

**AMENDED
BOND REFORM
NUTS & BOLTS:**

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

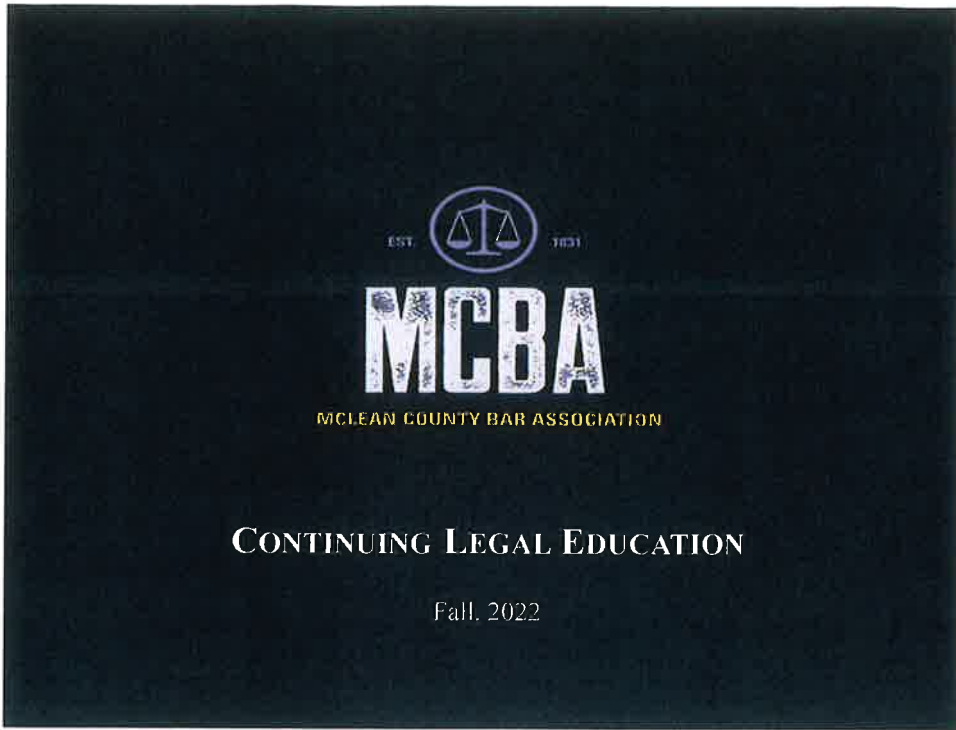
McLean County Bar Association CLE
December, 2022

Presented by Brendan Bukalski

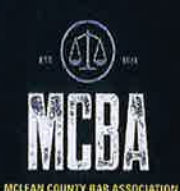
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Amended Bond Reform Nuts and Bolts: PowerPoint Presentation




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AMENDED
BOND REFORM NUTS & BOLTS

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

CLE, December, 2022



JOHNSON LAW GROUP LLC
Attorneys at Law

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Why Supplement the CLE?

Amendments passed on December 1st.

Became law on December 6th.

Lots of changes were made: this supplement covers many of those changes.

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To Arrest or Not?

- Issue Citation for all offenses that are not felonies or Class A misdemeanors.
Unless arrest is necessary because criminal activity persists, or the accused has obvious medical / mental health issue(s) that pose(s) a risk to the accused's safety.

4

- When charges are filed, warrant or summons are now authorized.

Note: summons can be served via the same method as in a civil action (sheriff, private process, certified mail, or by regular mail).

5

- Also, warrants issued after an FTA are now authorized, but courts can issue a summons, which is preferred.

- Caveat: if a person appears within 48 hours of their FTA, then the docket cannot reflect that they FTA'd, and a "cured" FTA cannot be used later by Pretrial Services.

6

2-way A-V Communication System

- Includes closed circuit and “computerized video conference.”
- Authorized for initial appearance, waiver of prelims, arraignments, status hearings, jury waivers, and sexually violent person commitments – if no witness testimony will be taken.

7

- Only authorized when a person waives their right to be present, when any person’s health/safety would be endangered, or the chief judge orders use due to “operational challenges.”
- Must be provided with means to consult w/counsel & these communications cannot be recorded w/all constitutional protections intact.

8

After Arrest

Arrests in County

- Hold initial appearance within 48 hours.
- 2-way A-V authorized, subject to limitations.

9

Arrests on out-of-county warrant

- Must hold detention/condition hearings.
 - The person must be transferred within 5 days or released, subject to release conditions
- Note: 2-way A-V communication with the county issuing the warrant is authorized, subject to limitations.

10

Pretrial Detention

- There are two standards for detention: dangerousness, and willful flight.

11

- The dangerousness standard involves detention for certain offenses (see 110-6.1) when there is a finding that a person is a real and present threat to the safety of any person(s) or the community (so, basically, to anyone) based upon the State proving “specific articulable facts.”

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Note that in cases of Agg/Stalking, the person has to be a real and present threat to the safety of the alleged victim, and detention must be necessary to prevent fulfillment of that threat.

13

- Willful flight is intentional conduct with the purpose of thwarting the judicial process to avoid prosecution:
 - Courts determine a person's future intent to evade prosecution by considering reoccurrence / patterns of FTA's and attempts to communicate / remedy FTA's, but not isolated incidents of FTA's.

14

Note that a finding of willful flight for purposes of detention includes the enumerated offenses under see 110-6.1 as well as any Class 3 or greater felony offense.

15

- The State can file multiple petitions to detain. However, any subsequent petition must contain new facts that were unknown or unobtainable at the time of filing the previous petition.
- SA must prove that detention is necessary by clear and convincing evidence.

16

- Defense now only has to seek leave of court to call a complaining witness if testimony is to be compelled.
 - But court if leave granted, the court must find by clear and convincing evidence that the accused will be materially prejudiced if leave is denied, and the court has to explain why leave was granted.

17

- Clarification for what must be tendered by the State to defense prior to hearing:
 - Copy of criminal history;
 - Written/recorded statements and the substance of oral statements only when in the State's possession.

18

- Changes to what judges need to do:
 - Written orders to detain need only summarize the reasons why, including why less restrictive conditions would not avoid any real/present threat.
 - For subsequent hearings, court need only find that continued detention is necessary to avoid a threat.

19

- If a person is ordered to be detained, then a court can put in place a no contact order during that detention.
- Either side can appeal a detention order.

20

Pretrial Release Conditions

- SA must prove that conditions are necessary by clear and convincing evidence.
- Conditions must be the least restrictive means and be individualized in order to guarantee presence in court and protection/safety of community.

21

- At subsequent hearings, judges must find that the current conditions are necessary to ensure appearance, safety of others, and compliance.
 - However, no hearing is required for a court to remove conditions.
- A rehabilitation program can't be ordered, unless it's directly tied to the risk of pretrial misconduct.

22

- Defense is essentially entitled to have the same information as the State.
- Any risk assessment tool *and the scoring system* must be given to defense counsel, who must be given an opportunity to challenge it.
- Defendants must receive verbal and written notice of the conditions.

23

- If conditions are imposed but a person remains in custody, then within 48 hours, the court must hold a hearing to determine why the person is still being detained and what conditions could be imposed to effectuate release.

Note: inability to pay for a condition is not a justification for detention.

24

- Custodial credit *must* be given for home confinement.
- Custodial credit *may* be given for GPS monitoring.
- Either side can appeal conditions of release.

25

Revocation of Pretrial Release

- Revocation possible after new CF or Class A is committed while subject to release.
- Revocation can follow a motion by the State or the court's own motion.
- The State *shall* file a petition for violation of protective order when released already for such a violation involving the same victim.

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- A warrant can issue after a violation.
- A person can be detained pending hearing.
- Revocation hearings must take place within 72 hours.
- People are entitled to counsel at their revocation hearings.
- Either side can appeal.

27

- State must prove by clear and convincing evidence that no condition or combination of conditions would reasonably ensure compliance with release.

28

- However, if detention was ordered and the new case was disposed of via a not guilty verdict, dismissal or fulfillment of sentence, then the person is entitled to a new hearing for release.

29

Sanctions for Condition Violation

- If a person has a Class B or C, OV, or TR, revocation of release cannot be ordered, but there could be a sanctions hearing instead.
- At the hearing, the person is entitled to counsel, and State still bears the burden of proving basis for sanction by clear and convincing evidence.

30

- Fines are no longer authorized sanctions.

31

Previously Deposited Bond \$

- Posted security can be kept on file with the Circuit Clerk with or without modifying conditions of release, and courts can order it to be kept pending appeal.
- Once discharged from all obligations, the Clerk shall return 90% of money posted.

32

What About ... ?

- Persons who posted bond prior to January 1st, can be subject to a petition to detain or for conditions filed by the State.

33

- Those in custody are entitled to a hearing for release:
 - 90 days to hold hearing if the offense is one for which detention is specifically authorized;
 - 60 days in cases involving risk of flight in CF's other than Class 4's; and
 - 7 days for all others.

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Let's not forget to thank:

- Our Judiciary & Will Scanlon, McLean County Trial Court Administrator
- McLean County Bar Association
- Mary Sellmyer, Bar Association Assistant
- The State's Attorney and Public Defender of McLean County

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Thank You!

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Speaker Biography

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Presented by Brendan Bukalski

Speaker Biography

Brendan Bukalski is Managing Partner of Johnson Law Group, LLC., which is headquartered in Bloomington, Illinois, and has offices in Springfield, Peoria, and Decatur. Practicing throughout central Illinois with a focus on criminal defense, Mr. Bukalski also has a substantial background in driver's license reinstatement, gun rights restoration, and post-conviction matters. He has successfully represented clients at both the trial and appellate court levels, as well as before administrative agencies.

Brendan is a frequent lecturer to groups about their rights and privileges under Illinois law, and has authored numerous articles published by various periodicals, including the Illinois State Bar Association. He presently serves as CLE Coordinator for the Illinois State Bar Association Committee on Criminal Justice, as well as Chair of the Criminal Law Committee and as Co-Chair for both the History and Memorials Committee and Membership Committee for the McLean County Bar Association, for which he is also on its Board of Governors. Brendan was born and raised in Illinois, and volunteers with various civic organizations. After graduating from New York University and Southern Illinois University School of Law, he worked as an Assistant State's Attorney in Livingston County, Illinois, for several years.

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Offenses Eligible for Detention

OFFENSES ELIGIBLE FOR DETENTION UNDER 725 ILCS 5/110-6.1

Offenses under the Dangerousness Standard

The Standard mostly allows for detention for certain offenses when the court finds the accused is a real and present threat to the safety of any person or persons or to the community based upon the State proving “specific articulable facts.”

- Aggravated battery with a deadly weapon other than discharge of a firearm 110-6.1(a)(6)(W)
- Aggravated DUI
 - After previous reckless homicide conviction 110-6.1(a)(6.5)(D)
 - Causing bodily harm to a child under age 16 110-6.1(a)(6.5)(F)
 - Causing great bodily harm 110-6.1(a)(6.5)(C)
 - Involving death 110-6.1(a)(6.5)(E)
 - While operating a school bus 110-6.1(a)(6.5)(B)
 - Attempt of any of these offenses 110-6.1(a)(7)
- Aggravated unlawful restraint 110-6.1(a)(6)(U)
- Child abduction 110-6.1(a)(6) (R)
- Child endangerment (felony 12C-5) 110-6.1(a)(6)(S)
 - Aggravated cruelty 3.02
 - Animal torture 3.03
 - Cruel treatment 3.01
 - Enumerated offenses 110-6.1(a)(6.5)(A)
- Domestic violence offenses 110-6.1(a)(2-4)
 - Domestic battery 12-3.2 or aggravated domestic battery 12-3.3
 - Stalking and aggravated stalking
 - Violation of an OP, stalking no contact, or civil no contact orders
- Firearm-related felonies 110-6.1(a)(6)(A-K, O)
 - Aggravated discharge of a firearm Section 24-1.2
 - Aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm Section 24-2.5
 - Armed habitual criminal Section 24-1.7
 - Firearms trafficking Section 24-3B
 - Gunrunning Section 24-3A
 - Manufacture, sale, or transfer of bullets or shells represented to be armor piercing bullets, dragon’s breath shotgun shells, bolo shells, or flechette shells Section 24-2.2
 - Non-probationable gun offenses
 - Aggravated possession of stolen firearm Section 24-3.9
 - Aggravated unlawful use of a weapon Section 24-1.6
 - Unlawful use or possession of weapons by felons or persons in custody of the Department of Corrections facilities Section 24-1.1

- Reckless discharge of a firearm Section 24-1.5
- Unlawful purchase of a firearm Section 24-3.5
- Unlawful sale or delivery of firearms Section 24-3
- Unlawful sale or delivery of firearms on the premises of any school Section 24-3.3
- Unlawful sale of firearms by liquor license Section 24-3.4
- Forcible felony offenses 110-6.1(a)(1.5)
 - Treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement, any other felony which involves the use or threat of physical force or violence against any individual
- Hate crime 110-6.1(a)(6)(T)
- Human trafficking 110-6.1(a)(6)(L-N)
 - Involuntary servitude Section 10-9(b)
 - Involuntary sexual servitude of a minor Section 10-9(c)
 - Trafficking in persons Section 10-9 (d)
- Non-probationable offenses 110-6.1(a)(1) and non-probationable offenses based on prior criminal history 110-6.1(a)(1)
- Residential burglary 110-6.1(a)(6)(Q)
- Reckless homicide and involuntary manslaughter 110-6.1(a)(6)(P)
- Sex offenses 110-6.1(a)(5)
 - Any offense under Article 11 of the Criminal Code of 2012 except 11-14 (prostitution), 11-14.1 (solicitation of a sexual act), 11-18 (patronizing a prostitute), 11-20 (obscenity), 11-30 (public indecency), 11-35 (adultery), 11-40 (fornication), 11-45 (bigamy/marrying a bigamist)
- Threatening a public official 110-6.1(a)(6)(V)

Offenses Under the Willful Flight Standard

The Standard: willful flight is defined as intentional conduct with the purpose of thwarting the judicial process to avoid prosecution. Although isolated incidents of failing to appear alone cannot serve as willful flight, reoccurrence and patterns of failing to appear, along with attempts to communicate or remedy missed court dates, may be considered to ascertain an individual's future intent to evade prosecution.

- Any class 3 felony offense or higher 110-6.1(a)(8), and
- Any of the above-listed offenses.

Text of HB1095¹

¹ See separate CLE Materials handout.