PRE-SAFE-T ACT DEFENDANTS

DEFENDANTS ARRESTED BEFORE THE SAFE-T ACT

725 ILCS 5/110-6

By Judge Miller

IF THE STATE MOVES TO DETAIN

The plain language of section 110-6.1(c)(1) (725 ILCS 5/110-6.1(c)(1) (West 2022)) sets forth a deadline for the State to file a petition to detain. Specifically, this court determined that: "The State may file a petition to detain at the time of the defendant's first appearance before a judge; no prior notice to the defendant is required. Alternatively, the State may file a petition to detain the defendant within 21 calendar days after the arrest and release of the defendant; however, reasonable notice is to be provided to the defendant under this circumstance."

People v. Rios, 2023 IL App (5th) 230724, ¶ 10.

STATE'S ABILITY TO DETAIN – Part 1

In People v. Rios, 2023 IL App (5th) 230724, the defendant was arrested on August 22, 2023 and held on a $500,000 bond. On September 18th, the day the SAFE-T Act became effective, the State filed a Petition to Detain the defendant.

The Court found the Petition to be untimely.

The Court considered 725 ILCS 5/110-6.1(c)(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."

THE TIME LIMIT EXCEPTION

When a defendant has previously been granted pretrial release under this Section for a felony or Class A misdemeanor, that pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release after a hearing on the court's own motion or upon the filing of a verified petition by the State.

725 ILCS 5/110-6

STATE'S ABILITY TO DETAIN – Part 2

In Rios, the defendant had not been released following his arrest and no new offenses had been alleged. Accordingly, the exception to the timing requirements set forth in section 110-6.1(c)(1) was also not applicable to Rios. Based on the foregoing, the 5th District Appellate Court found that the State's petition to detain pursuant to section 110-6.1 was untimely, and the circuit court did not have the authority to detain Rios pursuant to the untimely petition.

AUTHORITY TO DETAIN

The 3rd Ditrict Appellate Court has found that the State CAN file a Petition to detain in response to a defendant's Petition for Release and that the 110-6.1 time limits do NOT apply.

The State is permitted to file a responding petition in situations such as this where a defendant (1) was arrested and detained prior to the implementation of the Act, (2) remained in detention after monetary bail was set, and (3) filed a motion seeking to modify pretrial release conditions.

People v. Gray, 2023 IL App (3d) 230435, ¶ 15

INCREASING PRETRIAL CONDITIONS

For defendants arrested and detained before the Act's effective date who remained in detention after being granted pretrial release on the condition that they pay monetary bail, a motion to deny pretrial release following the Act's implementation operates as a motion to increase the pretrial release conditions to the furthest extent. The Code, as amended by the Act, allows the State to seek to modify pretrial release conditions, which includes filing a responding petition where the defendant moves for pretrial release.

People v Gray, 2023 IL App (3d) 230435

BACK TO SQUARE ONE

The 3rd District Appellate Court in People v Gray,2023 IL App (3d) 230435, adopted the language used by the 4th District Appellate Court in People v. Jones, 2023 IL App (4th) 230837:

If defendant chooses to have the matter treated under the SAFE-T Act, the State may file a responding petition.

"[O]nce a defendant elects 'to have their pretrial conditions reviewed anew' the matter returns to the proverbial square one, where the defendant may argue for the most lenient pretrial release conditions, and the State may make competing arguments."

DEFENDANT CAN CHOSE TO POST MONETARY BOND

The SAFE-T Act abolished the requirement of posting a monetary bail, but it did not eliminate the option to post the previously ordered security.

Under sections 110-7.5(b) and 110-5(e), a defendant arrested before the SAFE-T became effective may file a motion seeking a hearing to have their pretrial conditions reviewed anew. Alternatively, a defendant may elect to stay in detention until such time as the previously set monetary security may be paid. A defendant may elect this option so that they may be released under the terms of the original bail."

People v. Rios, 2023 IL App (5th) 230724, ¶ 16.

Defendant's Election

Defendants who were arrested prior to the implementation of the Act can either "elect to stay in detention until such time as the previously set monetary security may be paid," or file a motion to modify.

People v. Kurzeja, 2023 IL App (3d) 230434

DEFENDANT'S MOTION "Opens the Door"

The Code, as amended by the Act, allows the State to seek to modify pretrial release conditions, which includes filing a responding petition where the defendant moves for pretrial release.

People v. Kurzeja, 2023 IL App (3d) 230434

THE HEARING

The Court should conduct the Defendant's Petition for Pre-Trial Release and the State's Petition to detain following the same rules and burdens established for those defendants who were arrested Post SAFE-T Act.

THE STATE

The State will then provide information about the pending offense as well as relevant information regarding a need to detain. The State may present evidence at the hearing by way of proffer based upon reliable information.

Note: Simply presenting evidence from the police report has been found to be siufficient to meet the clear and convincing standard. People v. Robinson, 2023 IL App (2d) 230345-U

THE DEFENSE

The Defense will then provide information about the pending offense as well as relevant information regarding why the Defendant should NOT be detained. The Defense may present evidence at the hearing by way of proffer based upon reliable information.

IF THE COURT DECIDES TO DETAIN - Part 1

The Court should state:

The Court has considered the evidence and arguments of counsel, the State's Petition, the presumption of Pretrial Release, the Risk Assessment, and the available conditions of Pretrial Release.

The Court finds by clear and convincing evidence that the proof is evident and the presumption great that the defendant has committed a qualifying offense.

IF THE COURT DECIDES TO DETAIN - Part 2

That based upon the nature and circumstances of the offense as well as the defendant's history, character and condition, 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.

The Court further finds that, based upon the evidence produced and enunciated by the State, no condition or combination of conditions set forth in the Safe-T Act 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. ***(110-6.1(h) states that the court should summarize the court's reasons for concluding that the defendant should be denied pretrial release. Adopting the evidence adduced by the State should suffice, but the Court may add more to this.)***

Therefore, the State's petition to detain is granted.

IF THE COURT DECIDES NOT TO DETAIN – Part 1

The Court should state:

The Court has considered the evidence and arguments of counsel, the State's Petition, the presumption of Pre-trial Release, the Risk Assessment, and the available conditions of Pretrial Release.

The Court finds by clear and convincing evidence that the proof is evident and the presumption great that the defendant has committed a qualifying offense.

IF THE COURT DECIDES NOT TO DETAIN – Part 2

That based upon the nature and circumstances of the offense as well as the defendant's history, character and condition, 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.

However, the Court further finds that, based upon the evidence produced and enunciated by the State and Defense, that there are conditions set forth in the Safe-T Act that 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.

The Court denies the State's Petition to detain and the Court will order the Defendant released on Pre-trial Release.

CHOOSE APPROPRIATE CONDITIONS OF PRE-RIAL RELEASE

The Court may ask both the State and the Defense for any requests or recommendations.

If the Court doesn't orally state every condition of Pre-Trial release, keep in mind that:

The oral pronouncement of sentence and the written sentence order are considered one transaction when occurring on the same day. People v. Tackett (1985), 130 Ill.App.3d 347.

When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls. People v. Carlisle (2015), 35 N.E.3d 649.

MAKING A RECORD

If a defendant suggests a release condition as a potential tool to mitigate the danger a defendant poses, and it so happens that this resource is not available within that jurisdiction, it is imperative that courts (and prosecutors) make a record of the fact.

People v. Herrera, 2023 IL App (1st) 231801-B

APPEAL RIGHTS

Appeal Rights should be read.

You have a right to appeal. Your right to appeal the order will be preserved only if a Notice of Appeal under Rule 604(h) is filed in the Circuit Court within 14 days from the date on which the Order is entered. You have the right to request the clerk to prepare and file a notice of Appeal, and the right, if indigent, to be furnished without cost, with a transcript or audiovisual communication or other electronic recording of the proceedings of the hearing. If you are indigent, you also have the right to have counsel appointed on appeal.