

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 5/110-6.1

Formerly cited as IL ST CH 38 ¶ 110-6.1

5/110-6.1. Denial of pretrial release

Effective: January 1, 2023

Currentness

§ 110-6.1. Denial of pretrial release.

(a) Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release only if:

(1) the defendant is charged with a felony offense other than a forcible felony for which, based on the charge or the defendant's criminal history, a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(1.5) the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, and the defendant is charged with a forcible felony, which as used in this Section, means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement;

(2) the defendant is charged with stalking or aggravated stalking, and it is alleged that the defendant's pre-trial release poses a real and present threat to the safety of a victim of the alleged offense, and denial of release is necessary to prevent fulfillment of the threat upon which the charge is based;

(3) the defendant is charged with a violation of an order of protection issued under Section 112A-14 of this Code or Section 214 of the Illinois Domestic Violence Act of 1986,¹ a stalking no contact order under Section 80 of the Stalking No Contact Order Act, or of a civil no contact order under Section 213 of the Civil No Contact Order Act,² and it is alleged

that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(4) the defendant is charged with domestic battery or aggravated domestic battery under Section 12-3.2 or 12-3.3 of the Criminal Code of 2012 and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(5) the defendant is charged with any offense under Article 11 of the Criminal Code of 2012, except for Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35, 11-40, and 11-45 of the Criminal Code of 2012, or similar provisions of the Criminal Code of 1961 and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(6) the defendant is charged with any of the following offenses under the Criminal Code of 2012, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case:

(A) Section 24-1.2 (aggravated discharge of a firearm);

(B) Section 24-2.5 (aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm);

(C) Section 24-1.5 (reckless discharge of a firearm);

(D) Section 24-1.7 (armed habitual criminal);

(E) Section 24-2.2 (manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon's breath shotgun shells, bolo shells, or flechette shells);

(F) Section 24-3 (unlawful sale or delivery of firearms);

(G) Section 24-3.3 (unlawful sale or delivery of firearms on the premises of any school);

(H) Section 24-34 (unlawful sale of firearms by liquor license);

(I) Section 24-3.5 (unlawful purchase of a firearm);

(J) Section 24-3A (gunrunning);

(K) Section 24-3B (firearms trafficking);

(L) Section 10-9(b) (involuntary servitude);

(M) Section 10-9(c) (involuntary sexual servitude of a minor);

(N) Section 10-9(d) (trafficking in persons);

(O) Non-probationable violations: (i) unlawful use or possession of weapons by felons or persons in the Custody of the Department of Corrections facilities (Section 24-1.1), (ii) aggravated unlawful use of a weapon (Section 24-1.6), or (iii) aggravated possession of a stolen firearm (Section 24-3.9);

(P) Section 9-3 (reckless homicide and involuntary manslaughter);

(Q) Section 19-3 (residential burglary);

(R) Section 10-5 (child abduction);

(S) Felony violations of Section 12C-5 (child endangerment);

(T) Section 12-7.1 (hate crime);

(U) Section 10-3.1 (aggravated unlawful restraint);

(V) Section 12-9 (threatening a public official);

(W) Subdivision (f)(1) of Section 12-3.05 (aggravated battery with a deadly weapon other than by discharge of a firearm);

(6.5) the defendant is charged with any of the following offenses, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case:

(A) Felony violations of Sections 3.01, 3.02, or 3.03 of the Humane Care for Animals Act (cruel treatment, aggravated cruelty, and animal torture);

(B) Subdivision (d)(1)(B) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence while operating a school bus with passengers);

(C) Subdivision (d)(1)(C) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence causing great bodily harm);

(D) Subdivision (d)(1)(D) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence after a previous reckless homicide conviction);

(E) Subdivision (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence leading to death); or

(F) Subdivision (d)(1)(J) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence that resulted in bodily harm to a child under the age of 16);

(7) the defendant is charged with an attempt to commit any charge listed in paragraphs (1) through (6.5), and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case; or

(8) the person has a high likelihood of willful flight to avoid prosecution and is charged with:

(A) Any felony described in subdivisions (a)(1) through (a)(7) of this Section; or

(B) A felony offense other than a Class 4 offense.

(b) If the charged offense is a felony, as part of the detention hearing, the court shall determine whether there is probable cause the defendant has committed an offense, unless a hearing pursuant to Section 109-3 of this Code has already been held or a grand jury has returned a true bill of indictment against the defendant. If there is a finding of no probable cause, the defendant shall be released. No such finding is necessary if the defendant is charged with a misdemeanor.

(c) Timing of petition.

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

(2) Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant's first appearance if the defendant is charged with first degree murder or a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny or grant the request for continuance. If the court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing.

(d) Contents of petition.

(1) The petition shall be verified by the State and shall state the grounds upon which it contends the defendant should be denied pretrial release, including the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts or flight risk, as appropriate.

(2) If the State seeks to file a second or subsequent petition under this Section, the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition.

(e) Eligibility: All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:

(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), and

(2) for offenses listed in paragraphs (1) through (7) of subsection (a), the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, and

(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) 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, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant's willful flight for offenses listed in paragraph (8) of subsection (a), and

(4) for offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to paragraph (1) of subsection (a), no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate 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, and the defendant poses a serious risk to not appear in court as required.

(f) Conduct of the hearings.

(1) Prior to the hearing, the State shall tender to the defendant copies of the defendant's criminal history available, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the prosecutor's possession at the time of the hearing.

(2) The State or defendant may present evidence at the hearing by way of proffer based upon reliable information.

(3) The defendant has the right to be represented by counsel, and if he or she is indigent, to have counsel appointed for him or her. The defendant shall have the opportunity to testify, to present witnesses on his or her own behalf, and to cross-examine any witnesses that are called by the State. Defense counsel shall be given adequate opportunity to confer with the defendant before any hearing at which conditions of release or the detention of the defendant are to be considered, with an accommodation for a physical condition made to facilitate attorney/client consultation. If defense counsel needs to confer or consult with the defendant during any hearing conducted via a two-way audio-visual communication system, such consultation shall not be recorded and shall be undertaken consistent with constitutional protections.

(3.5) A hearing at which pretrial release may be denied must be conducted in person (and not by way of two-way audio visual communication) unless the accused waives the right to be present physically in court, the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court, or the chief judge of the circuit orders use of that system due to operational challenges in conducting the hearing in person. Such operational challenges must be documented and approved by the chief judge of the circuit, and a plan to address the challenges through reasonable efforts must be presented and approved by the Administrative Office of the Illinois Courts every 6 months.

(4) If the defense seeks to compel the complaining witness to testify as a witness in its favor, it shall petition the court for permission. When the ends of justice so require, the court may exercise its discretion and compel the appearance of a complaining witness. The court shall state on the record reasons for granting a defense request to compel the presence of a complaining witness only on the issue of the defendant's pretrial detention. In making a determination under this Section, the court shall state on the record the reason for granting a defense request to compel the presence of a complaining witness, and only grant the request if the court finds by clear and convincing evidence that the defendant will be materially prejudiced if the complaining witness does not appear. Cross-examination of a complaining witness at the pretrial detention hearing for the purpose of impeaching the witness' credibility is insufficient reason to compel the presence of the witness. In deciding whether to compel the appearance of a complaining witness, the court shall be considerate of the emotional and physical well-being of the witness. The pre-trial detention hearing is not to be used for purposes of discovery, and the post arraignment rules of discovery do not apply. The State shall tender to the defendant, prior to the hearing, copies, if any, of the defendant's criminal history, if available, and any written or recorded statements and the substance of any oral statements made by any person, if in the State's Attorney's possession at the time of the hearing.

(5) The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. At the trial concerning the offense for which the hearing was conducted neither the finding of the court nor any transcript or other record of the hearing shall be admissible in the State's case-in-chief, but shall be admissible for impeachment, or as provided in Section 115-10.1 of this Code, or in a perjury proceeding.

(6) The defendant may not move to suppress evidence or a confession, however, evidence that proof of the charged crime may have been the result of an unlawful search or seizure, or both, or through improper interrogation, is relevant in assessing the weight of the evidence against the defendant.

(7) Decisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention. Risk assessment tools may not be used as the sole basis to deny pretrial release.

(g) Factors to be considered in making a determination of dangerousness. The court may, in determining whether the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, consider, but shall not be limited to, evidence or testimony concerning:

(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. Such 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 which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat.

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them.

(5) The age and physical condition of the defendant.

(6) The age and physical condition of any victim or complaining witness.

(7) Whether the defendant is known to possess or have access to any weapon or weapons.

(8) Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law.

(9) Any other factors, including those listed in Section 110-5 of this Article 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 such behavior.

(h) Detention order. The court shall, in any order for detention:

(1) make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or prevent the defendant's willful flight from prosecution;

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

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

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

(i) Detention. If the court enters an order for the detention of the defendant pursuant to subsection (e) of this Section, the defendant shall be brought to trial on the offense for which he is detained within 90 days after the date on which the order for detention was entered. If the defendant is not brought to trial within the 90-day period required by the preceding sentence, he shall not be denied pretrial release. In computing the 90-day period, the court shall omit any period of delay resulting from a continuance granted at the request of the defendant and any period of delay resulting from a continuance granted at the request of the State with good cause shown pursuant to Section 103-5.

(i-5) At each subsequent appearance of the defendant before the court, the judge must find that continued detention is necessary to avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or to prevent the defendant's willful flight from prosecution.

(j) Rights of the defendant. The defendant shall be entitled to appeal any order entered under this Section denying his or her pretrial release.

(k) Appeal. The State may appeal any order entered under this Section denying any motion for denial of pretrial release.

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

(m) Interest of victims.

(1) 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.

(2) If the defendant is denied pretrial release, the court may impose a no contact provision with the victim or other interested party that shall be enforced while the defendant remains in custody.

Credits

Laws 1963, p. 2836, § 110-6.1, added by P.A. 85-892, § 1, eff. Nov. 4, 1987. Amended by P.A. 85-1209, Art. III, § 3-33, eff. Aug. 30, 1988; P.A. 94-556, § 1080, eff. Sept. 11, 2005; P.A. 98-558, § 80, eff. Jan. 1, 2014; P.A. 101-652, § 10-255, eff. Jan. 1, 2023; P.A. 102-1104, § 70, eff. Jan. 1, 2023.

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 110-6.1.

Footnotes

1
750 ILCS 60/214.

2
740 ILCS 22/213.

725 I.L.C.S. 5/110-6.1, IL ST CH 725 § 5/110-6.1

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

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