

SANCTIONS FOR VIOLATIONS OF PRETRIAL RELEASE

PROCEDURE FOR IMPOSING SANCTIONS

By Judge Miller

VIOLATION OF PRE-TRIAL RELEASE

If the defendant violates a condition of Pre-Trial Release, the court may impose sanctions. This includes the defendant's failure to appear in court as directed.

WARRANT vs. SUMMONS

Per the statute the Court “may issue a warrant” for the defendant to appear and respond to the Sanctions proceeding. The Statute states that the Safe-T Act has “the goal of relying upon summonses rather than warrants to ensure the appearance of the defendant in court whenever possible.”

725 Ill. Comp. Stat. Ann. 5/110-3

THE WARRANT

If the Court does issue a warrant, specific language should be included on the warrant.

An example of such language is: *“defendant must appear before the court for a hearing for sanctions and may not be released before that appearance.”* Without this language, the defendant may be released prior to being brought to court for the Sanctions Hearing.

725 ILCS 5/110-6 (c)

WHO MAKES THE MOTION TO REVOKE?

The State “may” file a verified petition requesting a hearing for sanctions.

The statute does NOT give the court power to proceed with a sanctions proceeding absent the State’s petition.

TIMING OF PETITION

The Court may issue a warrant for the Defendant's alleged Pre-Trial Release infraction without a Petition from the State.

Although the State may file a Petition before the Defendants arrest, the statute requires it to be filed WHEN defendant appears.

When a defendant appears in court pursuant to a summons or warrant...the State may file a verified petition requesting a hearing for sanctions.

725 Ill. Comp. Stat. Ann. 5/110-6

WHEN MUST THE SANCTIONS HEARING BE HELD?

A specific time for the Sanctions hearing is NOT stated in 725 ILCS 5/110-6.

The same Statute does specify a time limit for a REVOCATION HEARING (revocation hearing shall occur within 72 hours of the filing of the State's petition).

Additionally, the Statute allows for a warrant to issue and the defendant to be held until brought before the issuing court. There is NOT a time limit for this requirement to bring the defendant before the issuing court either.

DEFENDANT'S RIGHT TO COUNSEL

During the hearing for sanctions, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation.

WHAT DOES THE COURT CONSIDER?

The State shall bear the burden of proving by **clear and convincing** evidence that:

- (1) the defendant committed an act that violated a term of the defendant's pretrial release;
- (2) the defendant had actual knowledge that the defendant's action would violate a court order;
- (3) the violation of the court order was willful; and
- (4) the violation was not caused by a lack of access to financial monetary resources.

PROFFERED EVIDENCE?

The Statute does not specify that the parties may either call witnesses, or proceed by proffer. However, this hearing is an extension of the Safe-T Act Detention Hearing and the burden of proof is the same (clear and convincing). Arguably, then, proffered evidence is acceptable.

The evidentiary rule for a Detention Hearing is:

The State and the Defense may present evidence at the hearing by way of proffer based upon reliable information.

WHAT ARE THE SANCTIONS?

Sanctions for violations of pretrial release may include:

- (1) a verbal or written admonishment from the court;
- (2) imprisonment in the county jail for a period not exceeding 30 days;
- (3) a modification of the defendant's pretrial condition.

DOES THE DEFENDANT RECEIVE GOOD CONDUCT CREDIT?

If a Sanction is considered similar to criminal contempt, then YES.

Good behavior allowance is a right afforded by statute which cannot be waived by a failure to object at trial or in a post-trial motion. The fact that the legislature did not include criminal contemnors among those excluded from the Act indicates that the trial court was without authority to deny that credit. People v. Bailey, 235 Ill. App. 3d 1, 5, 600 N.E.2d 1267, 1269 (1992)

APPEAL RIGHTS

Appeal Rights are not required following the imposition of sanctions.

SUBSEQUENT APPEARANCES

At each subsequent appearance of the defendant before the court, the judge must find that continued detention under this Section is necessary to reasonably ensure the appearance of the defendant for later hearings or to prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.

725 ILCS 5/110-6(j)