

ROADMAP

Bail Best Practices

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Twin
Purposes of
Bail

Applicable
Defendants

- Assessing flight risk and safety of the public.

- Any defendant detained pursuant to an arrest warrant
- Except:
 - Defendants accused of a capital crime
 - Defendants detained pursuant to an indictment
 - Defendants accused of a VOP
 - Defendants subject to a bond revocation hearing

Ex Parte Setting Bond Schedules

The setting of bail in the first instance ex parte is acceptable ...IF

The defendant is later granted an individualized hearing

Use of bond schedules or presumptions is not allowed

But, remember...

When bail is set ex parte, reference should be made to the statutory factors to the maximum extent possible.

Individualized Hearing

The defendant must be given an individualized hearing promptly.

Best Practice would be to hold the hearing within 48 hours of detention.

Who makes the first move?

Application for a hearing is not required.

The court should ensure each detained defendant is given the opportunity for a hearing.

Attributes of the Hearing

Statutory factors must be considered.

Right to counsel.

Right to present proof.

Right to cross examine.

Right to notice.

POE standard of proof.

Presentation by DA (if possible).

Findings made – better if written.

Step by Step...

- A tiered analysis is required:
 - First consideration: ROR without conditions
 - Second consideration: ROR with conditions
 - Third consideration: Monetary Bail

Bail Factors And Release Conditions

- 40-11-115 – Factors for ROR bail
 - Note: statute was recently amended to include consideration of a validated risk assessment (if available) and the defendant's financial resources
- 40-11-116 – Acceptable bail conditions of release
- 40-11-118 – Factors for monetary bail

First Step: ROR

- Factors:
 - Validated Risk Assessment
 - Length of Residence
 - Employment Status, Financial Condition
 - Prior Criminal Record (Including prior RORs)
 - Out on Bail when charged
 - Nature of Offense, Probability of Conviction, Likely Sentence
 - SUD or Mental Health Issues better addressed in community treatment
 - Other factors bearing on community ties and flight risk

Second Step: ROR with Conditions

If flight risk and/or safety of public concerns are not satisfied by ROR, conditions on release may be ordered.

Acceptable conditions include:

- Release into care of responsible person or organization

- Reasonable restrictions on activities, movements, associations

- Other reasonable restrictions to assure appearance, including monetary bail

Third Step: Monetary Bail

- Factors to set Monetary Bail:
 - Length of Residence
 - Employment Status and financial condition
 - Family Ties
 - Reputation and Character and mental condition
 - Prior Criminal Record relating to flight risk
 - Nature of Offense, probability of conviction, likely sentence
 - Prior criminal record relating to risk of danger to public
 - Responsible community members vouching for defendant
 - Other flight risk factors

Recent Statutory Change: Factors

- 40-11-115 – factors for ROR bail
 - Recently amended to include consideration of a validated risk assessment and the defendant's financial resources
- Court must inquire as to defendant's ability to pay
 - Case law requires it
 - Statute requires it



Other considerations...

- Conditions (including monetary bail) must be the least onerous to achieve the twin purposes of bail
- In considering the “nature of the offense,” the magistrate should NOT question the defendant directly about the facts, rely instead on the affidavit
- If the defendant has an FTA, monetary bail must be set
- If the defendant is arrested while free on bail, the bail must be set in amount twice that which would be customary otherwise

Types of Monetary Bail

Agreement of two sufficient sureties

Real Estate


Cash

Professional Bondsman

Which type?

- A court cannot limit the defendant to any of the four types of bail
 - For instance, a court could not restrict the defendant to a cash bail only
 - On the other hand, the court may set a cash bail amount and a secured bail amount

Other Observations...

- Good Bondsman can help with flight risk, not so much risk to public
 - Accurate criminal histories are key to good bail decisions
 - Cash bond can be given as option (low level offenses)
 - Counsel can be appointed for bond hearings and then relieved (perhaps helpful in obtaining willing attorneys)
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More Other Observations...

- Most misdemeanors committed in the presence are citable
 - Certain Driving Offenses require special conditions under 40-11-118(d) and 40-11-148(b)
 - Certain Assaultive Offenses (DV, Violation OP, Elder Abuse) require special conditions – 40-11-150
 - Certain DORL/DOSL require ROR – 40-11-115
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