

Case Law Update: Bail Reform in Cook County

By Adam Sheppard

On July 17, 2017, Chief Judge Evans signed General Order 18.8A that requires judges to set bond in an amount which the accused can afford, unless the defendant poses a danger or significant risk of nonappearance. The order takes effect on September 18, 2017 for felony cases and January 1, 2018 for misdemeanors.

“Defendants should not be sitting in jail awaiting trial simply because they lack the financial resources to secure their release,” Chief Judge Evans said. “If they are not deemed a danger to any person or the public, my order states that they will receive a bail they can afford.”

Although the Illinois Code of Criminal Procedure already instructs that bond be “considerate of the financial ability of the accused,” 725 ILCS 5/110-5(b)(1-3)), Cook County bail hearings commonly proceed without a detailed inquiry into the accused’s financial ability to post bail. Chief Judge Evans’s order seeks to rectify that.

Under the new procedure, “prior to the initial bail hearing and at such other times as the court may direct, Pretrial Services shall request information from the defendant regarding the defendant’s ability, within 48 hours, to post monetary bail.” General Order 18.8A. Pretrial Services will provide this information to the court. For all bailable defendants, Pretrial Services shall use a risk-assessment tool approved by the chief judge to assist the court in establishing reasonable bail. *Id.* If the trial court determines that release on bail is not appropriate, it shall, in substance, make and state, on the record, in open court, one or both of the following findings, together with sufficient supporting facts:

- a. the defendant will not appear as required, and no condition or combination of conditions of release can reasonably assure the defendant’s appearance in court; or
- b. the defendant poses a real and present threat to any person or persons, as defined in 725 ILCS 5/110-I (d).

Id.

Under the order, “there shall be a presumption that any conditions of release imposed shall be non-monetary in nature, and the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the defendant for further court proceedings.” *Id.* The court shall inquire into the defendant’s ability to pay monetary bail prior to setting or modifying a condition of release that includes monetary bail. *Id.* Prosecutors and defense counsel may provide information regarding the defendant’s ability to post bail by way of proffer. The defendant’s relatives or other persons who are present at the hearing, and have information about the defendant’s ability to post monetary bail, also may make statements. *Id.*

If the court decides to require monetary bail as a necessary condition of release, it must, in substance, make the following findings on the record:

- a. no other conditions of release, without monetary bail, will reasonably assure the defendant’s appearance in court;
- b. the amount of bail is not oppressive, is considerate of the financial ability of the defendant, and the defendant has the present ability to pay the amount necessary to secure his or her release on bail; and
- c. the defendant will comply with the other conditions of release.

Id.

The order also provides for a prompt bail review for a person who is in custody due to inability to post monetary bail: “A person in custody due to an inability to post monetary bail shall be brought before the court at the next available court date or 7 calendar days from the date bail was set, whichever is earlier, for a review of the conditions of release pending further court proceedings.” *Id.*

The order helps assure that defendants on bail remain aware of their court dates. To do so, it directs Pretrial Services, beginning no later than December 1, 2017, to provide reminders to all defendants released on bail in felony cases. It may do so by telephone, text message, or similar technology, unless the defendant declines such reminders. *Id.*

In summary, the new order elevates the financial ability of the accused to post bail to a principal consideration. Unless the defendant poses a safety threat or significant risk of nonappearance, the new order presumes that non-monetary conditions of bail should apply. Under the new order, bail hearings should proceed more like bond hearings in federal court, if defendants do not pose a safety threat or risk of nonappearance, then non-monetary conditions will generally suffice. The new order will help combat the mass jailing of pretrial detainees who are incarcerated solely because they lack the financial ability to post bail.

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