

§1051. Post-conviction bail

1. Application to presiding judge or justice. After post-conviction, except as provided in this section, a defendant may apply to the judge or justice who presided at the trial for bail pending imposition or execution of sentence or entry of judgment or appeal. If the trial judge or justice is not available, the defendant may apply for bail under this section to another judge or justice of the court in which the defendant was convicted. Post-conviction bail is not available to a defendant convicted of:

- A. Murder; [PL 1987, c. 758, §20 (NEW).]
- B. Any other formerly capital offense for which preconviction bail was denied under section 1027; or [PL 1995, c. 356, §8 (AMD).]
- C. Any crime when the defendant's preconviction bail was revoked and denied under sections 1096 and 1097. [PL 1995, c. 356, §8 (AMD).]

The judge or justice shall hold a hearing on the record on the bail application and shall state in writing or on the record the reasons for denying or granting bail. If bail is granted, the judge or justice shall also state, in writing or on the record, the reasons for the kind and amount of bail set, for any condition of release imposed and for the omission of any condition of release sought by the State.

The judge or justice may enter an order for bail pending appeal before a notice of appeal is filed, but conditioned upon its timely filing.

Every order for post-conviction release of a defendant must include a waiver of extradition by the defendant as well as a condition of bail that the defendant refrain from new criminal conduct and not violate any pending protection from abuse order pursuant to former Title 19, section 769, Title 19-A, former section 4011 or Title 19-A, section 4113.

[PL 1997, c. 543, §12 (AMD); PL 2021, c. 647, Pt. B, §11 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

2. Standards. Except as provided in subsection 4, a defendant may not be admitted to bail under this section unless the judge or justice has probable cause to believe that:

- A. There is no substantial risk that the defendant will fail to appear as required and will not otherwise pose a substantial risk to the integrity of the judicial process; [PL 1997, c. 543, §13 (AMD).]
- B. There is no substantial risk that the defendant will pose a danger to another or to the community; and [PL 1997, c. 543, §13 (AMD).]
- C. There is no substantial risk that the defendant will commit new criminal conduct. [PL 1997, c. 543, §13 (NEW).]

In determining whether to admit a defendant to bail, the judge or justice shall consider the factors relevant to preconviction bail listed in section 1026, as well as the facts proved at trial, the length of the term of imprisonment imposed and any previous unexcused failure to appear as required before any court or the defendant's prior failure to obey an order or judgment of any court, including, but not limited to, violating a protection from abuse order pursuant to former Title 19, section 769, Title 19-A, former section 4011 or Title 19-A, section 4113.

If the judge or justice decides to set post-conviction bail for a defendant, the judge or justice shall apply the same factors in setting the kind and amount of that bail.

[PL 2007, c. 374, §12 (AMD); PL 2021, c. 647, Pt. B, §12 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

2-A. Violation of probation; standards. This subsection governs bail with respect to a motion to revoke probation.

A. A judge or justice may deny or grant bail. [PL 2015, c. 436, §5 (NEW).]

B. In determining whether to admit the defendant to bail and, if so, the kind and amount of bail, the judge or justice shall consider the nature and circumstances of the crime for which the defendant was sentenced to probation, the nature and circumstances of the alleged violation and any record of prior violations of probation as well as the factors relevant to the setting of preconviction bail listed in section 1026. [PL 2015, c. 436, §5 (NEW).]

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3. Conditions of release. Except as provided in subsection 4, the judge or justice may impose, in lieu of or in addition to an appearance or bail bond, any condition considered reasonably necessary to minimize the risk that the defendant may fail to appear as required, may compromise the integrity of the judicial process, may commit new criminal conduct, may fail to comply with conditions of release or may constitute a danger to another person or the community.

[PL 1997, c. 543, §14 (AMD).]

4. Standards applicable to bail arising out of State's appeal under section 2115-A, subsection

2. If the State initiates an appeal under section 2115-A, subsection 2, the judge or justice shall apply subchapter II to a defendant's application for bail pending that appeal.

[PL 1987, c. 758, §20 (NEW).]

5. Appeal by defendant. A defendant may appeal to a single Justice of the Supreme Judicial Court a denial of bail, the kind or amount of bail set or the conditions of release imposed by which the defendant is aggrieved. The single justice may not conduct a hearing de novo respecting bail, but shall review the lower court's order. The defendant has the burden of showing that there is no rational basis in the record for the lower court's denial of bail, the kind or amount of bail set or the conditions of release imposed of which the defendant complains. The determination by the single justice is final and no further relief is available.

[PL 1999, c. 731, Pt. ZZZ, §12 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

6. Appeal by State. The State may appeal to a single Justice of the Supreme Judicial Court the granting of bail, the kind or amount of bail set or the lower court's failure to impose a condition of release. The single justice may not conduct a hearing de novo respecting bail, but shall review the lower court's order. The State has the burden of showing that there is no rational basis in the record for the lower court's granting of bail, the kind or amount of bail set or the omission of the conditions of which the State complains. The determination by the single justice is final and no further relief is available.

[PL 1999, c. 731, Pt. ZZZ, §12 (AMD); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

7. Revocation of bail.

[PL 1991, c. 393, §1 (RP).]

7-A. Revocation of post-conviction bail.

[PL 1995, c. 356, §10 (RP).]

8. Failure to appear; penalty.

[PL 1995, c. 356, §11 (RP).]

9. Violation of condition of release; penalty.

[PL 1995, c. 356, §12 (RP).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §§6,7 (AMD). PL 1991, c. 393, §§1,2 (AMD). PL 1995, c. 356, §§8-12 (AMD). PL 1997, c. 543, §§12-14 (AMD). PL 1999, c. 731, §ZZZ12

(AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2007, c. 374, §12 (AMD). PL 2015, c. 436, §5 (AMD). PL 2021, c. 647, Pt. B, §§11, 12 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF).

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