

NOTICE TO THE BAR

Directive # 9-05

TO: ASSIGNMENT JUDGES

FROM: PHILIP S. CARCHMAN, J.A.D.

DATE: MAY 12, 2005

SUBJ: BAIL SCHEDULES AND POLICIES TO IMPROVE BAIL PRACTICES

This Directive promulgates two Statewide Bail Schedules and adopts policies on bail practices offered in the Conference of Criminal Presiding Judges Report on Bail Practices. The recommendations contained in that report were approved by the Judicial Council at its November 10, 2004 meeting. That report is available on the New Jersey Judiciary Internet site at [href="/bail.pdf](/bail.pdf).

STATEWIDE BAIL SCHEDULES

The two Statewide Bail Schedules attached to this Directive supersede all previously issued bail schedules, including the schedule contained in the Memorandum to Municipal Court Judges, dated May 29, 1985, from former Administrative Director Robert D. Lipscher, and are effective immediately. All local bail schedules are also superseded and may not be used.

The bail schedules should be used only when the presumption that a summons should be issued is overcome and the factors required for a warrant are present. R. 3:3-1(c) and R. 7:2-2(b).

Bail Schedule 1 contains offenses for which only a Superior Court Judge may set bail. R. 3:26-2. Bail Schedule 2 contains frequently charged offenses, including disorderly persons and petty disorderly persons offenses, for which bail may be set by a Superior Court Judge, a Municipal Court Judge or, when authorized by the Municipal Court Judge, a municipal court administrator or deputy court administrator. The authority of an authorized court administrator to set bail may be exercised only in accordance with Bail Schedule 2, promulgated by this Directive.

It should be emphasized that these bail schedules contain general bail ranges that are meant to be advisory in nature. Each case is fact sensitive. Bail must not be assessed solely by determining the degree of the charged offense, since many crimes within the same degree are significantly different with respect to the seriousness of the criminal conduct, the harm to the victim, and the danger to the community.

Releasing a defendant on bail is not a mere formality. The Supreme Court in *State v. Johnson*, 61 N.J. 351 (1972), directed that an evaluation should be conducted using the following factors: (1) the seriousness of the crime charged, the apparent likelihood of conviction, and the extent of the punishment prescribed; (2) the defendant's criminal record and previous record on bail; (3) the defendant's reputation and mental condition; (4) the defendant's length of residence in the community; (5) the defendant's family ties and relationships; (6) the defendant's employment status, record of employment and financial condition; (7) the identity of responsible members of the community who would vouch for the defendant's reliability; and (8) any other factors indicating the defendant's mode of life or ties to the community or bearing on the risk of failure to appear. See also R. 3:26-1 and R. 7:4-1.

A summary of the court rules and statutes governing bail as of May 1, 2005 has been attached to this directive for reference when utilizing the Statewide Bail Schedules.

STATEWIDE BAIL POLICIES

I. No monetary amount of bail may be set when a defendant is released on his or her own recognizance.

When the court determines that a defendant should be released on his or her own recognizance (ROR), no monetary amount of bail may be set. The development of this statewide policy is based on the premise that setting a monetary amount on an ROR bail is antithetical to the setting of an ROR bail. The theory behind ROR is to release a defendant on his or her own promise to appear in court. In other words, when a judge releases a defendant on his or her own recognizance the judge has made a determination that a defendant will return to court without the need for a monetary bail to ensure his or her appearance. If a judge believes there is a risk that the defendant will not return to court, the judge can always set bail with a monetary amount.

In addition, this policy is designed to eliminate various administrative complications involved in forfeiting ROR bails. For instance, some courts have attached a monetary amount to ROR bails, while others have not. Even in those courts that set monetary amounts on ROR bails, the majority made no effort to collect those amounts when bail was forfeited.

II. Criminal Presiding Judges and Municipal Presiding Judges must ensure that procedures for periodic bail reviews for incarcerated defendants are in place.

Fairness in bail practices involves not only the initial setting of bail amounts and conditions, but also the continuing and careful review of the bail set on defendants who are unable to make bail. Such subsequent reviews normally involve much more information than was available to the judge or judicial officer who initially set the bail.

A. Criminal Presiding Judges and Municipal Presiding Judges must ensure that all defendants held on bail receive their first appearance within 72 hours pursuant to R. 3:4-2 and R. 7:3-1. Further, Criminal Presiding Judges and Municipal Presiding Judges must ensure that procedures are in place to periodically review bail amounts of all incarcerated defendant charged with matters cognizable in the municipal courts or held on post-adjudication warrants to make sure that they are not held for unreasonable periods of time.

B. Criminal Presiding Judges must pay particular attention to ensure that procedures are in place that provide for a periodic review of the bail set for all defendants who are held in lieu of bail on indictable charges pending presentation to the Grand Jury or who are post-indictment but prior to arraignment.

C. Criminal Presiding Judges must carefully monitor and expeditiously move to trial all post-indictment defendants who have indicated that they do not wish to resolve their cases by pleas. If substantial delays occur, particularly if not caused by the defendant, serious consideration is to be given to reducing the bail of an incarcerated defendant.

III. Municipal Court Judges and other authorized judicial officers should give careful consideration to setting bail for post-adjudication warrants and not merely automatically or routinely designate the bail amount as the total amount of the outstanding fines.

In order to give indigent defendants a better opportunity to make bail and thereafter to pay or otherwise perform the remainder of their obligations, the bail amount set on post-adjudication warrants for failure to pay fines or failure to meet other conditions must be reasonable and should take into account the defendant's personal circumstances. Therefore, the automatic setting of bail in the amount of the outstanding fines, penalties and costs is usually inappropriate. *State v. Johnson*, 61 N.J. 351 (1972).