

PRESUMPTION OF INNOCENCE AND SETTING OF BOND

The presumption of innocence in a criminal law case means just that: you are presumed innocent unless proven guilty. This is true regardless of whatever crime is alleged, e.g., child sexual abuse, murder, sexual battery, robbery, drug trafficking, grand theft, DUI, domestic violence. The accused does not have to prove anything—the burden of proof is entirely on the prosecutor.

The presumption of innocence is one of the most important due process rights afforded to those accused of crimes. The presumption of innocence is a fundamental due process right stemming from the Fifth, Sixth and Fourteenth Amendments of the United States Constitution <http://www.gpoaccess.gov/constitution/index.html>.

In a criminal proceeding, every accused is presumed innocent unless proven guilty. The burden falls on the government (the prosecution) to prove guilt beyond each and every reasonable doubt. This means that an accused does not have to testify or have to present any other evidence. The prosecuting agency must prove each element of the alleged crime beyond and to the exclusion of a reasonable doubt.

Attorneys for the accused need to make sure that the government is held to its burden and that the accused gets the benefit of the presumption of innocence. One very important way an attorney can protect his or her client's presumption of innocence is during voir dire (jury selection). During jury selection, attorneys should question potential jurors about the presumption of innocence to make sure that all of the potential jurors understand that the accused has the presumption. Attorneys should talk with potential jurors about the presumption in order to ensure that the government is held to its burden of proof.

Factors a Judge Considers at a Bond Hearing

Because of this presumption of innocence, the judge must consider bond for the accused. For those whose family members, friends or acquaintances are accused of crimes, it may seem that the amount of bond imposed by the court is too high and that the presumption of innocence is violated if they are unable to meet that bond amount. For others in the community, it may seem as if the bond amount is too lenient; however, bond is not meant to be a punishment. Florida law favors release of the accused without having to post a bond when appropriate. However, under the Florida Rules of Criminal Procedure, many crimes are not eligible for non-monetary release. Fla. Stat. §907.04.

When the alleged crime does not qualify for release on non-monetary conditions, the Court must set a “reasonable” bond amount. In doing so, the Court considers many factors. See *What is a Bond Schedule and How Does It Apply to a Person Who Has Been Arrested?* Article I, Section 14 of the Florida Constitution and Florida Rule of Criminal Procedure 3.131(a) provide the Court with three basic factors to consider when setting bond amounts: whether the accused poses a risk of harm to the community; whether the accused is likely to appear for trial; and to assure the integrity of the judicial process. The

government often argues for a high bond amount or that the accused be held on a no bond status pursuant to the “proof evident, presumption great” standard. Fla. R. Crim. P. 3.131(a). The Florida Supreme Court has stated the standard for “proof evident, presumption great” is the same standard as beyond a reasonable doubt. *State v. Arthur*, 390 So. 2d 717 (Fla. 1980).

The accused should have an attorney present to represent him or her at bond hearing to argue for a release without having to post a bond or for the setting of a “reasonable” bond. Having an attorney helps the accused to maintain the presumption of innocence and ensures that the judge considers all relevant factors when considering bond.

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