

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