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CH. 6
BAIL

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§6-1
Generally

Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951) The traditional right to pre-trial bail:

> "permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."
> "Bail set at a figure higher than an amount reasonably calculated to [assure the presence of an accused] is 'excessive' under the Eighth Amendment . . . To infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act."

Schall v. Martin, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) State statute allowing pre-trial detention of juveniles upon a finding of a "serious risk" that the juvenile may commit a crime upheld.

U.S. v. Salerno, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) The Court upheld bail act, which allowed pretrial detention of defendant charged with certain felonies where defendant poses a threat to the safety of individuals or the community.

Meechaicum v. Fountain, 696 F.2d 790 (10th Cir. 1983) (and cases cited therein) The "Eighth Amendment's excessive bail provision is . . . binding upon the states under the Fourteenth Amendment."

People ex rel. Sammons v. Snow, 340 Ill. 464, 173 N.E. 8 (1930) A bail is excessive where its only purpose is to keep defendant confined.

People ex rel. Hemingway v. Elrod, 60 Ill.2d 74, 322 N.E.2d 837 (1975) The right to bail before conviction is qualified by the inherent authority of the courts "as an incident of their power to manage the conduct of proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure." However, denial or revocation of bail may not be based on mere suspicion, "but must be supported by sufficient evidence to show that it is required." Under the inherent power to manage the proceedings, courts may in appropriate circumstances keep an accused in custody pending trial "to prevent interference with witnesses or jurors or to prevent the fulfillment of threats." See also, People v. Ealy, 49 Ill.App.3d 922, 365 N.E.2d 149 (1st Dist. 1977).

People v. Bailey, 167 Ill.2d 210, 657 N.E.2d 953 (1995) The "no-bail" provisions of the stalking and aggravated stalking statutes allowing the trial court to deny bail where "the proof is evident or the presumption great" that defendant was guilty, defendant presented a "real and present threat" to the victim's physical safety, and denial of bail was necessary to assure the victim's safety do not violate the Illinois Constitution.

People v. Harris, 38 Ill.2d 552, 232 N.E.2d 721 (1967) An order denying bail may only be reviewed prior to conviction.

People ex rel. Morrison v. Sielaff, 58 Ill.2d 91, 316 N.E.2d 769 (1974) A defendant is not entitled to sentence credit for time on bail.

People v. Purcell, 201 Ill.2d 542, 778 N.E.2d 695 (2002) Under Article I, §9 of the Illinois Constitution and 725 ILCS 5/110-4, a criminal defendant may be denied bail where he is charged with a capital offense or an offense for which a life sentence is authorized, provided that "the proof is evident or the presumption great." §110-4(b), which assigns to the defense the burden to demonstrate that "the proof of his guilt is not evident and the presumption not great," violates the Illinois Constitution.

People v. Davison, 378 Ill.App.3d 1010, 883 N.E.2d 648 (4th Dist. 2008) Where defendant's bond money had been ordered forfeited because he failed to appear in court, he lacked standing to challenge the distribution of the remaining bond at the conclusion of the case. Defendant no longer had any right to the funds after the bond had been forfeited, and therefore had no real interest in how the funds were distributed. The court also noted that because defendant had assigned his rights in the bond to other persons, he would have lacked standing even had the bond not been forfeited.

Lampe v. Ascher, 59 Ill.App.3d 755, 376 N.E.2d 74 (4th Dist. 1978) A police department does not have discretion to refuse tendered bail. The police are required to accept tendered bail set either by a judge or a Supreme Court Rule.

Gende v. Flemming, 55 Ill.App.3d 659, 371 N.E.2d 191 (3d Dist. 1977) A circuit clerk is not liable as a garnishee in regard to money held as bail bond from a judgment debtor. Accord, A-1 Lithoplate v. AFS Publishing, 66 Ill.App.3d 560, 384 N.E.2d 395 (1st Dist. 1978).

People v. Bennett, 257 Ill.App.3d 299, 629 N.E.2d 116 (1st Dist. 1993) The plain language of Ch. 38, ¶311 (725 ILCS 185/11) unequivocally bars impeachment of a defendant's trial testimony with statements made during a pretrial services interview. However, the error was harmless.

Cumulative Digest Case Summaries **§6-1**

People v. Maldonado, 402 Ill.App.3d 411, 930 N.E.2d 1104 (1st Dist. 2010)

Under 725 ILCS 5/110-14, a defendant is entitled to a credit against a "fine" for each day of pretrial incarceration on a "bailable" offense. Under Illinois law, all offenses are "bailable" except for certain offenses specified in 725 ILCS 5/110-4.

As it applies to this case, §110-4 prohibits bail if the "proof is evident or the presumption great that the defendant is guilty of the offense" and the offense is either: (1) a capital offense, or (2) a felony offense for which conditional release is not authorized. For the latter class of offenses, the State must also establish in a hearing that release of the defendant would pose a real and present threat to the physical safety of one or more individuals.

Because the defendant was granted bail in the trial court, it was clear that the State failed to satisfy its burden to show that the offense was non-bailable. Because the offense was

bailable, defendant was entitled to credit against his fines. (See also, **SENTENCING**, §45-16(b)).

(Defendant was represented by Assistant Defender Levi Harris, Chicago.)

People v. Molidor, 2012 IL App (2d) 110006 (No. 2-11-0006, 5/25/12)

A motion for return of bond is governed not by Supreme Court Rule 604(d), but by 725 ILCS 5/110-7(f), which authorizes the return of 90% of the bond deposit when the conditions of bond have been performed and the defendant has been discharged from all obligations. Because §110-7(f) does not establish a time limitation for moving for return of the bond, the Appellate Court did not lack jurisdiction to consider an appeal from denial of a motion to return bond although the defendant failed to file his motion within 30 days of sentencing.

(Defendant was represented by Assistant Deputy Defender Bruce Kirkham, Elgin.)

People v. Williams (Edwards), 2012 IL App (2d) 111157 (No. 2-11-1157, 7/25/12)

Under 725 ILCS 5/110-7(a), a person who posts bail for a criminal defendant must receive written notice that the bail may be used to pay costs, fees, fines, attorney's fees, or restitution, and that all or part of the deposit may be lost. Section 110-7(a) also provides that the person who posts bail must be informed that if the defendant fails to comply with the conditions of the bond, the bond may be forfeited. The written notice must be distinguishable from the surrounding text, in bold type or underscored, and in a type size that is at least two points larger than the surrounding type. (725 ILCS 5/110-7(a)).

1. The court acknowledged that §110-7(a) creates a mandatory requirement concerning the notice to be given to a person who posts bail, but noted that even a mandatory provision may be satisfied by substantial compliance where: (1) the purpose of the statute was achieved despite the absence of strict compliance, and (2) the petitioner suffered no prejudice from the lack of strict compliance.

2. The petitioner posted $50,000 bond for a relative who was charged with ten counts of theft. The text of the written notice provided to the petitioner contained the statutory warnings in a "boxed-off" area on the bottom left corner of the page. Although the notice did not strictly comply with §110-7(a) because there were other bolded words on the page and the type was not two points larger than the surrounding text, the court concluded that the two-part test set out above was satisfied. Thus, the notice complied with §110-7(a).

First, the purpose of §110-7(a) is to place third persons on notice that they may lose money which they post as bond for criminal defendants. This purpose was served where the notice section of the form was "boxed-off" in a corner of the page, the bolded heading in the box stated: **"NOTICE TO PERSON PROVIDING BAIL BOND *OTHER THAN THE DEFENDANT*,"** and the box contained a warning that the bond could be used for costs, fees, or restitution. The notice also stated that the deposit could be forfeited. The box also contained an area for the petitioner's signature, address, and phone number. The court concluded that under these circumstances, any variations from the form required by §110-7(a) were *de minimis* and did not prevent the petitioner from being placed on notice that his bond deposit might not be returned.

Turning to the second part of the two-part test, the court concluded that the petitioner was not prejudiced by the failure to strictly comply with the statute. First, the record showed that the petitioner posted bond because he believed the defendant to be innocent, not because he was unaware of the possible drawbacks of posting bond. Second, the petitioner was present at a hearing to determine the source of the bail money, when the possibility that the money would not be returned was discussed. Having received actual notice that his money might not

be returned, the petitioner cannot claim to have been prejudiced by the failure of the form to strictly comply with statute requirements.

The court affirmed the trial court's order applying the $50,000 bail bond to restitution.

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§6-2
As Fund for Costs, etc.

Schilb v. Kuebel, 404 U.S. 357, 92 S.Ct. 479, 30 L.Ed.2d 502 (1971) The Court upheld Illinois statute allowing clerk to retain 10% of bail deposit (affirming Schilb v. Kuebel, 46 Ill.2d 538, 264 N.E.2d 377 (1970)). See also, Andrews v. Danaher, 62 Ill.2d 268, 342 N.E.2d 49 (1976).

People v. Lange, 102 Ill.2d 225, 464 N.E.2d 1071 (1984) A court clerk may not retain 10% of the original bond posted, but only 10% of the amount on deposit when the criminal proceeding is finally concluded. Thus, where the original bond was $100,000 but bond was reduced to $10,000 pending appeal, the clerk was entitled to retain only 10% of the $1,000 posted on the $10,000 bond.

People v. Fox, 130 Ill.App.3d 795, 475 N.E.2d 1 (1st Dist. 1985) Under the Deposit of Bail Security statute, the trial court has discretion to return more than 90% of a bail deposit.

People v. Nicholls, 71 Ill.2d 166, 374 N.E.2d 194 (1978) The purpose of the deposit of 10% of the bail is not only to ensure defendant's presence in court, but also to provide a fund from which a judgment for fine and costs may be satisfied without having an execution issue and a levy made upon the deposit. See also, People v. Owens, 174 Ill.App.3d 156, 528 N.E.2d 446 (4th Dist. 1988).

People v. Dale, 112 Ill.2d 460, 493 N.E.2d 1060 (1986) Bail is first subject to fines and court costs, not attorney fees, even if defendant assigns the right to the bail deposit to his attorney.

People v. Castile, 87 Ill.2d 73, 429 N.E.2d 495 (1981) Costs taxed by a trial court may be ordered paid from a bail deposit in the custody of the clerk of the appellate court. See also, People v. Crete, 133 Ill.App.3d 24, 478 N.E.2d 846 (2d Dist. 1985).

County of Champaign v. Anthony, 64 Ill.2d 532, 356 N.E.2d 561 (1976) When defendant was released on bail, the county placed an around-the-clock guard on the complaining witness to protect her from injury. After defendant was convicted, the county filed a complaint against him seeking to recover the cost of providing the guard. The trial court dismissed the complaint, and the Supreme Court affirmed. Article 1, §9 of the Illinois Constitution prohibits the administrative imposition of a financial obligation upon a defendant in addition to the conditions fixed by the court in admitting him to bail. "The defendant's constitutional right (to bail) would be diluted if not nullified if he could be subjected, at the will of the prosecutor, to an undisclosed but retroactive financial obligation."

People v. Love, 177 Ill. 2d 550, 687 N.E.2d 32 (1997) 725 ILCS 5/113-3.1 requires the trial court to conduct a hearing into defendant's financial circumstances and find an ability to pay before it may order defendant to pay reimbursement for appointed counsel, even where a cash

bail bond has been posted on defendant's behalf. See also, People v. Webb, 276 Ill.App.3d 570, 658 N.E.2d 852(3d Dist. 1995).

People v. Hans, 581 N.E.2d 712, 221 Ill.App.3d 82 (1st Dist. 1991) 725 ILCS 5/110-7(f) allows for bond deposited by or on behalf of defendant in one case to satisfy the financial obligations (due to a fine, court costs, restitution, or attorney fees) of same defendant in a different case.

People v. Maya, 119 Ill.App.3d 961, 457 N.E.2d 501 (1st Dist. 1983) Defendants posted a $10,000 cash bond deposit, and were subsequently convicted and sentenced in absentia. The trial court had the power to compensate defendants' attorneys for their services from defendants' bond monies.

People v. Baugh, 188 Ill.App.3d 902, 544 N.E.2d 1165 (4th Dist. 1989) The trial judge has discretion to order a cash bond used to pay restitution.

People v. Mompier, 276 Ill.App.3d 393, 657 N.E.2d 1190 (1st Dist. 1995) The court upheld the trial court's order refunding defendant's bond deposit to defense counsel, even though the Illinois Department of Revenue had filed a lien for $56,250 in taxes, $225,000 in penalties, and $2,109 in interest under the Drug Tax Act. The Department of Revenue lacks statutory authority to file a lien against a bond deposit posted by a third party. Although the Drug Tax Act (35 ILCS 520/15(a)) authorizes a lien against defendant's "real and personal property," it does not authorize liens against the property of third parties, even if that property has been posted as bond for defendant's benefit.

Cumulative Digest Case Summaries **§6-2**

People v. Devine, 2012 IL App (4th) 101028 (No. 4-10-1028, 9/6/12)

In counties with population of less than three million, the trial court has discretion to use bail from a criminal case to satisfy the defendant's financial obligations in other cases, including child support, so long as court costs have been paid in the case in which the bail was posted. Although 725 ILCS 5/110-7(f) specifically mentions the use of bond for child support only in counties with population of more than three million, the court found that trial courts in smaller counties have discretion to direct unused bond to outstanding child support obligations.

(Defendant was represented by Assistant Defender Martin Ryan, Springfield.)

People v. Gutierrez, 405 Ill.App.3d 1000, 938 N.E.2d 619 (2d Dist. 2010)

The trial court may order as a condition of bond that defendant be supervised by a pretrial services agency, probation department, or court services department, and defendant may be assessed fees for such services. 725 ILCS 5/110-10(b)(14) and (14.3). No such fee can be assessed if defendant is never released on bond, even though the court ordered the supervision and the supervision fee as a condition of bond.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

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§6-3
Violations - Forfeiture

People v. Ratliff, 65 Ill.2d 314, 357 N.E.2d 1172 (1976) The State failed to prove that defendant willfully failed to surrender to the court within 30 days following date of forfeiture, which it was required to prove to sustain a conviction for violation of bail bond, where defendant was incarcerated for most of the period in question and his failure to appear in court, therefore, was not willful.

People v. Sanders, 131 Ill.2d 58, 544 N.E.2d 788 (1989) The trial court did not err in refusing to vacate bond forfeiture where defendant, who had been in federal custody and in a witness assistance program, did not notify the court within 30 days of forfeiture that without his fault he could not appear.

People v. Markovich, 195 Ill.App.3d 999, 552 N.E.2d 1232 (5th Dist. 1990) Sentencing scheme for the offense of violation of bail bond upheld.

People v. Tompkins, 26 Ill.App.3d 322, 325 N.E.2d 83 (4th Dist. 1975) A bail bond violation is a misdemeanor if the bond was given for a misdemeanor charge and a felony if the bond was given on a felony charge, whether or not defendant was ultimately convicted of the charge.

In re E.H., 78 Ill.App.3d 854, 397 N.E.2d 571 (4th Dist. 1979) Forfeiture of bond (as distinguished from modification or revocation of bond) is authorized only when defendant fails to appear in court when ordered to do so, and is not authorized for any bond conditions, such as the commission of a criminal offense.

People v. Canaccini, 52 Ill.App.3d 811, 368 N.E.2d 133 (2d Dist. 1977) The trial court lacked authority to vacate final judgment of bond forfeiture after more than 30 days had passed.

People v. Mitchaner, 65 Ill.App.3d 338, 382 N.E.2d 687 (4th Dist. 1978) The trial court properly vacated the bond forfeiture where defendant had fled jurisdiction but was returned to the county jail within 30 days of the forfeiture. A defendant who is arrested and brought to court by police has appeared and surrendered within the meaning of the bail statute.

People v. Grogan, 197 Ill.App.3d 18, 554 N.E.2d 665 (1st Dist. 1990) Defendant violated bail in 1982, but was not indicted for the offense until 1987. The court reversed the conviction because defendant was not prosecuted within the three-year statute of limitations.

People v. Chaney, 257 Ill.App.3d 247, 628 N.E.2d 944 (1st Dist. 1993) Defendant's mother placed a second mortgage on her home to raise $10,000 to post as bail. The bond was forfeited when defendant failed to appear for a court date. Defendant's family filed a petition asking for return of the bond deposit, claiming that severe hardship would result from its forfeiture. The court held that defendant's failure to appear within 30 days of the forfeiture order vests in the State the right to have judgment entered on the forfeiture and this right to judgment cannot be divested merely upon a finding that forfeiture would cause hardship to the family members who posted the bond.

People v. Denny, 238 Ill.App.3d 819, 605 N.E.2d 600 (4th Dist. 1992) After sentencing defendant, who had posted a $5,000 bond and failed to appear for sentencing, the court stated that the $5,000 bond "would have to be revoked," issued a warrant for defendant's arrest, and made a docket entry stating that the bond was "revoked." Defendant was apprehended and charged with a Class 1 felony of violation of bail bond. At a hearing before a different judge, the original judge testified that he had intended to "forfeit" bond rather than "revoke" it. Over defense objection, the original order was amended *nunc pro tunc* to provide that defendant's bond had been "forfeited." Defendant was subsequently convicted and sentenced to ten years' imprisonment.

The court reversed, finding that it was improper to amend the order *nunc pro tunc* to establish an element of the offense. *Nunc pro tunc* orders may be used only to make an inaccurate record conform to the action that actually occurred, and not to alter judgments or correct judges' mistakes. Also, a nunc pro tunc order requires "definite and precise" evidence establishing that the original written order failed to conform to the court's actual ruling; such an order cannot be based on the trial judge's "true intent."

Cumulative Digest Case Summaries **§6-3**

People v. Casas, 2016 IL App (2d) 150456 (No. 2-15-0456, 4/14/16)

720 ILCS 5/32-10(a) provides that the offense of violation of bail bond occurs where a person who has been admitted to bail forfeits that bail and knowingly fails to surrender within 30 days. The Appellate Court held that because violation of bail bond is a continuing offense, the statute of limitations began to run the day the accused is arrested or surrenders.

1. Generally, felony offenses must be charged within three years after the commission of the offense. In most cases, the statute of limitations begins to run when the final element of the offense is complete. In the case of continuing offenses, however, the statute of limitations starts to run only when the perpetrator ceases to satisfy the elements of the crime. At that point, the whole "arc of criminal conduct" is aggregated into a single criminal violation.

2. The court concluded that the offense of violation of bail bond constitutes a continuing offense which extends beyond the initial act of violating bail. (Rejecting **People v. Grogan**, 197 Ill. App. 3d 18, 554 N.E.2d. 665 (1st Dist. 1990)). Thus, the statute of limitations does not begin to run until the defendant is apprehended. The court noted that if the statute of limitations began to run once the defendant failed to surrender within 30 days after defaulting on bail, a defendant could escape prosecution by going into hiding for three years.

Because the defendant was tried for the offense of violation of bail bond within three years after his apprehension, the statute of limitations was not violated.

People v. Costa, 2013 IL App (1st) 090833 (No. 1-09-0833, 9/27/13)

To sustain a conviction for violation of a bail bond, the State must prove beyond a reasonable doubt that: (1) defendant forfeited bail; (2) defendant failed to surrender within 30 days after the bail was forfeited; and (3) defendant's failure to surrender was willful. 720 ILCS 5/32-10(a). If a defendant is incarcerated and unable to appear in court, his failure to appear cannot be deemed willful. **People v. Ratliff**, 65 Ill. 2d 314, 357 N.E.2d 1172 (1976).

Defendant failed to appear on his court date and was arrested by the Honolulu police 27 days later on a bond-forfeiture warrant. Defendant's failure to surrender within the statutory 30 days cannot be deemed willful because he was in custody and unable to appear in court. Whether at the time of his arrest he intended to surrender within the 30 days is

immaterial.

The court reversed defendant's conviction.

(Defendant was represented by Assistant Defender Kristen Mueller, Chicago.)

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§6-4
On Appeal

People v. Williams, 143 Ill.2d 477, 577 N.E.2d 762 (1991) Chapter 38, ¶110-6.2(b), which provided that a defendant who has been convicted and sentenced to imprisonment shall be held without appeal bond unless the court finds by clear and convincing evidence that: (1) defendant is not likely to flee or pose a danger to others, (2) the appeal is not for the purpose of delay, and (3) the appeal raises a substantial issue which will likely result in a reversal or new trial, is unconstitutional as a violation of the separation of powers doctrine. Because ¶110-6.2(b) is mandatory rather than permissive, it conflicts with Supreme Court Rule 609(b), which allows the trial court or reviewing court to grant or deny appeal bond.

People v. Green, 88 Ill.App.3d 929, 410 N.E.2d 1003 (1st Dist. 1980) The court rejected defendant's contention that the trial court's denial of bail after conviction and sentencing constituted double punishment. The "denial of bail does not constitute and has no relationship to punishment for crime."

U.S. ex rel. Walker v. Twomey, 484 F.2d 874 (7th Cir. 1973) The failure of a state court to articulate its reasons for denying bail on appeal does not create a presumption of arbitrariness.

People v. Edwards, 105 Ill.App.3d 822, 434 N.E.2d 1179 (4th Dist. 1982) Defendants posted $10,000 deposit with the circuit clerk on $100,000 bond. The trial court dismissed the charges; however, the State appealed and asked that bond be set pending the appeal. The trial court reduced the bonds to $10,000 and ordered refunds representing the deductions. The clerk refunded $8,000 to each defendant, retained $1,000 as costs, and retained $1,000 as 10% of the appeal bond. The clerk's retention of the fees was premature. The trial judge's statements when setting the bond indicated that the bonds were being continued but reduced, and fees may be retained only "when the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause."

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