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FILE NO. 94-003

CRIMINAL LAW AND PROCEDURE:
Conditions of Bail and Fees
for Service Under Domestic
Violence Act Amendments

Honorable Michael Wepsiec
State's Attorney, Jackson County
Jackson County Courthouse
Murphysboro, Illinois 62966

Dear Mr. Wepsiec:

I have your predecessor's letter wherein he inquired regarding certain amendments to the Code of Criminal Procedure of 1963 (725 ILCS 5/100-1 et seq. (West 1992)) and the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 et seq. (West 1992)) which were enacted in Public Act 87-1186, effective January 1, 1993. Firstly, he inquired whether new subsection 110-10(d) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-10(d) (West Supp. 1992)), which pertains to conditions of bail in domestic violence cases, is automatically applicable to persons who are charged with misdemeanors and who are admitted to bail without a court appearance in accordance with Supreme Court

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Rule 528 (148 Ill. 2d R. 528 (1992)). Secondly, he inquired whether, under amended subsection 202(b) of the Domestic Violence Act (750 ILCS 60/202(b) (West Supp. 1992)), a sheriff is precluded from charging fees only for serving petitions for orders of protection, or for the service of orders entered in such cases, as well. For the reasons hereinafter stated, it is my opinion that the conditions of bail set forth in subsection 110-10(d) are automatically applicable whenever a person who is charged with a misdemeanor, the victim of which was a family or household member, is released on bail pursuant to Supreme Court Rule 528. An amendment to subsection 202(b) of the Domestic Violence Act enacted subsequent to Mr. Grace's inquiry prohibits the imposition of both clerk's and sheriff's fees for filing and service of the petition and other documents filed pursuant to that section.

The purpose of Public Act 87-1186 was to expand the coverage of the State's laws regarding domestic violence, and to make them more effective. (See Remarks of Rep. Homer, June 23, 1992, House Debate on Senate Bill 400; Remarks of Sen. Rock, May 12, 1992, Senate Debate on Senate Bill 400, at 5-7.) Section 110-10 of the Code of Criminal Procedure, as amended by Public Act 87-1186, provides in part:

> "Conditions of bail bond.
>
> (a) If a person is released prior to conviction, either upon payment of bail secu-

rity or on his or her own recognizance, the conditions of the bail bond shall be that he or she will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(2) Submit himself or herself to the orders and process of the court;

(3) Not depart this State without leave of the court; and

(4) Not violate any criminal statute of any jurisdiction.

(b) The court may impose other conditions, such as the following * * *:

* * *

(d) when a person is charged with a criminal offense and the victim is a family or household member as defined in Article 112A, conditions shall be imposed at the time of the defendant's release on bond that restrict the defendant's access to the victim. Unless provided otherwise by the court, the restrictions shall include requirements that the defendant do the following:

(1) refrain from contact or communication with the victim for a minimum period of 72 hours following the defendant's release; and

(2) refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following the defendant's release.

(e) Local law enforcement agencies shall develop standardized bond forms for use in cases involving family or household members as defined in Article 112A, including

> specific conditions of bond as provided in subsection (d). * * *
>
> * * * "
>
> (Emphasis added.)

The purpose of construing a statute is to give effect to the intent of the General Assembly in its enactment. In ascertaining legislative intent, the entire statute must be considered, as well as the evil to be remedied and the object to be attained. (People v. Bratcher (1976), 63 Ill. 2d 534.) Further, it is presumed that all statutes relating to one subject are governed by one spirit and one policy, and that the General Assembly intended for them to be consistent and harmonious. (Scofield v. Board of Education (1952), 411 Ill. 11, 20.) Rules of the Supreme Court which implement statutes are to be considered to be an integral part thereof (see Robbins v. Campbell (1965), 65 Ill. App. 2d 478, 485), and are to be construed under the same principles. See Eckhardt v. Hickman (1953), 349 Ill. App. 474, 482, appeal dismissed, 2 Ill 2d 98 (1954).

Supreme Court Rule 528 provides:

> "**(a) Offenses Punishable by Fine Not to Exceed $500.** Bail for offenses (other than traffic or conservation offenses), including ordinance violations, punishable only by a fine which does not exceed $500 shall be $75 cash.
>
> **(b) Offenses Punishable by Fine in Excess of $500.** Bail for offenses (other than traffic or conservation offenses) pun-

> ishable only by a fine which exceeds $500 shall be $1,000.
>
> **(c) Certain Other Offenses.** Bail for any other offenses, including violation of any ordinance of any unit of local government (other than traffic or conservation offenses) punishable by fine or imprisonment in a penal institution other than the penitentiary, or both, shall be $1,000, except that bail for Class C misdemeanors shall be $75 cash."

Section 110-9 of the Code of Criminal Procedure (725 ILCS 5/110-9 (West 1992)) provides:

> "* * * When bail has been set by a judicial officer for a particular offense or offender any sheriff or other peace officer may take bail in accordance with the provisions of Section 110-7 or 110-8 of this Code and release the offender to appear in accordance with the conditions of the bail bond, the Notice to Appear or the Summons. The officer shall give a receipt to the offender for the bail so taken and within a reasonable time deposit such bail with the clerk of the court having jurisdiction of the offense."

Based upon these two provisions, it has been held that when a person is arrested for a misdemeanor, bail for which is established by Rule 528 or related Rules, he or she must be informed of the right to post bail, and, if the arrestee has money, he or she must be permitted to post it and be released. (People v. Seymour (1979), 80 Ill. App. 3d 221; Lampe v. Ascher (1978), 59 Ill. App. 3d 755.) Thus, many defendants charged with misdemeanors are released on bail without a court appearance.

If subsection 110-10(d) were construed to apply only in those instances in which a defendant is brought before a court,

its usefulness would be severely limited. It would not reach those misdemeanor defendants who are able to post a relatively small sum in order to attain release. Further, because subsection 110-10(b), even prior to enactment of Public Act 87-1186, specifically authorized the court to impose conditions of bail such as refraining from contact with particular persons or entering particular premises, the new subsection would be of relatively little utility if so construed. Therefore, in order to give effect to the apparent legislative intent, it is my opinion that the restrictions in subsection 110-10(d) must be applied automatically to defendants who post bond pursuant to Supreme Court Rule 528 in cases which fall within its terms.

Moreover, the language of section 110-10, as amended, clearly supports this conclusion. Subsection 110-10(a) sets forth, in mandatory terms, basic conditions for all bail bonds. Subsection 110-10(b) sets forth a non-exclusive listing of conditions which a "court may impose". Subsection 110-10(c) refers to certain sex offenses against minors, and requires that in such cases "the judge shall impose" specific conditions which are designed to protect the victim. (The offenses specified in this subsection are generally felonies to which the automatic bail rules do not apply.) Subsection 110-10(d), also uses mandatory language, with no reference to the court, providing that, in domestic violence cases, bail "restrictions shall

include" the specified terms. Lastly, subsection 110-10(e) provides that standardized bond forms for use in domestic violence cases are to include the specific restrictions set forth in subsection 110-10(d).

When viewed in its entirety, section 110-10 of the Code uses permissive terms when it is contemplated that a court appearance is necessary to impose specific bond conditions, but uses mandatory language with respect to those conditions that are intended to be automatically imposed. That subsection 110-10(d) was intended to be applied mandatorily is reinforced by the requirement that the conditions set out therein be included in standardized bond forms for domestic violence cases.

Mr. Grace's second question, regarding amended subsection 202(b) of the Domestic Violence Act, has been addressed by further legislation. Public Act 88-306, effective January 1, 1994, further amends section 202 of the Illinois Domestic Violence Act of 1986 to provide, in pertinent part as follows:

" * * *

> (b) Filing, certification, and service fees. No fee shall be charged by the clerk for filing petitions or certifying orders. No fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under this Section.
>
> * * * "

In addition, the Act repealed section 204 of the Domestic Violence Act (750 ILCS 60/204 (West 1992 Supp.)) which had provided for a waiver of fees for indigent persons, and made a conforming amendment in section 210 (750 ILCS 60/210 (West Supp. 1992)) with reference to fees.

These amendments, taken together, clearly express a legislative intent that no filing or service fees are to be charged with respect to petitions for, or orders of, protection, and related documents. Therefore, the inquiry regarding the effect of the previous amendment has become moot.

Respectfully yours,

ROLAND W. BURRIS
ATTORNEY GENERAL