

The NO-BOND Hearing

PROCEDURE FOR DENYING BOND IN A FELONY MATTER

By Judge Miller

DON'T PROCEED VIA VIDEO

- Whenever a person arrested either with or without a warrant is required to be taken before a judge, a charge may be filed against such person by way of a two-way closed circuit television system, **except that a hearing to deny bail to the defendant may not be conducted by way of closed circuit television.**

725 Ill. Comp. Stat. Ann. 5/109-1

A DEFENDANT DOESN'T HAVE AN ABSOLUTE RIGHT TO BAIL

- **All persons shall be bailable before conviction, except the following offenses where the proof is evident or the presumption great that the defendant is guilty of the offense: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction.**

725 Ill. Comp. Stat. Ann. 5/110-4(a)

IN OTHER WORDS....

- **In order to deny the defendant bail, the defendant must be charged with a non-probationable offense.**

BURDEN FOR OFFENSES PUNISHABLE BY NATURAL LIFE

- A person seeking release on bail who is charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed shall not be bailable until a hearing is held wherein such person has the burden of demonstrating that the proof of his guilt is not evident and the presumption is not great.

725 Ill. Comp. Stat. Ann. 5/110-4

FOR ALL OTHER FELONIES, THE BURDEN IS ON THE STATE

- Where it is alleged that bail should be denied to a person upon the grounds that the person presents a real and present threat to the physical safety of any person or persons, the burden of proof of such allegations shall be upon the State.

725 Ill. Comp. Stat. Ann. 5/110-4

THE STATES PETITION SHALL BE VERIFIED

- Upon verified petition by the State, the court shall hold a hearing to determine whether bail should be denied to a defendant who is charged with a felony offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, when it is alleged that the defendant's admission to bail poses a real and present threat to the physical safety of any person or persons.

725 Ill. Comp. Stat. Ann. 5/110-6.1

NOTICE REQUIREMENT

- 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.

725 Ill. Comp. Stat. Ann. 5/110-6.1

Section 110-6

- Section 110-6 addresses the Modification of bail or conditions. This is NOT applicable to the denial of Bond at the initial appearance when bond is being set.

THE HEARING SHALL BE HELD IMMEDIATELY

- The hearing shall be held immediately upon the defendant's appearance before the court, unless for good cause shown the defendant or the State seeks a continuance.
- A continuance on motion of the defendant may not exceed 5 calendar days, and a continuance on the motion of the State may not exceed 3 calendar days. The defendant may be held in custody during such continuance.

725 Ill. Comp. Stat. Ann. 5/110-6.1

RIGHT TO COUNSEL

- Defendant has the right to be represented by counsel, and if he is indigent, to have counsel appointed for him.

725 Ill. Comp. Stat. Ann. 5/110-6.1

EVIDENCE TO BE CONSIDERED

PART 1

- Information used by the court in its findings or stated in or offered at such hearing may be by way of proffer based upon reliable information offered by the State or by defendant. Defendant shall have the opportunity to testify, to present witnesses in his own behalf, and to cross-examine witnesses if any are called by the State. The defendant has the right to present witnesses in his favor.

725 Ill. Comp. Stat. Ann. 5/110-6.1

EVIDENCE TO BE CONSIDERED

PART 2

- 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. 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.

725 Ill. Comp. Stat. Ann. 5/110-6.1

CAN A DEFENDANT MOVE TO SUPPRESS EVIDENCE?

- **No.**
- A motion by the defendant to suppress evidence or to suppress a confession shall not be entertained. Evidence that proof may have been obtained as the result of an unlawful search and seizure or through improper interrogation is not relevant to this state of the prosecution.

725 Ill. Comp. Stat. Ann. 5/110-6.1

BURDEN OF PROOF

- The facts relied upon by the court to support a finding that the defendant poses a real and present threat to the physical safety of any person or persons shall be supported by **clear and convincing evidence** presented by the State.

725 Ill. Comp. Stat. Ann. 5/110-6.1

THE COURT'S FINDINGS

- The court shall, in any order for detention:
- (1) briefly summarize the evidence of the defendant's culpability and its reasons for concluding that the defendant should be held without bail;
- (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 choice by visitation, mail and telephone; and
- (4) direct that the sheriff deliver the defendant as required for appearances in connection with court proceedings.
- 725 Ill. Comp. Stat. Ann. 5/110-6.1

WORDING TO INCLUDE

PART 1

- **State on the record that you considered:**
 - (1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon.
 - (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.

WORDING TO INCLUDE

PART 2

- (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 any person assaulted by the defendant;
- (6) Whether the defendant is known to possess or have access to any weapon or weapons;
- (7) 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;
- (8) 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.

725 Ill. Comp. Stat. Ann. 5/110-6.1

OUTLINE - DENIAL OF BOND

I have considered all the evidence presented at this Bond Hearing, arguments of counsel, applicable case and statutory law, and the relevant portions of the Illinois Criminal Code including factors to be considered as stated in 725 ILCS 5/110-6.1. The Court has also considered the weight and quality of the evidence and arguments presented and applied the requisite standards and burdens of proof.

(1) The Court finds that the proof is evident or the presumption great that the defendant has committed an offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, must be imposed by law as a consequence of conviction, and

(2) the defendant poses a real and present threat to the physical safety of any person or persons, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, physical harm, an offense under the Illinois Controlled Substances Act which is a Class X felony, or an offense under the Methamphetamine Control and Community Protection Act which is a Class X felony, and

(3) the court finds that no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article, can reasonably assure the physical safety of any other person or persons.

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

(1) briefly summarize the evidence of the defendant's culpability and its reasons for concluding that the defendant should be held without bail;

(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 choice by visitation, mail and telephone; and

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

SPEEDY TRIAL CHANGES

- 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 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.

725 Ill. Comp. Stat. Ann. 5/110-6.1

APPEAL

- Rights of the defendant. Any person shall be entitled to appeal any order entered under this Section denying bail to the defendant.
- The State may appeal any order entered under this Section denying any motion for denial of bail.
- 725 Ill. Comp. Stat. Ann. 5/110-6.1