



State of Illinois
Circuit Court of Cook County

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**Chief Judge Evans says that demand for jail for all suspects
charged with violent crime is wrong on law and facts**

CHICAGO (June 7) – A recent claim that all those accused of violent crimes are “guilty” and should be in jail prior to trial is wrong on both the law and the facts, Chief Judge Timothy C. Evans said on Tuesday.

Judge Evans condemned the tragic wave of violent crime that has afflicted Chicago and other American cities so far this year. “Some of the victims have been

successful young participants in my court programs and looked forward to full and meaningful lives before being shot and killed,” he said.

However, he pointed out the national and state constitutional issues raised by imprisoning people before they are convicted of anything. “As I have previously stated, I respectfully disagree that the automatic detention in jail of defendants facing certain categories of charges is a constitutional practice under the United States and Illinois constitutions. Pretrial detention serves a legitimate purpose, preventing the serious risk of committing crimes while on pretrial release. Its purpose is not, however, to punish by depriving people of their liberty for crimes for which they have not yet been convicted.”

If, after a judge hears specific facts of the case, the presumption is determined to be great that an individual is guilty of the crime, that he or she poses a danger to any person if released pretrial, and that no condition or combination of conditions of pretrial release can reasonably assure the physical safety of other persons, then he or she may be detained. 725 ILCS 5/110-6.1.

In a criminal case, the state’s attorney, defense counsel, jurors, and judges have different responsibilities. When making bail decisions, judges must view evidence in the same way as they and jurors do at a trial. That is, they must independently determine the believability of the evidence and determine whether statements and arguments made by the parties are supported by the evidence.

“At all stages of the justice system, the adjudicator must be unbiased,” Judge Evans said. “In our justice system, the accuser is not the adjudicator; a judge, not a prosecutor or law enforcement official, must decide whether an individual shall be deprived of his or her liberty.” The law requires that defendants shall be released on the least restrictive conditions that will reasonably ensure they will appear in court, and that will reasonably protect the community, witnesses, victims or any other person.

Contrary to the notion that all those charged with violent crimes are guilty, of violent felony cases disposed between October 2017 and April 2022, 11% were dropped upon further investigation by the State's Attorney, and an additional 3.2% were found not guilty at trial. This shows that charging an individual does not equate with guilt.

Furthermore, there is no evidence that individuals released from pretrial detention are driving the current wave of violence. Independent studies by Loyola University have found that only one in one hundred individuals released on bond is rearrested for a violent offense. A recent study by the University of Chicago Crime Lab of the 4,477 homicides and shooting incidents in Chicago in 2021 found that two people were arrested for homicide and one person for nonfatal shooting among the population released on electronic monitoring that year.

Judge Evans cited further statistics showing that bail reform is not responsible for the current wave of violence. There was no statistically significant change in the level of crime in Chicago in 2018, the year after bail reform (Fall 2017). Violent crime jumped since the beginning of the COVID-19 pandemic, but has affected both cities like Chicago that have undergone bail reform and cities that have not. In 34 U.S. cities including Chicago, homicides rose sharply in 2020, and rates of aggravated assaults and gun assaults increased as well. Homicide rates were 30% higher in 2020 than in 2019, an historic increase in these 34 cities. This trend has continued in 2021 and 2022.

The law against pretrial detention without just cause is clear, in that both the state and federal constitutions hold that a person is presumed innocent until proven guilty. See Illinois Constitution, Article I, Section 9.

In United States v. Salerno, 481 U.S. 739 (1987), the U.S. Supreme Court upheld the federal Bail Reform Act against a facial constitutionality challenge on the basis of substantive and procedural due process. The Supreme Court wrote that “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

“The judicial officer is not given unbridled discretion in making the detention determination,” the Supreme Court wrote. The Court continued that the judge must consider “the nature and seriousness of the charges, the substantiality of the Government's evidence against the arrestee, the arrestee's background and characteristics, and the nature and seriousness of the danger posed by the suspect's release.”

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