

West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 725. Criminal Procedure

Act 5. Code of Criminal Procedure of 1963 (Refs & Annos)

Title III. Proceedings After Arrest

Article 110. Pretrial Release (Refs & Annos)

725 ILCS 5/110-5  
Formerly cited as IL ST CH 38 ¶ 110-5

## 5/110-5. Determining the amount of bail and conditions of release

Effective: January 1, 2023

Currentness

§ 110-5. Determining the amount of bail and conditions of release.

(a) In determining which conditions of pretrial release, if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release, the court shall, on the basis of available information, take into account such matters as:

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

(2) the weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

(3) the history and characteristics of the defendant, including:

(A) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, history criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;

(4) the nature and seriousness of the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, that would be posed by the defendant's release, if applicable, as required under paragraph (7.5) of Section 4 of the Rights of Crime Victims and Witnesses Act;

(5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release, if applicable;

(6) when a person is charged with a violation of a protective order, domestic battery, aggravated domestic battery, kidnapping, aggravated kidnaping, unlawful restraint, aggravated unlawful restraint, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against a spouse or a current or former partner in a cohabitation or dating relationship, regardless of whether an order of protection has been issued against the person, the court may consider the following additional factors:

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

(B) whether the person has a history of domestic violence, as defined in the Illinois Domestic Violence Act of 1986, or a history of other criminal acts;

(C) the mental health of the person;

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

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

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

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

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

(I) whether a separation of the person from the victim of abuse or a termination of the relationship between the person and the victim of abuse has recently occurred or is pending;

(J) whether the person has exhibited obsessive or controlling behaviors toward the victim of abuse, including, but not limited to, stalking, surveillance, or isolation of the victim of abuse or the victim's family member or members;

(K) whether the person has expressed suicidal or homicidal ideations; and

(L) any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of that behavior.

(7) in cases of stalking or aggravated stalking under Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the court may consider the factors listed in paragraph (6) and the following additional factors:

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

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

(C) the nature of the threat that is the basis of the charge against the defendant;

(D) any statements made by, or attributed to, the defendant, together with the circumstances surrounding them;

(E) the age and physical condition of any person allegedly assaulted by the defendant;

(F) whether the defendant is known to possess or have access to any weapon or weapons; and

(G) any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of that behavior.

(b) The court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release as provided under Section 110-6.4. If a risk assessment tool is used, the defendant's counsel shall be provided with the information and scoring system of the risk assessment tool used to arrive at the determination. The defendant retains the right to challenge the validity of a risk assessment tool used by the court and to present evidence relevant to the defendant's challenge.

(c) The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10. The court may impose any conditions that are permissible under subsection (b) of Section 110-10. The conditions of release imposed shall be the least restrictive conditions or combination of conditions necessary to reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community.

(d) When a person is charged with a violation of a protective order, the court may order the defendant placed under electronic surveillance as a condition of pretrial release, as provided in Section 5-8A-7 of the Unified Code of Corrections, based on the information collected under paragraph (6) of subsection (a) of this Section, the results of any assessment conducted, or other circumstances of the violation.

(e) If a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant.

(f) Prior to the defendant's first appearance, and with sufficient time for meaningful attorney-client contact to gather information in order to advocate effectively for the defendant's pretrial release, the court shall appoint the public defender or a licensed attorney at law of this State to represent the defendant for purposes of that hearing, unless the defendant has obtained licensed counsel. Defense counsel shall have access to the same documentary information relied upon by the prosecution and presented to the court.

(f-5) At each subsequent appearance of the defendant before the court, the judge must find that the current conditions imposed are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendant with all the conditions of pretrial release. The court is not required to be presented with new information or a change in circumstance to remove pretrial conditions.

(g) Electronic monitoring, GPS monitoring, or home confinement can only be imposed as a condition of pretrial release if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.

(h) If the court imposes electronic monitoring, GPS monitoring, or home confinement, the court shall set forth in the record the basis for its finding. A defendant shall be given custodial credit for each day he or she was subjected to home confinement, at the same rate described in subsection (b) of Section 5-4.5-100 of the Unified Code of Corrections. The court may give custodial credit to a defendant for each day the defendant was subjected to GPS monitoring without home confinement or electronic monitoring without home confinement.

(i) If electronic monitoring, GPS monitoring, or home confinement is imposed, the court shall determine every 60 days if no less restrictive condition of release or combination of less restrictive conditions of release would reasonably ensure the appearance, or continued appearance, of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm. If the court finds that there are less restrictive conditions of release, the court shall order that the condition be removed. This subsection takes effect January 1, 2022.

(j) Crime Victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain a protective order.

(k) The State and defendants may appeal court orders imposing conditions of pretrial release.

### Credits

Laws 1963, p. 2836, § 110-5, eff. Jan. 1, 1964. Amended by P.A. 82-449, § 1, eff. Jan. 1, 1982; P.A. 82-1027, § 1, eff. Dec. 15, 1982; P.A. 84-945, § 2, eff. Sept. 25, 1985; P.A. 85-513, § 1, eff. Jan. 1, 1988; P.A. 86-984, § 1, eff. Dec. 13, 1989; P.A. 88-677, § 30, eff. Dec. 15, 1994; P.A. 88-679, § 30, eff. July 1, 1995; P.A. 89-235, Art. 2, § 2-140, eff. Aug. 4, 1995; P.A. 89-377, § 20, eff. Aug. 18, 1995; P.A. 93-254, § 5, eff. Jan. 1, 2004; P.A. 93-817, § 5, eff. July 27, 2004; P.A. 94-556, § 1080, eff. Sept. 11, 2005; P.A. 95-773, § 20, eff. Jan. 1, 2009; P.A. 96-688, § 10, eff. Aug. 25, 2009; P.A. 96-1551, Art. 1, § 965, eff. July 1, 2011; P.A. 97-1150, § 635, eff. Jan. 25, 2013; P.A. 98-558, § 80, eff. Jan. 1, 2014; P.A. 98-1012, § 5, eff. Jan. 1, 2015; P.A. 99-143, § 890, eff. July 27, 2015; P.A. 100-1, § 1-10, eff. Jan. 1, 2018; P.A. 101-652, § 10-255, eff. Jan. 1, 2023; P.A. 102-28, § 55, eff. June 25, 2021; P.A. 102-558, § 735, eff. Aug. 20, 2021; P.A. 102-813, § 625, eff. May 13, 2022; P.A. 102-1104, § 70, eff. Jan. 1, 2023.

725 I.L.C.S. 5/110-5, IL ST CH 725 § 5/110-5

Current through P.A. 103-471 of the 2023 Reg. Sess. Some statute sections may be more current, see credits for details.

---