; 98-1012, eff. 1-1-15;
22 99-143, eff. 7-27-15.)

23 (725 ILCS 5/113-9 new)

24 Sec. 113-9. Electronic surveillance risk assessment
25 evaluations.

1 (a) The State's Attorney may initiate a risk assessment
2 evaluation hearing:

3 (1) once the defendant has been arraigned under this
4 Article, or at any stage in the criminal proceedings
5 thereafter;

6 (2) after communication with and upon the request of
7 the victim; and

8 (3) when a person is charged with an attempt to commit
9 first degree murder committed against an intimate partner,
10 kidnapping, aggravated kidnaping, unlawful restraint,
11 domestic battery, aggravated domestic battery, stalking,
12 aggravated stalking, cyberstalking, harassment by
13 telephone, harassment through electronic communications,
14 as defined in Sections 8-4, 10-1, 10-2, 10-3, 12-3.2,
15 12-3.3, 12-7.3, 12-7.4, 12-7.5, 26.5-2, or 26.5-3 of the
16 Criminal Code of 1961 or the Criminal Code of 2012. As used
17 in this subsection, "intimate partner" means a spouse or a
18 current or former partner in a cohabitation or dating
19 relationship.

20 (b) The court may grant the hearing, and inquire into any
21 matters appropriate which shall include:

22 (1) whether the alleged incident involved harassment
23 or abuse, as defined in the Illinois Domestic Violence Act
24 of 1986;

25 (2) whether the person has a history of domestic
26 violence, as defined in the Illinois Domestic Violence Act

1 of 1986, or a history of other criminal acts;

2 (3) the mental health of the person;

3 (4) whether the person has a history of violating the
4 orders of any court or governmental entity;

5 (5) whether the person has been, or is, potentially a
6 threat to any other person;

7 (6) whether the person has access to deadly weapons or
8 a history of using deadly weapons;

9 (7) whether the person has a history of abusing alcohol
10 or any controlled substance;

11 (8) based on the severity of the alleged incident that
12 is the basis of the alleged offense, including, but not
13 limited to, the duration of the current incident, whether
14 the alleged incident involved the use of a weapon, physical
15 injury, sexual assault, strangulation, abuse during the
16 alleged victim's pregnancy, abuse of pets, or forcible
17 entry to gain access to the alleged victim;

18 (9) whether a separation of the person from the alleged
19 victim or a termination of the relationship between the
20 person and the alleged victim has recently occurred or is
21 pending;

22 (10) whether the person has exhibited obsessive or
23 controlling behaviors toward the alleged victim,
24 including, but not limited to, stalking, surveillance, or
25 isolation of the alleged victim or victim's family member
26 or members;

1 (11) whether the person has expressed suicidal or
2 homicidal ideations;

3 (12) whether the person has the financial means to pay
4 for the cost of electronic surveillance and a risk
5 assessment evaluation;

6 (13) any information contained in the complaint and any
7 police reports, affidavits, or other documents
8 accompanying the complaint.

9 (c) After considering these factors, the court may, in its
10 discretion, order the defendant to undergo a risk assessment
11 evaluation using a recognized, evidence-based instrument
12 conducted by an Illinois Department of Human Services approved
13 partner abuse intervention program provider, pretrial service,
14 probation, or parole agency. These agencies shall have access
15 to summaries of the defendant's criminal history, which shall
16 not include victim interviews or information for the risk
17 assessment evaluation. Based on the information collected, the
18 results of any risk assessment evaluation conducted, and the
19 other circumstances of the violation, the court may order that
20 the person be placed under electronic surveillance under
21 Section 5-8A-7 of the Unified Code of Corrections. Upon making
22 a determination whether or not to order the defendant to
23 undergo a risk assessment evaluation or to be placed under
24 electronic surveillance, the court shall document in the record
25 the court's reasons for making those determinations. The cost
26 of electronic surveillance and risk assessment evaluation

1 shall be paid by, or on behalf, of the defendant, but under no
2 circumstances shall be paid, in all or in part, by the victim.

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