

BAIL (Pa.R.Crim.P.520-536)

A. General Notes

1. Bail is the security or other guarantee required and given for the release of a person from custody, conditioned upon a written undertaking in the form of a bail bond. (Pa.R.Crim.P. 3)
2. Bail may be required for appearance of a material witness or a fugitive from justice.
3. Bail authority is the individual who has jurisdiction over the case regarding bail. (Pa.R.Crim.P. 3)
4. A defendant may be admitted to bail on any day and at any time [(Pa.R.Crim.P. 520 B)]
5. All conditions of release, as determined by the bail authority, shall be set forth in the bail bond. (Pa.R.Crim.P.526 A)
6. The defendant shall not be released until he or she executes the bail bond. [(Pa.R.Crim.P. 525 A)]
7. The bail bond shall be valid until full and final disposition of the case including all avenues of direct appeal to Supreme Court of Pa., excluding state post-conviction proceedings, federal appeals and post-conviction habeas corpus proceedings. (Pa.R.Crim.P.534)
 - a. Acceptance in ARD constitutes a full and final disposition for purposes of bail.
8. When the amount of bail is increased, the original bail shall remain in effect and additional security shall be required only for the amount of the increase. (Pa.R.Crim.P.533)
9. No general rule or statute requires the payment of interest to a party who posts cash as bail. [(Crum v. Burd, 571 A.2d 1 (1989)]

B. Types of bail that shall be accepted by clerk (Pa.R.Crim.P.524)
(see FORMS section)

1. Releases on Recognizance (ROR):
 - a. No amount is set for this type.
2. Release on No monetary Conditions (See Pa.R.Crim.P. 527 for conditions which may be required):
 - a. No amount is set for this type.

3. Releases on Unsecured Bail Bond:
 - a. Defendant is liable for a fixed sum of money if he or she fails to appear or failed to comply with conditions; however, no money or security posted.
4. Release on Nominal Bail: ((Pa.R.C.P. 524 C4)
 - a. Defendant deposits nominal amount of cash (ex. \$1.00) and agreement of a designated person, organization or bail agency to act as surety.
5. Release on a Monetary Condition: One or a combination of following forms of security shall be accepted to satisfy full amount. (Pa.R.Crim.P.528)
 - a. U. S. currency
 - (1) Percentage cash bail may be permitted by the bail authority/ percentage not to exceed 10% of amount of total bail set.
 - (a) At the conclusion of the defendant's bail period, the court or bail agency may retain as a fee an amount reasonably related to the cost of administering the cash bail program. (Schilb v. Kuebel, 404 U.S. 357 (1971))
 - (b) If defendant posts the money, the defendant must sign the bail bond, thereby becoming the surety and is liable for the full amount of bail if he fails to appear or to comply.
 - (c) If someone other than the defendant deposits the cash but does not wish to be liable for the full amount of bail, the person will be permitted to deposit the money and will relinquish the right to make a subsequent claim for the return of monies. For this case, the defendant would sign the bond and be liable for the full amount of bail.
 - b. Bearer bonds of U. S. Government, of Commonwealth of Pa. or of any political subdivision of the Commonwealth.
 - (1) Defendant or surety must file a sworn schedule verifying value and marketability of the bonds and which shall be approved by bail authority.

c. Realty located within Commonwealth of Pa. so long as actual net value is at least equal to amount of bond.

(1) Local Rule shall determine net value.

(2) Net value may be computed by subtracting estimated collection costs and encumbrances from the 100% assessed value (assessment figure x county factor = 100% assessed value).

(3) All joint tenants or tenants by the entirety must execute the bail bond.

d. Realty located outside Commonwealth but within the U. S., provided the surety shall comply with reasonable conditions to perfect the lien of the county in which prosecution is pending.

e. Surety bond of a licensed professional bondsman or of a surety company authorized to be business in Pa. (See Professional Bondsman/Surety Bondsman, Chap. B3)

C. Each Court Of Common Pleas may, by local rule, establish or designate a bail agency to monitor and assist defendants released on bail. (Pa.R.Crim.P 530)

D. Qualifications of Surety

1. Clerk shall accept following sureties unless additional requirements are prescribed by Local Rules (Pa.R.Crim.P.531)

a. Owners of cash or securities as provided in Rule 528;

b. Owners of realty located in the Commonwealth as provided in Rule 528(D) 3, or owners of realty located outside the Commonwealth but within the United States as provided in Rule 528 (d) (4), provided that satisfactory evidence of ownership or special approval of the court is obtained;

c. Surety companies approved by The Court and authorized to do business in the Commonwealth of Pennsylvania;

d. Professional bondsmen licensed under the Judicial Code, 42 Pa. C.S. §5741-5749;

e. For percentage cash bail only, the defendant or any private individual or organization.

2. Clerk shall not permit the following to be a surety (Pa.R.Crim.P.528)

- a. No attorney, or spouse or employee of any attorney, shall be permitted to become a surety for a client of the attorney or for the client of the attorney's office.
- b. No sheriff, employee of a sheriff, tipstaff other employee, or official of the courts or issuing authority of any judicial district shall be permitted to become a surety unless the defendant is a member of that person's immediate family.
- c. No person who is named in any current official list of undesirable bondsmen shall be permitted to become a surety in any case.

E. Bail before verdict

1. Clerk shall verify bail required to release a defendant upon request. The following should be noted:
 - a. Bail shall be set in all cases, as permitted by law, by issuing authority or judge. (Pa.R.Crim.P. 520)
 - b. Bail modification by an issuing authority at any time before the preliminary hearing is permissible.
 - c. At any time before or after preliminary hearing, a Common Pleas Court judge may modify bail.
 - d. After bail has been set or modified by Common Pleas Court judge it may thereafter modified by only by a Common Pleas judge (Pa.R.Crim.P. 526)
2. After verifying the bail amount, type to be posted, surety acceptability, and clerk shall prepare the appropriate bail bond/ have defendant and sureties sign in the proper blanks/ then sign and seal the bond.
3. Clerk shall state conditions to defendant and surety as explained on back of bond and distribute copies.
4. Substitution of surety or security may be done only upon approval of Court.

F. Bail after finding of guilt [(Pa.R.Crim.P. 521)]

1. If the offense is punishable by death or life imprisonment, defendant shall not be released on bail.
2. If aggregate possible sentences for offenses on all outstanding verdicts within the same judicial district cannot exceed 3 years, defendant shall have the same right to bail.
 - a. Clerk shall proceed as in Sec. E 2, 3, and 4.

3. If aggregate possible sentences on all outstanding verdicts within the same judicial district can exceed 3 years.
 - a. Clerk to verify bail as set since the trial judge has the right to change condition of bail, amount of bail, refuse bail or revoke bail.
 - b. Clerk shall proceed as in Sec. E 2, 3, and 4.
- G. Bail After Sentencing [Pa.R.Crim.P. 521]
 1. Condition of release on bail shall be,
 - a. File a post sentence motion and perfect an appeal or,
 - b. Perfect an appeal within the time permitted by law.
 2. If sentence imposed includes imprisonment of less than 2 years and condition 1a or 1b have been met,
 - a. Clerk to verify bail as set since the trial judge has the right to change condition of bail, amount of bail, refuse bail or revoke bail.
 - b. Clerk shall proceed as in Sec. E 2,3, and 4.
- H. Bail Pieces [Pa.R.Crim.P. 536(b)] (see FORMS)
 1. A bail piece authorizes the surety to apprehend and detain the defendant whenever and wherever defendant may be found and to bring the defendant before the issuing authority or court without unnecessary delay.
 2. A surety may apply for the bail piece from the court and upon approval of the court is responsible for any expenses incurred in the apprehension and commitment of the defendant. (See sample bail piece in forms chapter.)
 3. When a bail piece has been served and the defendant has been detained, the surety is no longer liable if the bail had not been forfeited prior to that detention. Clerk shall return non-forfeited monies less fees and commissions.
 4. Exoneration of surety shall be done when court ordered.
- I. Monies collected for bail (Pa.R.Crim.P. 535)
 1. Non-forfeited

a. Clerk shall furnish an itemized receipt of bail to the surety. (See Accounting and Agent Responsibilities, Chap. A1)

(1) Any clerk who receives more than \$10,000 in cash as bail for any individual charged with a criminal offense under 18 P.S. § 911 (criminal organizations) or 35 P.S. § 470-13 (drug offenses) shall file, within 15 days, a Form 8300 with the IRS, a copy of the Form 8300 with the US Attorney for the jurisdiction in which the offense occurred, and a copy of the Form 8300 with the US Attorney for the jurisdiction in which the individual charged resides. (See list of US Attorney's offices pages B1-21 thru B1-26.) Further, the clerk, on or before January 31 each year, is required to furnish a written statement to each payer of bail whose name is set forth in.

(2) the Form 8300 including the name and address of the clerk's office and the aggregate amount of the cash received by such clerk. See AOPC memo, instruction and sample forms in FORMS)

b. Clerk shall note on the docket transcript or the docket book the amount deposited and by whom deposited.

c. Clerk shall deposit monies in a bank or other depository approved by the Court. (See 16 P.S. §1706 and 42 Pa.C.S.3561.)

d. Clerk shall keep proper fiscal records of bail monies.

e. Clerk shall return non-forfeited monies (less fee) (42 Pa.C.S. §21061) to the surety promptly 20 days after full and final disposition. (Pa.R.Crim.P.535.) Acceptance into ARD is considered full and final disposition for purposes of bail [Pa.R.Crim.P. 179(comment)].

f. Clerk shall also return non-forfeited monies (less fee) to sureties when it can be determined individual is no longer the surety on that case.

g. The court has no authority to order deduction of fine and costs from bail deposit (Comm. vs. McDonald, 382 A.2d 124).

h. For return of fugitive from justice bail see Fugitive from Justice, Chap. F3, Sec. Bla.

i. For return of material witness bail see Subpoenaed Witnesses

2. Forfeited bail

- a. In motor vehicle cases, clerk shall distribute forfeited monies as clerk would a fine pursuant to disposition as noted in 42 Pa.C.S. §§3571,3572,3573. (See Accounting and Agent Responsibilities, Chap. A1.)
- b. Clerk shall deposit those forfeited monies in a timely manner and with proper documentation according to local practice.
- c. Clerk shall cause a judgment to be brought against all sureties on forfeited bail according to local practice.

J. All Forfeited Bail (Pa.R.Crim.P. 536)

1. Written notice shall be given to the defendant and any surety, either personally or by both certified and first class mail at defendant and surety's last known address.
2. Execution on the bond may issue at the expiration of twenty (20) days following notice.
3. Notification should be given to county solicitor to proceed on execution of bond according to local practice.

K. Retention and Disposition Schedule

1. In County Records Manual, refer to Chapter 4 - Office of the Clerk of Courts,
 - a. Criminal Dockets, Books and Indices
 - b. Criminal Papers/Files
2. Subject matter is part of a case; therefore, retention is covered under the case to which it is filed.