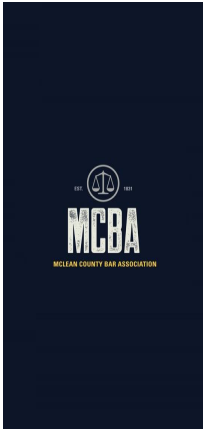


1



BOND REFORM NUTS & BOLTS

Illinois' Safety, Accountability,
Fairness and Equity—Today
("SAFE-T") Act

CLE, November 2, 2022



2

What We Will Cover

- I. When Release is Required or Discretionary, and When Police Must Arrest & Courts May Detain
- II. Arrest Procedure
- III. Detention Hearings
- IV. Pretrial Release Conditions: Modifications; Sanctions after Violation; and Revocation
- V. Additional Resources



3

When Release is Required or Discretionary, and When Police Must Arrest & Courts May Detain



4

Introduction

- Language is changing:
 - Before, “detention” referenced what police do, but now, “detention” is a function of the courts and refers to “pretrial detention.”
 - Further, there will not be “bail hearings.” Bail does not exist as of January 1st. Instead, there will be “detention hearings.”



5

- Police can:
 - Cite & Release: required in certain instances, subject to exceptions, and discretionary in other instances, subject to the presumption to release.
 - Arrest & Book: required only when eligible, and otherwise discretionary, subject to the presumption to release.
- Courts can:
 - Not detain for most offenses; or
 - Detain only if offense is eligible or circumstances qualify.



6

When Release is Required

If Class B, C, TR/OV, then release by citation required with first appearance within 21 days.

- Unless:
1. No proper identification;
 2. Obvious threat to community/any person; or
 3. Obvious medical/mental health issue that poses a risk to own safety.

Note: if services available, then transfer for services should be accomplished.



7

When Release is Discretionary

Police can exercise discretion to arrest or to issue citation if the offense is a Class A or a CF that does not require detention.

Note: release by citation need not occur on scene, and can occur at police station, jail, etc.

Police can still arrest, and take people to jail for Class A or a CF, but there is a presumption in favor of releasing people when the offense is not one for which a person must be detained.



8

When Police Must Arrest & Courts May Detain

• Stalking or Agg Stalking if release “poses a real and present threat to the physical safety of a victim of the offense, and denial of release is necessary to prevent fulfillment of the threat”

• Alleged victim is a family/household member & (1) the person charged is subject to an OP or (2) has a previous conviction for Vio of OP, Dom Batt, a violent crime (if victim was a family or household member, & release “poses a real and present threat to the physical safety of any person(s)”



9

When Police Must Arrest & Courts May Detain (Cont'd).

- Dom Batt or Agg Dom Batt, and release “poses a real and present threat to the physical safety of any person(s)”
- Sex Offense (except Public Indecency, Adultery, Fornication, Bigamy), and release “poses a real and present threat to the safety of any person(s)”



10

When Police Must Arrest & Courts May Detain (Cont'd).

- When release “poses a real and present threat to the physical safety of any specifically identifiable person(s)” for the following: see list in handouts. The enumerated offenses include ones involving several firearms– and/or ammunition–related offenses, including Agg UUW offenses, Armed Habitual Criminal, Involuntary Servitude, Involuntary Sexual Servitude of a Minor, and Trafficking in Persons.



11

When Police Must Arrest & Courts May Detain (Cont'd).

- If the person has high likelihood of willful flight to avoid prosecution, and is charged with a felony alleging: Forcible Felony if prison required; Stalking or Agg Stalking; Victim is a family/household member; Agg Dom Batt; Sex Offense (except Public Indecency, Adultery, Fornication, Bigamy); or any felony other than a Class 4.



12

When Police Must Arrest & Courts May Detain (Cont'd).

- Forcible Felonies when prison required and if release “poses a specific, real and present threat to any person or the community.” Forcible felony is defined in the handout, but it includes “any other felony which involves the use or threat of physical force or violence against any individual.”



13

Arrest Procedure



14

- Within 3 hours, the person has the right to make at least 3 calls in order to communicate with an attorney and with their family free of charge, which includes the right to access a telephone (cell phone or landline).
- Police must summarize the above in a posted sign.
- Police must maintain records of the number of calls, the times calls were made, and why calls were not made (if this occurs).



15

Detention Hearings



16

Determining Release with or without Conditions

- Judges have to release people, unless the State files a petition, but can impose conditions on release.
- Release & compliance with conditions is presumed.
- Detention only when necessary to guarantee appearance, prevent crime, or compliance with PT conditions. (Requires written finding setting out why less restrictive conditions would not guarantee community safety or appearance in court, and judges must find continued detention is necessary for a specific, real and present threat at each subsequent hearing.)



17

Determining Release with or without Conditions (Cont'd.)

- See 725 ILCS 5/110-2, -5, & -10. Courts can consider:
 - Nature/Circumstances of offense;
 - Weight of evidence;
 - History/Characteristics of person;
 - Nature/Seriousness of a specific threat; &
 - Nature/Seriousness of obstruction to justice
- If electronic monitoring or home confinement imposed, judge must make a finding of there being no less restrictive means to ensure appearance or protect from the imminent threat of serious harm.



18

Hearing Details

- Must occur "without unnecessary delay," and still within 48 hours.
- Must be in-person (unless waived or person's physical health/safety would be endangered).
- Counsel must be appointed.
- Counsel must be given an adequate opportunity and physical accommodation to consult with client.



19

Hearing Details (Con'td.)

- Counsel must be given and State must provide discovery in some form prior to the hearing, including a criminal history, reports, and possibly even photos and/or videos
- State's Attorney must notify victim of hearing and of right to seek protective order at hearing.
- Assessment must be done.



20

State's Petition to Detain

- Must state grounds.
- Can be filed any time (even day of court after a notice to appear was issued).
- Can only be filed once.
- Hearing must be held that day, unless continued: hearing in 48 hours if a CF and in 24 hours if a CM.
- Procedural notes:
 - Proffers are allowed;
 - Rules of evidence do not apply; and
 - Defense can only call complaining witness after court grants leave.



21

State's Petition to Detain (Cont'd.)

- State must show by clear and convincing evidence:
 - Proof is evident or presumption great that offense was committed;
 - Person poses real and present threat to safety of a specific person by their conduct; and
 - No pretrial conditions will remove the threat.



22

**Pretrial Release Conditions:
Modifications;
Sanctions after Violation;
and Revocation**



23

Pretrial Condition Modifications

- Removing Conditions: Any party can seek.
Note: If conditions protects a victim, then victim must receive notice.
- Adding Conditions: requires a revocation or sanctions hearing after a warrant is issued or upon State's motion.
Note: State must notify victim(s) of hearing.



24

Sanctions for Violation

After a Person Fails to Appear

- After FTA, it is unclear whether courts can issue a warrant. Instead, courts can continue the hearing, issue notice to appear or RTSC (unclear whether service must be in-person or via mail).
 - If FTA again, then warrant can issue, but revocation of pretrial release/detention only possible on felonies.
 - Don't be surprised if you see different approaches in different counties, even in the same circuit.



25

Sanctions for Violation (Cont'd.)

- State may file a petition after notice to show cause.
 - WT can only issue after FTA at hearing.
 - Violation can result in release by citation to appear on a new Class B, Class C, TR or OV.
- Sanctions can include:
 - Verbal/written admonishment;
 - Imprisonment up to 30 days;
 - Fine up to \$200; and/or
 - Modification of Pretrial Conditions



26

Sanctions for Violation (Cont'd.)

- Hearing Procedure
 - Person has right to representation, present mitigation & to be heard.
 - Court must find by clear and convincing evidence:
 - Violation actually occurred;
 - Person had actual knowledge violation would occur;
 - Violation was willful; and
 - Violation was not due to a lack of financial resources.



27

Revocation of Pretrial Release

- If already released on CF/Class A and person commits a new CF/Class A, then new detention hearing can be held on court's own motion or petition of State.
- If person had a previous Vio of OP and gets a new Vio of OP involving the same victim, State must file petition to detain.
- Hearing must be held within 72 hours.



28

Revocation of Pretrial Release (Cont'd.)

- To detain, court must find by clear & convincing evidence no condition(s) will reasonably guarantee appearance or prevent commission of new qualifying offense(s).
- Instead of detention, courts can order a person's release with or without new condition(s).



29

Additional Resources

- See Handouts to this CLE.
- Go to: <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/> for additional materials and listening sessions.



30

Before Questions, Let's Thank:

- Judge Costigan & our Judiciary
- McLean County Bar Association
- Mary Sellmyer, Bar Association Assistant
- Bradly Rigdon, Assistant State's Attorney



31

Questions?

There are lots.

- The Good: the SAFE-T Act is subject to change.
- The Bad: a lot remains unaddressed.
- The Ugly: not all questions will have answers ... yet.



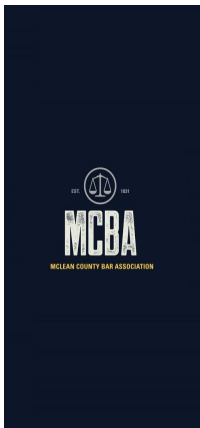
32

Thank You!

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33

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