

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, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and complies with all conditions set forth in the bail bond.
2. Bail may be required for appearance of a material witness or a fugitive from justice.
3. Bail authority is the magisterial district judge, magistrate, Philadelphia bail commissioner, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke or deny bail.
4. A defendant may be admitted to bail on any day and at any time Pa.R.Crim.P. 520(B). Rule 117 (C) requires the president judge to ensure coverage is provided to satisfy the requirements of paragraph (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(D)].
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 collateral proceedings, federal appeals and post-conviction habeas corpus proceedings, or any other collateral attacks. [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))].
10. Bail may not be applied to defendant's fines and costs.

B. Types of bail that shall be accepted by clerk [Pa.R.Crim.P. 524 C].

See Forms for CPCMS 414A1, 414A6

1. Release on Recognizance (ROR): Rule 524 (C) (1)
 - a. No amount is set for this type.
2. Release on Nonmonetary Conditions: Rule 524 (C)(2) (See Pa.R.Crim.P. 526 for conditions which may be required):
 - a. Release conditioned upon defendant's agreement to comply with any nonmonetary conditions, as set forth in Rule 527.

3. Release on Unsecured Bail Bond: Rule 524 (C) (3)
 - a. Release conditioned upon the defendant's written agreement to be liable for a fixed sum of money if he or she fails to appear as required or fails to comply with the conditions of the bail bond. No money or other form of security is deposited.
4. Release on Nominal Bail: Rule 524 (C) (4)
 - a. Release conditioned upon the defendant's posting a nominal amount of cash which the bail authority determines is sufficient security for the defendant's release, such as \$1.00, and the agreement of a designated person, organization, or bail agency to act as surety for the defendant.
5. Release on a Monetary Condition: Rule 524 (C) (5)
 - a. Release conditioned upon the defendant's compliance with a monetary condition imposed pursuant to Rule 528. The amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond.
 - a. U. S. currency
 - (1) Percentage cash bail may be permitted by the bail authority/percentage not to exceed 10% of the 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 reasonable 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 the 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 the bail.
 - b. Bearer bonds of U. S. Government, of Commonwealth of Pennsylvania 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 Pennsylvania 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 the 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 do business in Pennsylvania. (See Professional Bondsman/Surety Bondsman, Chap. B3)
- C. Each Court Of Common Pleas may, by local rules, 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. 531 (B) (C) (D)
 - a. Rule 531(B) -No attorney, or spouse or employee of any attorney, shall be permitted to become a surety for a client of the attorney or for a client of the attorney's office.
 - b. Rule 531(C)-No sheriff, employee of a sheriff, tipstaff, other employee, or official of the courts of issuing authorities of any judicial district shall be permitted to become a surety unless the defendant is a member of that person's immediate family.
 - c. Rule 531(D)-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 be modified by only a Common Pleas Court Judge. (Pa.R.Crim.P. 529)
2. After verifying the bail amount, type to be posted, surety acceptability, the clerk shall prepare the appropriate bail bond (see CPCMS Forms/Report Manual) and have defendant and sureties sign in the proper blanks then seal the bond and process a Jail Release Of Prisoner Form 2004.
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 conditions of bail, amount of bail, refuse bail or revoked bail.
 - b. Clerk shall proceed as in Sec. E 2, 3, and 4.

G. Bail After Sentencing (Pa.R.Crim.P. 521(B))

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 revoked bail.
 - b. Clerk shall proceed as in Sec. E 2, 3 and 4.

H. Bail Pieces (Pa.R.Crim.P. 536(B))

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 CPCMS Forms/Report Manual)
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.

Note: Paragraph (A)(2)(c) provides an automatic 20 day stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

I. Receipt for Deposit, Return of Deposit (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 \$10,000.00 in cash as bail for any individual charged with a criminal offense under 18 P.S. Sec. 911 (criminal organizations) or 35 P.S. Sec. 470-13 (drug offenses) shall file, within 15 days, a Form 8300 with the IRS, a copy of the Form 8300 with the U. S. Attorney for the jurisdiction in which the offense occurred, and a copy of the Form 8300 with the U.S. Attorney for the jurisdiction in which the individual charged resides. (See list of U.S. 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.
- You may obtain copies of Form 8300 by going to the following web addresses
<http://www.irs.gov/pub/irs-pdf/f8300.pdf>
<http://www.irs.gov/pub/irs-pdf/f8300sp.pdf>
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) or access the above web sites.
- b. Clerk shall note on the docket 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. Sec. 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. § 1061) 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. 313 and 534) (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. v. McDonald, 382 A.2d 124).
- h. For return of fugitive from justice bail, see Fugitive from Justice, Chap. F3, Sec. B1a.
- 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. (CPCMS FORM 2215)

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.
4. When a magisterial district judge orders bail forfeited pursuant to this rule, the magisterial district judge shall generate a check in the amount of the bail monies he or she has on deposit in the case, and shall send the check and a copy of the docket transcript to the clerk of courts for processing and disbursement as provided by law.

K. Retention and Disposition Schedule

1. Refer to the PA Historical and Museum Commission – County Records Manual