



State of Illinois  
Circuit Court of Cook County

Timothy C. Evans  
Chief Judge

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**MEMORANDUM**

To: All Judges

From: Timothy C. Evans  
Chief Judge

A handwritten signature in black ink, appearing to read "T.C.E.", written over the printed name of Timothy C. Evans.

Date: July 17, 2017

**Re: General Order No. 18.8A. Procedures for bail hearings and pretrial release**

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Today I entered the above referenced general order which is attached for your information. Also attached are supporting legal commentary for the order and the press release issued today by my office.

TCE:rmm  
Enclosure



State of Illinois  
Circuit Court of Cook County

Chambers of  
Timothy C. Evans  
Chief Judge

50 West Washington Street  
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Chicago, Illinois 60602  
(312) 603-6000

**JULY 17, 2017**  
**PRESS RELEASE**  
**FOR IMMEDIATE RELEASE**

**CONTACT:**

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## **Evans changes cash-bail process for more pretrial release**

CHICAGO (July 17, 2017) – Defendants who pose no danger to the public will be released from custody pending trial because any future bail amounts will be set at an amount they can afford, under an order Chief Judge Timothy C. Evans entered today that will take effect on September 18, 2017, in the Circuit Court of Cook County.

“Defendants should not be sitting in jail awaiting trial simply because they lack the financial resources to secure their release. 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,” Chief Judge Evans said.

Chief Judge Evans’ order states that a judge must ensure that “the defendant has the present ability to pay the amount necessary to secure his or her release on bail.” This means that judges in the Circuit Court of Cook County can only set bail in an amount that a defendant can afford to pay at the time of the bail hearing, which ensures the defendant’s release.

As part of this significant change to the process, Chief Judge Evans will also create a new division of the court specifically for initial bail proceedings, effective September 18, 2017. The establishment of a new division, with a presiding judge to oversee it, will allow the court to further examine and enhance bail-setting procedures. All judges will have the opportunity to request assignment to the new division.

If a judge finds that a defendant’s future court attendance can only be accomplished by setting a monetary bail, Chief Judge Evans’ order lays out procedures for the court to follow that will assist the

judge in setting a bail that the defendant can afford to pay. For the first time, court staff and judges will be required to inquire into the ability of a defendant to pay a bail amount.

For the defendant to be released, the judge must also find that the defendant does not present a danger to the community. Judges also have the discretion to release defendants on individual-recognition bonds or electronic monitoring, which do not require the defendant to pay money to be released.

Defendants who are found to be a danger to a person or the community, after a bail hearing, will be held in jail without bond.

Chief Judge Evans' order takes effect on September 18, 2017, for all felony cases in the Circuit Court of Cook County. The order will take effect for misdemeanors on January 1, 2018, when court staff begins conducting pretrial risk assessments of misdemeanor defendants. (Pretrial risk assessments of felony defendants began in June 2015).

After the first year of the order's implementation, Chief Judge Evans plans to review statistics to see what effect the order has on: the size and makeup of the jail population; whether defendants attend future court hearings; and whether defendants commit new offenses while their case is pending.

## **HISTORY**

For the past year, Chief Judge Evans has been on record with his position regarding his preference for a bail system similar to the system in Washington, D.C., where the vast majority of defendants receive release pending trial without being required to pay cash bail. He stated his position to the Chicago Sun-Times Editorial Board in June 2016 and to the Cook County Board in October 2016.

Today's order is consistent with both the letter and spirit of the Illinois bail statutes, as the law states that monetary bail shall be "not oppressive" and "considerate of the financial ability of the accused." In addition, parts of the Bail Reform Act of 2017 take effect on January 1, 2018, and state that there is a presumption that bail shall be "non-monetary in nature" and that a judge should impose "the least restrictive conditions or combinations of conditions" on a defendant.

This is the next step in the effort by Chief Judge Evans to enhance the pretrial process. The Circuit Court of Cook County was the first state court system in Illinois to implement the Public Safety Assessment (PSA) tool provided by the Laura and John Arnold Foundation at no expense to the Circuit Court of Cook County.

The court applies the PSA to defendants with felony charges to provide more information to the judge in bond court and to provide an assessment of whether a defendant is likely to commit another crime, commit a violent crime or fail to appear for future court dates. The court began using the PSA in June 2015, and full implementation in felony cases occurred in March 2016.

To understand the makeup of the jail population by case type, the Office of the Chief Judge has analyzed data from the Clerk of the Circuit Court and the Sheriff's Office regarding jail inmates who are awaiting trial. Of the 6,689 inmates awaiting trial in jail at the end of the first quarter of this year on March 31, 2017: 3,025 defendants were charged with a violent crime; 1,058 were charged with a weapons crime; and 494 were charged with a person-related crime such as assault, battery or child neglect.

That means nearly 70 percent of the jail population of pretrial defendants face violent, weapons or person-related charges. To indicate how the jail population has changed since Chief Judge Evans' improvements to the pretrial process, consider the figure that was quoted in the news media in the years prior to PSA implementation. Prior to PSA implementation, 70 percent of the jail population was said to be awaiting trial on nonviolent offenses.

## COMMENTS

The following officials issued these statements regarding today's announcement:

Cook County Commissioner Jesus "Chuy" Garcia: "I applaud Chief Judge Evans on the groundbreaking order that he has issued today. To my knowledge no chief judge of Cook County (or for that matter, any county in Illinois) has ever issued any order of this sort. It is an extraordinary and significant step towards the critical and constitutionally mandated goal of ending the longstanding practice of jailing presumptively innocent persons prior to trial because they are too poor to post cash bail. I urge the Circuit Court judges to follow this directive, and more importantly, call on our Illinois Supreme Court to issue a rule ending pretrial incarceration on the basis of poverty all over our great state."

Sharlyn Grace, Senior Criminal Justice Policy Analyst at Chicago Appleseed Fund for Justice: "This order represents a dramatic improvement of our pretrial justice system in Cook County and thus our entire criminal justice system. No longer will access to money determine who awaits trial in jail and who awaits trial in the community. As a result, our courts will be fairer for all county residents."

Cook County State's Attorney Kimberly M. Foxx: "The Chief Judge's order today provides important guidance for the judiciary and the entire criminal justice system on the need to reduce our reliance on monetary bond. There is often no clear relationship between the posting of a cash bond and securing the safety of the community or the appearance of a defendant. As a result, far too many people have been detained pre-trial because they are poor and unable to post even minimal amounts for bond. This order provides an important reminder that our focus should be on non-monetary conditions of bond to ensure appearance in court and protect public safety. I commend Judge Evans for continuing Cook County's work towards meaningful bail reform."

Public Defender Amy P. Campanelli: "There are too many of my clients in the Cook County Jail simply because they are poor and cannot afford bail. Chief Judge Evans' administrative order follows the law while helping to ensure that when bail is set, it is affordable. This order requires that bail not be oppressive, and must be considerate of the financial ability of the accused. I commend Chief Judge Evans for taking steps that should result in more of my clients being released so they can return to their families, jobs and communities."

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## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

### GENERAL ORDER NO. 18.8A. Procedures for bail hearings and pretrial release

This order is intended to ensure no defendant is held in custody prior to trial solely because the defendant cannot afford to post bail, to ensure fairness and the elimination of unjustifiable delay in the administration of justice, to facilitate the just determination of every criminal proceeding, and to preserve the public welfare and secure the fundamental human rights of individuals with interests in criminal court cases,

This order is effective as provided below:

1. This order applies to all rulings on bail pursuant to Article 110 of the Code of Criminal Procedure, 725 ILCS 5/110-1, *et seq.*, (Art. 110) including rulings on review of prior bail decisions, on the following schedule:
  - a. effective September 18, 2017, in all felony cases;
  - b. effective January 1, 2018, in all cases.
2. 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. All information gathered by Pretrial Services from the defendant regarding the ability to pay monetary bail shall be provided to the court.
3. 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 for a defendant by assessing the defendant's likelihood of appearing at future court proceedings or determining if the defendant poses a real and present threat to the physical safety of any person or persons. Public disclosure of information used with the assessment tool by Pretrial Services to assist the court shall be governed by the Pretrial Services Act, 725 ILCS 185/0.01, *et seq.*
4. If the court determines that release on bail is not appropriate, the court shall, in substance, make one or more of the following findings and state the finding(s), together with sufficient supporting facts, on the record in open court:
  - 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 5/110-1(d).

Where applicable, the court shall also make a finding that the proof is evident or the presumption great that the defendant has committed the offense charged.

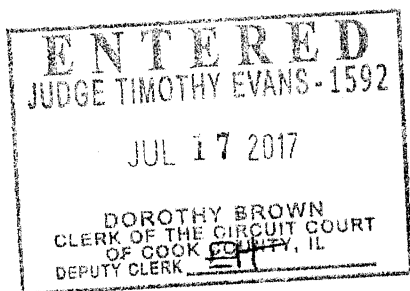
5. When setting bail, there shall be a presumption that any conditions of release imposed shall be non-monetary in nature, and the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the defendant for further court proceedings. Said conditions shall include conditions necessary to ensure the defendant does not pose a real and present threat to the physical safety of any person. The court shall consider the defendant's social and economic circumstances when setting conditions of release.
6. Prior to setting or modifying a condition of release that includes monetary bail, the court shall conduct an inquiry into the defendant's ability to pay monetary bail. Such inquiry shall allow the prosecutor, defense counsel, and the defendant the opportunity to provide the court with information pertinent to the defendant's ability to pay monetary bail. This information may be provided by proffer, and may include statements by the defendant's relatives or other persons who are present at the hearing and have information about the defendant's ability to pay monetary bail. All information shall be admissible if it is relevant and reliable, regardless of whether it would be admissible under the rules of evidence applicable at criminal trials.
7. When the court determines that monetary bail is a necessary condition of release, the court shall, in substance, make the following findings and state them, together with sufficient supporting facts, on the record in open court:
  - 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.
8. The procedures required in paragraphs 6 and 7 of this order are not required when the court imposes non-monetary conditions of release or an obligated amount of cash is a condition of release on recognizance (I-bond).
9. If the court is presented with insufficient information to make a finding regarding the defendant's ability to pay the ordered amount, it shall so state on the record in open court.
10. Nothing in this order shall limit a court's authority to revoke bail, in accordance with present law, where the defendant has violated conditions of his or her release on bail.
11. In addition to any other relief available under the Code of Criminal Procedure of 1963, 725 ILCS 5/100-1, *et seq.*, 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.

12. Beginning no later than December 1, 2017, Pretrial Services shall provide reminders to all defendants released on bail in felony cases of their upcoming court dates, unless the defendant informs Pretrial Services that he or she does not want to receive reminders. Said reminders shall be communicated to the defendant by telephone, Short Message Service (text messaging), or similar technology. The defendant may choose to receive or decline to receive reminders, and may inform Pretrial Services of this choice at either an in-person interview with Pretrial Services or online via Cook County's Web site. Nothing in this order shall be interpreted to prevent Pretrial Services from reminding defendants of their court dates by other means, including, but not limited to, conventional mail, email, and personal contact. Nothing in this order shall be interpreted to prevent Pretrial Services from reminding defendants in misdemeanor cases of their court dates by any appropriate and reliable means.
13. This order shall be liberally construed to effectuate the purpose of relying upon contempt of court proceedings or criminal sanctions instead of financial loss to assure the appearance of the defendant, that the defendant does not pose a danger to any person or the community, and that the defendant will comply with all conditions of bond.
14. This order shall be interpreted to supplement Art. 110, and nothing in this order shall be construed to supersede or limit its provisions.
15. This order shall supersede all conflicting provisions in existing general orders and general administrative orders of the court. Application of existing orders with conflicting provisions shall be reconciled so as to fully implement the provisions of this order.

Except as otherwise ordered herein, this order is effective September 18, 2017.

Dated this 17th day of July, 2017.

ENTER:

A handwritten signature in dark ink, appearing to read "Timothy C. Evans". Below the signature is a horizontal line, and underneath that line, the name "Timothy C. Evans" and the title "Chief Judge" are printed in a serif font.

Timothy C. Evans  
Chief Judge

## Comments

These comments accompany Gen. Ord. Cook Co. Cir. Ct. 18.8A (eff. Sept. 18, 2017) (“order”). They are not part of the order, but are provided only as a guide to understanding it.

¶ 1. The two effective dates specify that, on January 1, 2018, applicability of the order will no longer be limited to felony cases and will be extended to include cases in which the most serious charge is a misdemeanor. The order supplements rather than supplants Article 110 (Bail) of the Code of Criminal Procedure.

¶ 4. This section recognizes similar provisions of Art. 110, including, but not limited to 725 ILCS 5/110-4, 110/6.1. The record of the proceeding will provide a readily accessible and objective basis for review of the decision in the circuit court and appeals courts.

¶ 5. This language incorporates and combines similar, though differently worded, provisions of section 2 (eff. Aug. 18, 1995) and a new 5(a-5) (P.A. 100-1, eff. Jan. 1, 2018) of Art. 110, which express the legislature’s preferred standards for setting bail. These standards are also expressed by the Supreme Court of the United States in *Bearden v. Georgia*, 461 U.S. 660 (1983). The effective dates of the order apply to the language in new section 5(a-5).

¶ 7. These provisions are to be read in conjunction with ¶ 4, so that the amount of monetary bail is unrelated to any danger to persons or the community presented by the defendant. The record of the proceeding will provide a readily accessible and objective basis for review of the decision in the circuit court and appeals courts.

Subsection 7(a) incorporates a standard provided in 725 ILCS 5/110-2.

Subsection 7(b) incorporates standards provided in 725 ILCS 5/110-5(b)(2, 3) and in the new 110(a-5) provided in the Act. It also includes similar standards endorsed by the American Bar Association, the National Association of Pretrial Services Agencies, the National Association of Counties, the American Jail Association, the International Association of Chiefs of Police, the American Probation and Parole Association, the Conference of State Court Administrators, and the Conference of Chief Justices. It is consistent with the decisions in *Leonard C. Arnold, Ltd. v. Northern Trust Co.*, 116 Ill. 2d 157 (1987), and *Onewest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187.

¶ 8. If the defendant is to be released based on the recommendation by PTS and other information, and monetary bail will not be a condition of release, the court need not make the inquiry, findings, or record required by ¶¶ 4, 6, and 7. The “obligated amount of cash” refers to a condition of release requiring the defendant to pay a specified amount of cash only if and when the court finds the defendant to have violated the terms and conditions of release and orders the defendant to pay the specified amount.

¶ 9. The court may also state the nature or a specific description of any further information on which a modified decision as to the defendant’s ability to pay the ordered amount would be based.

It is important to note that the order is not intended to abrogate or supersede the Constitution of the State of Illinois, any current statute, or any court decision. The court sought to avoid, in all instances, conflicting with or affecting the validity of any existing statute promulgated by the Illinois legislature, including the parts of Illinois Public Act 100-1 scheduled to take effect



January 1, 2018. Similarly, the order is not intended, in any way, to limit or infringe the inherent authority of the judiciary, as it relates to bail, set forth in *People ex rel. Hemingway v. Elrod*, 60 Ill. 2d 74 (1975).

The order is not intended to preclude the Illinois legislature from acting in the future with respect to the law of bail in a manner that will not conflict with the Constitutions of the State of Illinois or of the United States.

July 17, 2017