

CHEAT SHEET: RI BAIL GUIDELINES, RULES (BGR) & ARGUMENTS

BGR I: PURPOSE OF BAIL

- Ensure appearance in court // Keep the peace and be of good behavior
- Not: 1) excessive or 2) pre-trial punishment

BGR II, III & V: FORMULAS FOR SETTING BAIL

Misdemeanors and Non-Capital Felony Offenses

- **Presumption of Personal Recognizance (P.R.):** Except when P.R. will not reasonably assure the appearance of the person in court or defendant endangers public safety
- **Pre-Conditions Before Monetary Conditions:** When P.R. alone not sufficient court should next consider additional non-monetary conditions
 - Least restrictive possible to assure appearance and public safety
 - Requires court order stating the conditions imposed
- **Monetary Conditions Should Only Be Set When:**
 - No other conditions will reasonably assure the defendant's appearance in court or ensure public safety
 - May not be for the sole purpose of pre-trial punishment (*ABA CJS 10-5.3-(e)*)
 - Court is reasonably satisfied that the defendant will not appear or endangers public safety
 - Defendant is already out on P.R., commits a new crime, and is a VOP or VOB
 - Defendant has an outstanding warrant for failure to appear in another case – in such cases HWOB can be considered
 - Monetary conditions are imposed? Reasons must be set forth on the most current version of the Bail and Recognizance Conditions form on the judiciary's website at www.courts.ri.gov. (Bail Guideline II as amended by SCORI Order dated 10/26/23).
- **Monetary Conditions / Amount:**
 - Misdemeanors: Not greater than the max fine prescribed by law or \$ 1,000 W/S
 - Felonies: Based on potential penalty
 - Up to 5 years - not greater than \$ 5,000 W/S
 - Up to 10 years - not greater than \$ 10,000 W/S
 - Up to 20 years - not greater than \$ 20,000 W/S

- More than 20 years -- not greater than \$ 50,000 W/S
- 1 or More Incidents = 1 or More Bails?: Apply test for motion to sever not # of charges.

➤ **Departure From Monetary Conditions \$ Formula:**

- Court must state “why” on record
- Departure reasons include:
 - Post bail hearing, likelihood of conviction and sentence
 - Outstanding warrants or detainers
 - Previous record of nonappearance
 - Physical or mental condition affecting the defendant's behavior

Capital Offenses

- When no opposition to setting of bail decision should be made in accordance with *BGR* provisions regarding non-capital felony offenses (starting with P.R. presumption).

BGR IV: PRE-RELEASE SCREENING: Relevant factors to determine specific bail amounts -

<ul style="list-style-type: none"> ➤ Marital status. ➤ Name and address of dependents. ➤ Present employment--including place of employment, position held and length of employment. ➤ Whether the defendant is under the care of a licensed physician or uses medication prescribed by a licensed physician. ➤ Any physical or mental condition affecting the defendant's behavior. 	<ul style="list-style-type: none"> ➤ Education. ➤ Prior criminal record, including facts indicating that the defendant is likely to be a danger to the community if released without restrictions. ➤ Prior court appearances and record of appearance or non-appearance. ➤ Ties to this community and to other communities. ➤ Financial resources.
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OTHER ARGUMENTS & AUTHORITIES: Pretrial detention resulting from indigency:

Bad Public Policy & Violates 14th Am Equal Protection and Due Process: USDOJ Statements of Interest in *Maurice Walker v. City of Calhoun, Georgia, #4:15-cv-170-HLM (D GA)*; *Christy Dawn Varden v. City of Clanton, Alabama, #2:15-cv-34-MHT-WC (D AL)*. <https://www.justice.gov/archives/atj/court-filings-support-access-justice>

Unintended & Counterproductive Consequences: Pretrial detention 1) does not improve court appearance rates 2) is more likely to result in conviction, longer sentences, and worse case outcomes 3) enhances the rate of recidivism. *Digard, et al, The Harmful and Lasting Effects of Pre-Trial Detention, The Vera Institute (April, 2019)*. <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

Protections In Place Observed in the Breach (or “Where’s my client’s AG report?”): To eliminate all unnecessary detention, the District Court shall exercise supervision over the detention of defendants who have been detained pending preliminary examination, arraignment, or trial and the Attorney General shall make a biweekly report to the Chief Judge listing each defendant who has been held in custody for a period in excess of ten (10) days and the reasons why the defendant is still held in custody. *District Court R. Crim. Pro 46(i)* (identical Superior Court Rule repealed, September, 2017).
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