

REVOCACTION OF BOND

PROCEDURE FOR REVOKING A DOMESTIC BATTERY BOND

By Judge Miller

SAME VICTIM REQUIRED

...if a defendant is out on bond for domestic battery against a family or household member, as statutorily defined, and the defendant commits another domestic battery against the same victim, “the court shall revoke the bail of the defendant and hold the defendant for trial without bail.” 725 ILCS 5/110–6(f)(3)

People v. Hamilton, 364 Ill. App. 3d 721, 723, 847 N.E.2d 761, 762 (2006)

THE APPLICABLE OFFENSES

Where the defendant is on bail for a felony **domestic battery, aggravated domestic battery, aggravated battery, unlawful restraint, aggravated unlawful restraint** or **domestic battery** in violation of item (1) of subsection (a) of Section 12–3.2 of the Criminal Code of 1961 or the Criminal Code of 2012 against a family or household member as defined in Section 112A–3 of this Code and the violation is an offense of domestic battery **against the same victim.**

DOMESTIC BATTERY

The statute refers to **domestic battery** in violation of item (1) of subsection (a) of Section 12-3.2 .

This section refers to:

(1) Causes bodily harm to any family or household member. 720 Ill. Comp. Stat. Ann. 5/12-3.2

It does **NOT** apply to making physical contact of an insulting or provoking nature

Case #1 vs Case #2

This means that the Defendant needs to be on BOND for a Domestic Battery that involved bodily harm.

To revoke bond, the Defendant needs to be charged with a second Domestic Battery against the same victim. That second case (newer case) can either allege bodily harm **OR physical contact of an insulting or provoking nature.**

WHO MAKES THE MOTION TO REVOKE BAIL?

The court shall, on the motion of the State or its own motion, revoke bail in accordance with the provisions of **725 ILCS 5/110-6**

WHAT SHOULD THE COURT DO IF THE MOTION IS MADE?

- The court shall hold the defendant without bail pending the hearing on the alleged breach;**
- If the defendant is not in custody a “No Bond” warrant should issue.**

HOW LONG IS THE DEFENDANT HELD BEFORE A HEARING IS HELD?

The Statute reads:

However, **if the defendant is not admitted to bail** the hearing shall be commenced within 10 days from the date the defendant is taken into custody or the defendant may not be held any longer without bail, unless delay is occasioned by the defendant.

DELAY BY THE DEFENDANT

Where defendant occasions the delay, the running of the 10 day period is temporarily suspended and resumes at the termination of the period of delay. Where defendant occasions the delay with 5 or fewer days remaining in the 10 day period, the court may grant a period of up to 5 additional days to the State for good cause shown. The State, however, shall retain the right to proceed to hearing on the alleged violation at any time, upon reasonable notice to the defendant and the court.

BAIL and the TEN DAY PERIOD

- This is unclear from the Statute.
- The Statute clearly reads: **The court shall hold the defendant without bail pending the hearing on the alleged breach.**
- However, the Statute also states: **However, if the defendant is not admitted to bail the hearing shall be commenced within 10 days.**

INTERPRETATION NUMBER ONE

- “However, if the defendant **is not admitted to bail** the hearing shall be commenced within 10 days.”
- This appears to give the Court authority to **release** the Defendant from the **No Bond** conditions and set the matter for hearing at a date either within or outside the 10 day limit.

INTERPRETATION NUMBER TWO

“The court shall hold the defendant **without bail** pending the hearing on the alleged breach.”

This suggests that the Court does NOT have discretion. It requires that the Defendant be held without bail until the hearing is held.

WHICH INTERPRETATION SHOULD THE COURT FOLLOW?

Clearly the purpose of this statute is to protect the alleged victim. It would appear there is statutory authority to either set a BOND (with new conditions), or to summarily revoke the BOND.



THERE IS NOT ANY LEGAL AUTHORITY TO ADMIT THE DEFENDANT TO BAIL EXCEPT THE INTERPRETATION OF THE STATUTE. JUDICIAL VIEWPOINTS DIFFER ON THIS ISSUE.

The Court should review the allegations and determine on a case-by-case basis if the allegations are such that, in the interest of justice, would trigger one alternative over the other.

BURDEN OF PROOF

At a hearing on the alleged violation the State has the burden of going forward and proving the violation by clear and convincing evidence.

EVIDENCE

The evidence shall be presented in open court with the opportunity to testify, for the defendant to present witnesses in his behalf, and to cross-examine witnesses if any are called by the State.

PROFFERED EVIDENCE

Information used by the court in its findings or stated in or offered in connection with hearings for increase or revocation of bail may be by way of proffer based upon reliable information offered by the State or defendant.

RELEVANT AND RELIABLE

- All evidence shall be admissible if it is relevant and reliable regardless of whether it would be admissible under the rules of evidence applicable at criminal trials.
- Evidence that proof may have been obtained as a result of an unlawful search and seizure or through improper interrogation is not relevant to this hearing.

THE COURT'S FINDINGS

- Upon a finding by the court that the State has established by clear and convincing evidence that the defendant has committed a domestic battery alleging bodily harm against a family or household member and the new violation is an offense of domestic battery, against the same victim, **the court shall revoke the bail of the defendant and hold the defendant for trial without bail.**

SPEEDY TRIAL

If the bail of any defendant is revoked pursuant to paragraph (f) (3) of this Section, the defendant may demand and shall be entitled to be brought to trial on the offense with respect to which he was formerly released on bail within 90 days after the date on which his bail was revoked. If the defendant is not brought to trial within the 90 day period required by the preceding sentence, he shall not be held longer without bail. 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.