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1st District: No-bail orders must go through proper hearings

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An appeals court decision could reset the pretrial release process in light of confusion from a mandate to reduce cash bail.

The 1st District Appellate Court last week ruled prosecutors must still file certain petitions and judges must still conduct a specific type of hearing to deny bail.

Those requirements are still codified in the state bail statute. But Justice Mary L. Mikva wrote in an opinion last week that a Cook County general order two years ago — which aims to ensure defendants accused of less-serious crimes don't remain in detention merely because they can't afford bail — “may have injected some confusion into the correct procedure for a no-bail order.”

Both the guidance on cash bail and Article 110 of the Criminal Code have language stating that to deny bail when someone is charged with a nonprobationable offense, a judge should find a defendant poses a threat and there is a high presumption he or she committed the offenses.

The general order specifically states it isn't meant to supersede the bail law. But the language in paragraph four of the guidance and Section 6.1 of the bail law don't perfectly match, lawyers for a defendant argued.

Under the law, the state must also file a verified petition asking a judge for a no-bail order. That's followed by a hearing in which the defense can compel witness testimony and written statements relied upon by the state. The law says a judge must also find no other conditions can assure the “safety” of others, and the state must prove all the criteria by “clear and convincing” evidence.

While the panel found there was “no conflict” between the law and the guidance, the guidance doesn't refer to the verified petition or the burden of proof, the defendant argued. It also discusses a judge finding that no other conditions can assure the defendant's “appearance” rather than the “safety” of others, and that provision could be construed separately from the other criteria rather than conjunctively.

“We do not question the power of the circuit court to deny bail, provided the proper procedures are followed and the necessary findings are made,” Mikva wrote.

“Here, however, neither of those things occurred.”

The ruling came as part of a case involving Jason Gil, a former Chicago Public Schools math teacher who was charged with having a sexual relationship with one of his teenage students.

Gil was ordered held without bail in February after he was arrested, with a judge finding only that he “poses a real and present threat” to the victim and the public, and that “the proof is evident, the presumption great” that he committed the crimes.

Multiple judges, including most recently Cook County Circuit Judge Aleksandra Gillespie, upheld that decision before the appeals court weighed in, ordering conditions should be set for Gil’s release because not all the steps were followed in the process that led to his no-bail order.

Gil’s bond was set at \$1 million earlier this week, and conditions for his release include electronic monitoring, no contact with minors and surrendering his passport, his attorney said during an interview on Wednesday.

Adam J. Sheppard of Sheppard Law Firm P.C. said Gil made bail and was released on Thursday.

He added there were questions about whether the state could request a no-release order on remand because the law says there’s a 21-day deadline to do so.

The Cook County State’s Attorney’s office said in a statement that it believes the deadline should reset “when a case where a no-bail order was previously issued is remanded back to the circuit court to set monetary bail.” The office didn’t say whether it plans to appeal the case.

Sheppard said this week he’s heard from practitioners that the decision is changing the way hearings are conducted in central bond court.

“Not that judges don’t have the discretion to [deny bail] — they do — but after the appropriate procedures are in place, which guard pre-trial detainees’ rights,” Sheppard said.

A spokesman for Chief Judge Timothy C. Evans declined to comment on the decision this morning, referring in a statement to ethics rules that prevent comments on pending cases.

The appellate court wrote that the guidance, Cook County Circuit Court Order 18.8A issued in July 2017, “has drastically reduced the use of cash bail in Cook County.” The chief judge’s office earlier this summer also noted a sharp increase in the number of defendants accused of murder and Class X felonies who were denied bail, noting in a release the reform efforts have “strengthened community safety” while still reducing the jail population.

It stated the amount of murder defendants denied bail after the order was enacted, up until the end of last year, rose from 46.5% to 92.3%, and the number of Class X felony defendants receiving no-bail orders increased from 2.7% to 32.7%.

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