

BAIL RETENTION GUIDE

DECIDE • RELEASE • RESTRICT • REVOKE

The MDJ's Mission:

Assure Appearance • Protect the Community • Respect Rights

1 WHO IS THIS PERSON?

RULE 523

Before imposing conditions, the MDJ considers ALL available information.

Are they rooted here?
Family ties
Employment
Financial resources
Length of residence

Who are they?
Character
Reputation
Criminal record
Mental condition
Drug / alcohol use

What did they do?
Nature of offense & circumstances

Will they come back?
Prior bail performance
Flight risk
False ID

Anything else I should know?
Any other factor affecting appearance or safety

The goal is NOT punishment.
The goal is a SMART release decision.

2 THE RELEASE LADDER

RULE 524

Start with the least restrictive. Use more only if needed.



As risk increases, so does control.

3 THE 5 PROMISES

RULE 526

When released, the defendant makes 5 promises to the court.



These are MANDATORY in EVERY case.

4 EXTRA LEASHES

RULE 527

If the 5 promises aren't enough, the court can add conditions.



Purpose: Control the risk, not punish the person.

5 SHOW ME THE MONEY

RULE 528

Money bail is used ONLY when necessary. MDJ must consider Rule 523 factors AND the defendant's ability to pay.



Money bail must be reasonable, not excessive.

6 WHO CAN CHANGE IT?

RULE 529

Modification depends on WHO changed bail last.



EXAM TRAP: Once CCP modifies, MDJ CANNOT change bail.

7 BREAK THE RULES

RULE 536

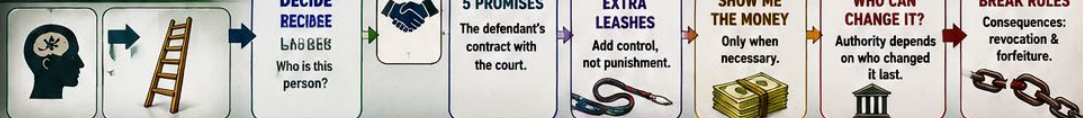
If the defendant violates conditions, this is what happens.



DUE PROCESS IS REQUIRED AT EVERY STEP.

8 THE BAIL MAP

YOUR QUICK MEMORY ANCHOR



★ REMEMBER: BAIL IS ABOUT BALANCE – RIGHTS OF THE ACCUSED & SAFETY OF THE COMMUNITY.

BE FAIR. BE SMART. BE THE JUDGE.



BAIL STUDY AID

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BIG IDEA:

Bail is **NOT** punishment. Bail is about **BALANCE**—between the defendant's liberty and the community's safety and court assurance.

WHY DOES BAIL EXIST?

A defendant is **presumed innocent** until proven guilty.

The purpose of bail is to:



ASSURE
APPEARANCE
IN COURT



PROTECT
THE
COMMUNITY



PROTECT
VICTIMS &
WITNESSES



PRESERVE
DEFENDANT'S
LIBERTY

EXAM TRAP

Many students incorrectly believe:

"The 8th Amendment gives a right to bail."

U.S. CONSTITUTION

No Excessive Bail



PA CONSTITUTION

Right to Bail
(with exceptions)



WHO SETS BAIL?

MAGISTERIAL DISTRICT JUDGE (MDJ)

Acts as the **BAIL AUTHORITY**

- ✓ Fix bail
- ✓ Accept bail
- ✓ Set conditions of release
- ✓ Modify bail (within limits)
- ✓ Issue citations and notices



JUDGE

Includes:

- Court of Common Pleas Judge
- Superior Court Judge
- Supreme Court Judge



Judges possess broader
bail authority.

KEY TAKEAWAYS

- ✓ Bail exists to assure appearance and protect the community.
- ✓ The 8th Amendment prohibits excessive bail; PA Constitution creates a right to bail with exceptions.
- ✓ MDJs are the bail authority at the preliminary stage.
- ✓ Judges have broader authority to review, modify, and revoke.

CONSTITUTIONAL FOUNDATIONS

U.S. CONSTITUTION

8TH AMENDMENT

"Excessive bail shall not be required..."

- Protects against excessive bail
- Does **NOT** create an absolute right to bail
- Only prohibits **EXCESSIVE** bail

PA CONSTITUTION

ARTICLE I, SECTION 14

"All prisoners shall be bailable..."

Generally, **ALL PRISONERS SHALL BE BAILABLE**, except:

- 1 Capital offenses
- 2 Offenses for which the maximum sentence is **LIFE IMPRISONMENT** when the proof is evident or presumption great

VOLUNTARY MANSLAUGHTER TRAP

Murder and Voluntary Manslaughter are **NOT** treated the same for bail purposes.

DEGREES OF MURDER

- | | | |
|---------------------------|---------------------------|---------------------------|
| 1
1ST DEGREE
MURDER | 2
2ND DEGREE
MURDER | 3
3RD DEGREE
MURDER |
|---------------------------|---------------------------|---------------------------|

Do not automatically assume all homicide offenses are treated identically for bail.

MDJ vs JUDGE AUTHORITY

MDJ (BAIL AUTHORITY)

VS.

JUDGE

Fix bail amount	\$	Review/Modify bail
Accept bail	Handshake	Review/Accept bail
Set conditions	Clipboard	Set or Modify conditions
Modify bail (limited)	Recycling symbol	Modify bail (full authority)
Issue citations	Document	Revoke bail
Limited jurisdiction	Building	Broader jurisdiction



MEMORY ANCHOR

Bail = **BALANCE**





BAIL STUDY AID

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RULE 523 — RELEASE CRITERIA

"Should This Defendant Be Released?"



Before imposing bail conditions, the bail authority considers **ALL AVAILABLE INFORMATION** that is relevant to assuring the defendant's appearance and protecting the community.

THE QUESTION IS: Can this defendant be reasonably expected to appear and comply with conditions?

1 CURRENT CHARGE



NATURE OF THE OFFENSE & CIRCUMSTANCES

- Seriousness of the offense
- Violence involved
- Use of a weapon
- Harm caused or threatened
- Circumstances surrounding the offense



ASK:
Does the charge itself create a greater risk?

2 COMMUNITY ROOTS



EMPLOYMENT STATUS

- Employed?
- Length of employment
- Type of employment
- Financial stability

FAMILY RELATIONSHIPS

- Spouse or partner
- Children
- Family support
- Dependents

LENGTH OF RESIDENCE

- How long at current address?
- Property owner or renter?

ASK:



Is this person connected to the community?

3 RELIABILITY



PREVIOUSLY RELEASED ON BAIL?

- Complied with conditions?
- Reported as required?
- Any violations?

RECORD OF FLIGHT

- Prior failures to appear?
- Missed court dates?
- Avoided law enforcement?

USE OF FALSE IDENTIFICATION

- Provided false name
- Used false documents
- Misrepresented identity



ASK:

Will this person return to court as required?

4 CHARACTER & HISTORY



CRIMINAL RECORD

- Prior convictions
- Pending charges
- Pattern of criminal behavior

CHARACTER & REPUTATION

- Community reputation
- Employer or neighbor input
- General character

MENTAL CONDITION

- Mental illness
- Treatment needs
- Competency concerns

DRUG OR ALCOHOL ABUSE

- Substance abuse history
- Current use
- Treatment or rehabilitation

ASK:



What does this history suggest about future compliance?

5 ANY OTHER RELEVANT FACTOR



The bail authority may consider **ANY OTHER** factor affecting:



The defendant's appearance



Compliance with conditions of release



Protection of the community



The fair and effective administration of justice

ASK:



Is there anything else that impacts this decision?

EXAM FOCUS

HIGH-VALUE FACTORS
(Most Frequently Tested)



Nature of the offense



Employment history



Family relationships



Length of residence



Record of flight



Use of false identification



Criminal record



Character & reputation



Mental condition



Drug / alcohol abuse



Any other relevant factor

KEY TAKEAWAY

Use all available information to make a **SMART** release decision.



Specific facts



Measurable risk



Appearance



Reasonable



Tailored conditions (if needed)

JUDICIAL THINKING MODEL

1 WHO IS THIS PERSON?



Understand the defendant.

2 WHAT DID THEY DO?



Evaluate the charge and circumstances.

3 ARE THEY ROOTED HERE?



Look at ties to family, job, and community.

4 WILL THEY RETURN?



Assess reliability and flight risk.

5 ANYTHING ELSE I SHOULD KNOW?



Consider all other relevant factors.

REMEMBER



Bail is not about punishment.

It is about balancing liberty with community safety and court assurance.



BAIL STUDY AID

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RULE 524 – TYPES OF RELEASE

Start with the Least Restrictive. Use More Only if Needed.



The goal is to assure the defendant's appearance and protect the community using the **LEAST RESTRICTIVE** release that will reasonably accomplish that goal.

★ EXAM TIP

Bail is a **LAST RESORT**. Always consider nonmonetary options first.

TYPE OF RELEASE	DESCRIPTION	WHAT IT MEANS	EXAMPLES / NOTES
1 ROR RELEASE ON RECOGNIZANCE 	The defendant is released without the posting of any money or security, based on a promise to appear in court.	✓ Personal promise to appear ✓ No money or security required ✓ Appropriate when risk is low and community ties are strong ✓ <i>Always the first choice</i>	• Minor, non-violent offenses • Strong employment • Strong family support • No prior failures to appear • Stable residence
2 NONMONETARY RELEASE 	Release subject to conditions other than the posting of money.	✓ Conditions are imposed to address risk ✓ Commonly used for moderate risk cases ✓ May include multiple conditions together	Common examples: • Reporting requirements • Travel restrictions • No contact orders • Curfews • Treatment or counseling • Other conditions under Rule 527
3 UNSECURED RELEASE 	The defendant is released after signing a written promise to appear, without money or security.	✓ <i>A written recognizance</i> ✓ <i>Creates a bond obligation with the court</i> ✓ <i>Failure to appear can result in arrest and additional charges</i>	• Used when some risk exists but money is not necessary • Defendant signs a recognizance or appearance bond • May include nonmonetary conditions
4 NOMINAL BAIL 	Requires the posting of a small amount of money as a show of good faith.	✓ Amount is set by the MDJ (often \$10–\$5,000) ✓ Not intended to be punitive ✓ Used when minimal risk exists but some assurance is needed	• Shows defendant is serious about returning to court • Amount should be reasonable and not excessive
5 MONETARY RELEASE 	Release conditioned on the posting of money or security.	✓ <i>Used when other release options are insufficient</i> ✓ <i>Amount must be reasonable (Rule 528 factors)</i> ✓ <i>Can be cash, percentage, real estate, or surety</i>	• Appropriate for higher risk cases • Must consider ability to pay • Never set bail for the purpose of detaining someone who can't afford it

THE RELEASE LADDER (Rule 524)



KEY REMINDERS

- Always start with the least restrictive release. Move up the ladder only if necessary.
- Reasonableness is the standard. Bail must be reasonable, not excessive.
- Individualized decision. Each case is different; consider the specific facts.
- The record matters. Be prepared to articulate the reasons for the type of release chosen.

EXAM FOCUS

- ★ Know the 5 types of release in order.
- ★ Understand the difference between each.
- ★ Know the purpose and typical use of each.
- ★ Remember: monetary bail is the LAST option.
- ★ Be able to identify which type of release fits a given fact pattern.

Think:
What is the least restrictive option that will reasonably accomplish the goal?



ESSENTIAL PRINCIPLE: Bail decisions must balance the defendant's liberty with the community's safety and the court's authority.



BE FAIR. BE SMART. BE THE JUDGE.



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RULE 526 – CONDITIONS OF BAIL BOND

Mandatory. Written. Enforceable.



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These conditions are **REQUIRED** in every bail bond unless waived by the court for good cause.

THE MANDATORY CONDITIONS

1



APPEAR AS REQUIRED

The defendant shall appear at all court proceedings and at all times as required by the court.

2



OBEY ALL LAWS

The defendant shall not violate any federal, state, or local law.

3



NOTIFY OF ADDRESS/EMPLOYMENT CHANGES

The defendant shall notify the court of any change of address or employment.

4



SURRENDER PASSPORT

The defendant shall surrender any passport and shall not obtain a new passport.

5



NO DANGEROUS WEAPONS

The defendant shall not possess a firearm, dangerous weapon or device.

6



COMPLY WITH ALL CONDITIONS

The defendant shall comply with all conditions of release imposed by the court.

WHAT IS A BAIL BOND?

A bail bond is a **CONTRACT** between the defendant and the court.



THE CONTRACT INCLUDES:

- ✓ The amount of bail (if any)
- ✓ The conditions of release
- ✓ The defendant's promise to comply
- ✓ The court's agreement to release the defendant if the promise is kept

PURPOSE OF THESE CONDITIONS



To assure the defendant's appearance in court.



To protect the safety of the community, victims, and witnesses.



To promote compliance with the law while respecting the defendant's liberty.

MUST BE IN WRITING



- ✓ All conditions of the bail bond **MUST** be in **WRITING**.
- ✓ Oral conditions are **NOT** valid.
- ✓ Written conditions must be signed by the defendant.
- ✓ A copy must be provided to the defendant.



EXAM ALERT

- Failure to include these mandatory conditions is a common exam trap.
- If the court imposes nonmandatory conditions, those too must be in writing.
- Waiver of a mandatory condition is allowed **ONLY** for **GOOD CAUSE** and must be on the record.



WAIVER FOR GOOD CAUSE



The court may waive any mandatory condition for **GOOD CAUSE**.

GOOD CAUSE EXAMPLES

- Condition is unnecessary to assure appearance or protect the community.
- Condition is not reasonably related to the risk.
- Condition is unduly burdensome for the defendant.

KEY TAKEAWAYS



Six mandatory conditions are required in every bail bond.



All conditions **MUST** be in **WRITING**.



Bail bond = **CONTRACT** with the court.



Purpose is appearance, compliance, and community protection.



Waiver allowed **ONLY** for **GOOD CAUSE**.



MEMORY ANCHOR

Think: **BAIL BOND = CONTRACT**

Contract comes with **TERMS** (conditions).
Break the terms, break the contract.

THE 6 MANDATORY CONDITIONS – REMEMBER:

A

APPEAR

O

OBEY
LAWS

N

NOTIFY
CHANGES

N

NO
PASSPORT

S

NO
WEAPONS

C

COMPLY
CONDITIONS



MANDATORY.
EVERY TIME.



BE SMART. BE PREPARED. BE THE JUDGE.



BAIL STUDY AID

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RULE 527 – NONMONETARY CONDITION Conditions Instead of Money



KEY CONCEPT

Nonmonetary conditions are imposed to reasonably assure the defendant's appearance and protect the community.

They are **RISK-BASED**, not **PUNISHMENT-BASED**.



EXAM FOCUS

Know the common conditions.
Know when they are appropriate.
Know the purpose of each.

TYPES OF NONMONETARY CONDITIONS

1	REPORTING REQUIREMENTS		The defendant must report to a pretrial services agency or other designated person as directed.	EXAMPLES
				- Report weekly, biweekly, or as directed - Report in person, by phone, or electronically
2	TRAVEL RESTRICTIONS		Limits on where the defendant can go and/or requires permission to travel.	- No travel outside the judicial district - No travel outside the state - Must obtain approval before any travel
3	CURFEW		The defendant must remain at a specified place during certain hours.	- Home detention at night 24-hour home confinement - Electronic monitoring may be used
4	NO CONTACT		The defendant must not contact certain persons.	- No contact with victim - No contact with witnesses - No contact with co-defendants
5	STAY AWAY		The defendant must stay away from certain places.	- No contact with victim's home, school, work - Stay away from places of illegal activity - Stay away from places where co-defendants go
6	TREATMENT / COUNSELING		The defendant must participate in treatment or counseling as directed.	- Drug or alcohol treatment - Mental health counseling - Anger management
7	SECURITY		The defendant must provide security other than money.	- Surrender passport - Surrender firearm or weapons - Maintain employment or schooling
8	ANY OTHER CONDITION		Any other condition reasonably necessary to assure appearance or protect the community.	- Community service - Substance testing - Other tailored conditions

PURPOSE OF NONMONETARY CONDITIONS



Assure the defendant's appearance in court.



Protect the safety of victims, witnesses, and the community.



Promote compliance with the law while respecting the defendant's liberty.



Use the least restrictive means necessary to achieve the goal.



EXAM ALERT

- Conditions must be reasonably related to the risk.
- Avoid overly restrictive or unnecessary conditions.
- Conditions must be written.
- Review Rule 527 examples in your class notes.

BEST PRACTICES FOR MDJs



Assess the risk factors (Rule 523).



Match the condition to the specific risk.



Use the least restrictive condition that works.



Put the condition in writing.



Review and modify if risk changes.

MULTIPLE CONDITIONS

- ✓ The court may impose multiple nonmonetary conditions together if necessary.
- ✓ Tailor the package to the risk.



EXAMPLES IN PRACTICE

LOW TO MODERATE RISK

- Report weekly
- No travel outside county
- No contact with victim
- Maintain employment



Goal: Assure appearance with minimal restriction.

HIGH RISK

- Home confinement with EM
- No contact with victim or witnesses
- No travel; surrender passport
- Drug treatment and testing
- Report 3x per week



Goal: Protect community and assure appearance.

REMEMBER



- ✓ Nonmonetary conditions are not punishment.
- ✓ They are risk-based and individualized.
- ✓ Always tie the condition to the risk.
- ✓ Use the least restrictive option that works.
- ✓ Put it in writing and review as needed.



MEMORY ANCHOR
CONDITIONS, NOT COLLARS.

THINK:
RISK → CONDITION → PURPOSE

KNOW THE CONDITIONS.
APPLY THEM WITH PURPOSE.



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RULE 528 – MONETARY CONDITIONS

Money or Security to Assure Appearance



KEY CONCEPT

Monetary conditions are used when the court determines that nonmonetary conditions alone will not reasonably assure the defendant's appearance.

The amount must be **REASONABLE** and based on Rule 528 factors.

TYPES OF MONETARY CONDITIONS

1 CASH DEPOSIT 	The defendant deposits cash with the court.	- Full amount is deposited - Held by the court - Returned if all conditions are met and case is resolved
2 PERCENTAGE DEPOSIT 	The defendant deposits a percentage of the total bail amount.	- Commonly 10% - Amount is set by the court - Nonrefundable if forfeited
3 REAL ESTATE SECURITY 	Real property is used as security for the bail amount.	- Equity must be sufficient - Property must be in Pennsylvania - Court may require appraisal
4 SURETY BOND 	A bail bond company (surety) guarantees the defendant's appearance.	- Surety signs bond - Typically 10% premium paid to surety - Surety responsible if defendant fails to appear

RULE 528 FACTORS – AMOUNT MUST BE BASED ON:

- The intensity of the defendant's ties to the community (family, employment, length of residence, etc.)
- The defendant's character and mental condition
- The seriousness of the offense charged
- The defendant's criminal record
- The defendant's record of appearance at court proceedings (past compliance or failures to appear)
- The safety of any person or the community
- Any other factor that the court deems relevant



REASONABLENESS IS REQUIRED

- ✓ The amount must be reasonably calculated to assure appearance.
- ✓ It must not be excessive.
- ✓ Consider the totality of the circumstances.

ABILITY TO PAY

The court **must** consider the defendant's **financial ability** when setting monetary conditions.



- Consider income, assets, and expenses
- Do not set an amount the defendant cannot reasonably pay
- Monetary condition should not be a tool for detention of the indigent

A defendant **cannot** be denied release solely because of inability to pay.

SOURCE OF FUNDS

The court **may** require the source of funds for cash, percentage, or real estate.



- Helps prevent money laundering
- Helps deter criminal activity
- Ensures funds are legitimate
- Defendant must disclose source when requested

ACCEPTABLE SOURCES



- Employment income
- Savings or investments
- Proceeds from sale of property
- Gifts from family
- Loans from legitimate financial institutions
- Business income
- Retirement accounts
- Inheritance
- Other lawful sources

UNACCEPTABLE SOURCES



- Illegal drug proceeds
- Criminal activity
- Money laundering
- Undisclosed or false sources
- Third parties paying to conceal ownership
- Funds used to continue criminal enterprises

PRACTICAL POINTS FOR MDJs



- ✓ Use the Rule 528 factors.
- ✓ Set the lowest amount necessary.
- ✓ Document your reasoning on the record.
- ✓ Consider ability to pay.
- ✓ If source of funds is questionable, ask questions.
- ✓ Tailor the monetary condition to the defendant.

MONETARY CONDITIONS AT A GLANCE

TYPE	WHAT IT IS	WHO PROVIDES	REFUNDABLE?	IF DEFENDANT FAILS TO APPEAR
CASH DEPOSIT	Full amount deposited in cash	Defendant	Yes (if conditions met)	Cash is forfeited
PERCENTAGE DEPOSIT	% of total bail (usually 10%)	Defendant	No (premium is not refunded)	Amount is forfeited
REAL ESTATE SECURITY	Property used as security	Defendant	Yes (if conditions met)	Property may be forfeited
SURETY BOND	Surety guarantees appearance	Surety / Bail bond company	No (premium is not refunded)	Surety owes full bond amount



EXAM ALERT

- Know the four types.
- Know the seven factors.
- Ability to pay matters.
- Source of funds may be required.
- Monetary conditions are **risk-based**, not punishment-based.



MEMORY ANCHOR

M – O – N – E – Y
M – Monetary conditions if needed
O – Options: cash, %, real estate, surety
N – Need Rule 528 factors
E – Evaluate ability to pay
Y – Yield to reasonable amount



THINK:

"Is this amount necessary, reasonable, and based on the factors?"



SET IT RIGHT. MAKE IT FAIR.

REASONABLE AMOUNT. REASONABLE CHANCE.

BE SMART. BE PREPARED. BE THE JUDGE.



BAIL STUDY AID

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RULE 529 – MODIFICATION OF CONDITIONS OF BAIL When Circumstances Change



KEY CONCEPT

Rule 529 gives the court **continuing jurisdiction** to modify conditions of bail to ensure they remain fair, reasonable, and effective.



PURPOSE

To allow the court to adapt conditions of bail when new information or changed circumstances affect the risk or fairness of the conditions.



THE BOTTOM LINE

Conditions are not set in stone. If circumstances change, the court can modify conditions to protect the community and assure appearance.

WHO MAY REQUEST MODIFICATION?

A request for modification may be made by:



THE DEFENDANT

- Can request more lenient conditions (e.g., reduce supervision, lower bail).
- Must show changed circumstances.



THE COMMONWEALTH

- Can request more restrictive conditions.
- Must show changed circumstances.



THE COURT ON ITS OWN MOTION

- The court may initiate a review and modify conditions without a formal request.

WHEN MAY THE COURT MODIFY CONDITIONS?

The court may modify conditions **ONLY** upon a showing of changed circumstances that affect:



RISK OF FLIGHT

New information showing the defendant is more or less likely to fail to appear.



DANGER TO COMMUNITY OR PERSONS

New information affecting the risk of danger or threats to the safety of others.



ADEQUACY OF CONDITIONS

Existing conditions are no longer sufficient to address the risk or are more restrictive than necessary.



CHANGE IN CIRCUMSTANCES

Changes in employment, residence, health, family status, or other relevant factors.



OTHER FACTORS UNDER RULE 523

Any other factor the court must consider under Rule 523.

DUE PROCESS IS REQUIRED



The defendant must receive notice of the request for modification.



The defendant has the right to a fair hearing and an opportunity to be heard.



The hearing may be held in person or by other reliable means.

HOW IT WORKS

- 1 Request filed or court initiates review.
- 2 Notice is given to the other party.
- 3 Hearing held (if requested or required).
- 4 Court considers evidence and Rule 523 factors.
- 5 Court issues a written order modifying conditions, or denies the request.

WHAT THE COURT CAN DO



GRANT MODIFICATION

Conditions may be made more lenient or less restrictive.



IMPOSE ADDITIONAL CONDITIONS

Add or increase conditions to address new risks.



DENY MODIFICATION

If no changed circumstances are proven.

EXAMPLES IN PRACTICE



EXAMPLE 1: DEFENDANT REQUESTS

Defendant gets a stable job and completes treatment. Requests to reduce reporting from weekly to monthly.



Court may:

Reduce reporting requirement if risk is now lower.



EXAMPLE 2: COMMONWEALTH REQUESTS

New arrest for DUI while on bail.

Court may:



Add electronic monitoring and curfew as new conditions.



EXAMPLE 3: COURT INITIATES REVIEW

Court learns defendant moved to another state without notice.

Court may:

Schedule hearing and modify conditions to address risk of flight.



EXAM ALERT

Modification requires **CHANGED CIRCUMSTANCES**.

- ✓ The burden is on the party requesting modification.
- ✓ Court has continuing jurisdiction under Rule 529.
- ✓ Always apply Rule 523 factors.



MEMORY ANCHOR

M.O.D.I.F.Y.

M – Monitor the change
 O – Opportunity to be heard
 D – Determine impact (Rule 523)
 I – Issue written order
 F – Fair and reasonable
 Y – Yield to justice and safety



KEY TAKEAWAY

Rule 529 keeps bail conditions aligned with current risks and ensures fairness by allowing the court to modify when circumstances change.



CIRCUMSTANCES CHANGE. CONDITIONS ADAPT. JUSTICE REMAINS.





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RULE 536 – NOTICE, HEARING, REVIEW AND FORFEITURE AFTER RELEASE

After Release: Compliance Is Required



KEY CONCEPT

Rule 536 provides the tools the court uses after release to respond to problems, enforce conditions, and protect the community. The process always starts with **notice** and an **opportunity to be heard**.



PURPOSE

Ensure the defendant complies with conditions, protect the community, and provide a fair process before any sanction is imposed.



THE BIG PICTURE

When a concern arises after release, the court may: 1) modify conditions, 2) revoke and re-detain, or 3) forfeit bail. Each has specific notice, hearing, and findings requirements.

THE PROCESS ALWAYS STARTS THE SAME WAY



NOTICE

Written notice of the alleged violation and the relief sought.



OPPORTUNITY TO BE HEARD

Fair hearing before the court.



FINDINGS

Court makes findings of fact based on evidence.



DECISION

Court chooses the appropriate action (Rule 536 option).

WHO MAY REQUEST ACTION?



THE COMMONWEALTH
(Authorized law enforcement or prosecutor)



THE COURT ON ITS OWN MOTION
At any time after release.



THE DEFENDANT
May request modification of conditions.

1 MODIFY CONDITIONS (Rule 536(A))



Court changes existing conditions of release.

WHEN THE COURT MAY MODIFY

Upon a showing of changed circumstances that affect:

- ✓ Risk of flight
- ✓ Danger to the community or persons
- ✓ Adequacy of existing conditions
- ✓ Circumstances of the defendant (e.g., employment, residence, health)
- ✓ Any other factor under Rule 523

POSSIBLE OUTCOMES

- Conditions made more lenient
- Conditions made more restrictive
- Conditions otherwise changed



MODIFICATION IS NOT PUNISHMENT.
It is an adjustment to address changed circumstances.

2 REVOKE AND RE-DETAIN (Rule 536(B))



Court revokes release and orders the defendant detained pending further proceedings.

WHEN THE COURT MAY REVOKE

After a hearing, the court finds by a **PREPONDERANCE OF THE EVIDENCE** that the defendant has:

- ✗ Violated a condition of release
- ✗ Committed a new criminal offense
- ✗ Otherwise poses a risk of flight or a danger to the community or persons

POSSIBLE OUTCOMES

- Defendant detained in custody
- New bail hearing may be held
- New or different conditions may be imposed if released again



REVOCAION REQUIRES FINDINGS.
It cannot be based on suspicion or unsupported allegations.

3 FORFEITURE (Rule 536(C))



Court orders all or part of the bail money forfeited.

WHEN THE COURT MAY FORFEIT

After a hearing, the court finds by a **PREPONDERANCE OF THE EVIDENCE** that the defendant has:

- ✗ Failed to appear as required
- ✗ Violated a condition of release
- ✗ Committed a new criminal offense while on release

POSSIBLE OUTCOMES

- Full forfeiture of bail
- Partial forfeiture of bail
- Court may consider reasons and ability to pay before determining amount forfeited



FORFEITURE IS CIVIL, NOT CRIMINAL.
Purpose is to enforce compliance and assure court appearance.

IMPORTANT PROCEDURAL PROTECTIONS



Written notice must state the specific alleged violation(s) and the action the court is considering.



Defendant has the right to be represented by counsel and to present evidence and witnesses.



Hearsay alone cannot support a finding unless the court finds good cause and the evidence is reliable.



Court must place the reasons for its decision on the record or in writing.



Timely hearing is required. Unreasonable delay can be a basis for relief.

QUICK COMPARISON

Action	What It Does	Standard	Purpose
Modify (536(A))	Changes existing conditions	Changed circumstances	Adjust to current risks and needs
Revoke & Re-detain (536(B))	Ends release and places defendant back in custody	Preponderance of the evidence	Protect community / assure appearance
Forfeit (536(C))	Orders all or part of bail money forfeited	Preponderance of the evidence	Enforce compliance and court appearance

COMMON EXAM PITFALLS



Acting without notice and an opportunity to be heard.



Using "beyond a reasonable doubt" as the standard (not required).



Imposing punishment rather than addressing risk or compliance.



Failing to state findings and reasons.



Confusing modification (adjustment) with revocation (detention).



EXAM ALERT

- ✓ Rule 536 applies **AFTER** the defendant has been released.
- ✓ Notice + hearing come first—always.
- ✓ Three tools: modify, revoke, forfeit.
- ✓ Know the standard: preponderance of the evidence.
- ✓ Findings and reasons must be on the record.



MEMORY ANCHOR

N – Notice
M – Modify / Revoke
R – Review (findings) & Resolve

Fair process. Clear findings.
 Just result.

PRACTICE POINTERS FOR MDJs

- ✓ Ask: Has the party received proper notice?
- ✓ Ask: Did the party have an opportunity to be heard?
- ✓ Base decision on evidence and Rule 523 factors.
- ✓ Choose the least restrictive action that protects the community and assures appearance.



NOTICE. HEARING. FINDINGS. ACTION. PROTECT THE COMMUNITY. ENSURE APPEARANCE.





BAIL STUDY AID

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RULE 545 – DETAIN OR RELEASE ORDER

Final Decision: Detain or Release



THE BIG PICTURE

After the hearing, the court must make a clear decision: **Detain** the defendant, or Release the defendant under conditions. The decision must be based on the evidence and the factors in **Rule 523**.



PURPOSE

To make a decision that reasonably assures the defendant's appearance and protects the community.



KEY CONCEPT

The court's decision must be fair, reasonable, and based on the record—not on assumptions or bias.

THE COURT HAS TWO OPTIONS

1 RELEASE

Release the defendant under conditions of bail.



2 DETAIN

Deny bail and order the defendant held in custody until trial.



FACTORS THAT LEAD TO EACH DECISION

FACTORS THAT SUPPORT RELEASE



- Strong community ties (family, job, residence)
- No history of failing to appear
- No serious prior criminal record
- Evidence of stable employment and income
- Willingness to follow conditions
- Lower risk of danger to the community
- Conditions can reasonably manage the risk

FACTORS THAT SUPPORT DETENTION



- High risk of failing to appear
- Serious or violent offense
- History of criminal activity or failures to appear
- Lack of community ties
- Access to large financial resources
- Danger to the safety of the community
- No conditions can reasonably assure appearance or safety

DECISION MUST BE BASED ON:

- ✓ The evidence presented at the hearing
- ✓ The factors in Rule 523
- ✓ The law and the rights of the defendant
- ✓ The need to assure appearance and protect the community

RELEASE ORDER MUST INCLUDE



- ✓ Conditions of release
- ✓ The amount of bail (if any)
- ✓ Any nonmonetary conditions
- ✓ Instructions to the defendant
- ✓ Date and judge's signature

DETAIN ORDER MUST INCLUDE



- ✓ Order that defendant be detained
- ✓ Reasons for detention
- ✓ Findings of fact that support detention
- ✓ Notice of right to appeal
- ✓ Date and judge's signature

THE ORDER MUST BE WRITTEN



The court's order—whether release or detain—MUST be in **WRITING** and include:

- 1 The decision (release or detain)
- 2 The reasons for the decision
- 3 The facts and evidence relied upon
- 4 The conditions (if released)



EXAM ALERT

- Rule 545 = the final decision rule.
- Court must choose: release with conditions OR detain.
- Decision must be based on evidence and Rule 523 factors.
- Order must be in **WRITING** with findings and reasons.
- Know what must be included in each type of order.

COMMON MISTAKES

- ✗ Basing decision on assumptions or bias
- ✗ Failing to make findings on the record
- ✗ Not stating reasons for detention
- ✗ Imposing conditions that are not necessary
- ✗ Failing to put the order in writing

PRACTICE POINTERS FOR MDJs

- ✓ Review the evidence carefully.
- ✓ Apply the Rule 523 factors.
- ✓ Make clear findings of fact.
- ✓ Choose the least restrictive option.
- ✓ Write a clear, complete order.

RELEASE vs. DETAIN: AT A GLANCE

TOPIC	RELEASE ORDER	DETAIN ORDER
Result	Defendant is released under conditions	Defendant is held in custody
Goal	Assure appearance and protect community	Protect community / prevent flight
Based On	Evidence + Rule 523 factors	Evidence + Rule 523 factors
Order Must Include	Conditions, bail amount, instructions, date, judge's signature	Reasons, findings of fact, right to appeal, date, judge's signature
Review	Conditions can be modified (Rule 536)	Detention can be appealed
Focus	Manage risk with conditions	Risk cannot be managed

MEMORY ANCHOR

DECIDE – WRITE – PROTECT



DECIDE

Choose release or detain based on evidence.



WRITE

Put the order in writing with reasons and findings.



PROTECT

Always focus on appearance and community safety.



FAIR DECISION. CLEAR ORDER. SAFE COMMUNITY. JUSTICE STARTS HERE.

