

Crim. R. Rule 46

Crim R 46 Pretrial release and detention

Effective: July 1, 2020

[Currentness](#)

(A) Pretrial Detention. A defendant may be detained pretrial, pursuant to a motion by the prosecutor or the court's own motion, in accordance with the standards and procedures set forth in the Revised Code.

(B) Pretrial Release. Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders financial conditions of release, those financial conditions shall be related to the defendant's risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.

(1) *Financial Conditions of Release.* Any person who is entitled to release may be released upon one or more of the following types of financial conditions in the amount set by the court:

- (a) An unsecured bail bond;
- (b) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;
- (c) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

(2) *Non-Financial Conditions of Release.* The court may impose any of the following conditions of release:

- (a) The personal recognizance of the accused;
- (b) Place the person in the custody of a designated person or organization agreeing to supervise the person;
- (c) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(d) Place the person under a house arrest, electronic monitoring, or work release program;

(e) Regulate or prohibit the person's contact with the victim;

(f) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;

(g) Require completion of a drug and/or alcohol assessment and compliance with treatment recommendations, for any person charged with an offense that is alcohol or drug related, or where alcohol or drug influence or addiction appears to be a contributing factor in the offense, and who appears based upon an evaluation, prior treatment history, or recent alcohol or drug use, to be in need of treatment;

(h) Require compliance with alternatives to pretrial detention, including but not limited to diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance at future court proceedings;

(i) Any other constitutional condition considered reasonably necessary to reasonably assure appearance or public safety.

(C) Factors. Subject to subsection (G)(2) of this rule, in determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;

(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order

(D) Appearance pursuant to summons. When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, there is a presumption of release on personal recognizance.

(E) Continuation of Bail. When a judicial officer, either on motion of a party or on the court's own motion, determines that the considerations set forth in subsections (B) and (C) require a modification of the conditions of release, the judicial officer may order additional or different types, amounts or conditions of bail, or may eliminate or lessen conditions of bail determined to

be no longer necessary. Unless a modification is agreed to by the parties, the court shall hold a hearing on the modification of bond as promptly as possible. Unless modified by the judicial officer, or if application is made by a surety for discharge from a bond pursuant to [R.C. 2937.40](#), conditions of release shall continue until the return of a verdict or the entry of a guilty plea, or a no-contest plea, and may continue thereafter pending sentence or disposition of the case on review.

(F) Information need not be admissible. Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law. Statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail shall not be received as substantive evidence in the trial of the case.

(G) Bond schedule.

(1) In order to expedite the prompt release of a defendant prior to initial appearance, each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. The court also may include requirements for release in consideration of divisions (B) and (C)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant's initial appearance.

(2) A bond schedule shall not be considered as "relevant information" under division (C) of this rule.

(3) Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card.

(4) Each court shall review its bail bond schedule biennially by January 31 of each even numbered year, to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of defendants due to inability to pay.

(H) Review of Release Conditions. A person who has been arrested, either pursuant to a warrant or without a warrant, and who has not been released on bail, shall be brought before a judicial officer for an initial bail hearing no later than the second court day following the arrest. That bail hearing may be combined with the initial appearance provided for in [Crim. R. 5\(A\)](#).

If, at the initial bail hearing before a judicial officer, the defendant was not represented by counsel, and if the defendant has not yet been released on bail, a second bail hearing shall be held on the second court day following the initial bail hearing. An indigent defendant shall be afforded representation by appointed counsel at State's expense at this second bail hearing.

(I) Failure to appear; breach of conditions. Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bond given for the person's release may be forfeited. If there is a breach of condition of release, the court may amend the bail.

(J) Justification of sureties. Every surety, except a corporate surety licensed as provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety shall provide other evidence of financial responsibility as the court or clerk may require. No bail bond shall be approved unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond. No licensed attorney at law shall be a surety.

CREDIT(S)

(Adopted eff. 7-1-73; amended eff. 7-1-90, 7-1-94, 7-1-98, 7-1-06, 7-1-20)

VALIDITY

For validity of this rule, see [State ex rel. Sylvester v. Neal, 140 Ohio St.3d 47, 2014 -Ohio- 2926](#).

STAFF NOTES

2020:

Crim. R. 46 has been amended to improve efficiency in setting bail in an amount that effectively ensures (1) the defendant's continued presence at future proceedings, (2) that future proceedings will not be impeded by any effort to obstruct justice, and (3) the safety of any person as well as the community in general. Crim. R. 46 continues to entrust to the judicial officer's sound discretion the setting of particular conditions of release that will be imposed on a particular defendant in a particular case. At the same time, the amendments seek to ensure that excessive money bails are not used as a means of simply denying a defendant bail without benefit of a detention hearing prescribed by statute. See [R.C. 2937.222](#)

The title of Crim. R. 46 has been changed to recognize that pretrial detention is available under the Revised Code in those cases where no conditions of release are reasonably available. Subsection (A) has been added to that same effect.

Subsection (B) recognizes that conditions of release include both financial and non-financial conditions, either or both of which may be employed by the judicial officer in the exercise of the judicial officer's discretion. Financial conditions should be the least costly to reasonably ensure the defendant's presence at future proceedings; limiting financial conditions to ensuring against risk of flight is consistent with subsection (I), which provides that bond can only be forfeited when a defendant fails to appear at a future proceeding. The subsection's list of non-financial conditions is not exclusive, but identifies a number of non-financial conditions already employed by courts in Ohio and elsewhere.

Subsection (G) recognizes that a bond schedule is to be used for the sole purpose of securing a release before an initial appearance, and is not to be considered by a judicial officer during a bond hearing.

Subsection (H) has been amended to ensure that a person arrested who has not already been released pursuant to posting a bond specified in a bond schedule or prescribed in an arrest warrant, will appear before a judicial officer no later than the second court day after arrest. If the defendant's appearance at that time is without counsel, and if the defendant has not yet been released, then a second hearing, with the opportunity for the defendant to be represented by counsel, must take place within two court days after the initial court appearance.

2006:

Rule 46 was modified, effective July 1, 1998, to reflect the amendment to [Article I, Section 9 of the Ohio Constitution](#) approved by the voters in November 1997. Subsequent changes in the law, such as the standard civil protection order forms promulgated by the [Supreme Court \(Rule 10.01](#) of the Rules of Superintendence for the Courts of Ohio) and legislative revisions to the criminal code make some elaboration appropriate. The changes to divisions (B), (C), and (G) are intended to update the rule to reflect available technology, provide for greater safety, amplify the options that may be used by the trial court, and confirm the ability of a trial court to control conditions and type of bail.

Rule 46(B) Conditions of bail

Division (B)(3) is modified to include electronic monitoring as one of the permissible conditions of bail that may be imposed by the trial court.

Rule 46(C) Factors

Division (C) is amended to permit the trial court to consider two express factors in determining the amount and conditions of bail. Division (C)(1) permits the trial court to consider whether the defendant used or had access to a weapon. Division (C)(5) allows the court to consider whether the defendant is subject to a court-issued protection order.

Rule 46(G) Bond schedule

Division (G) is revised to permit the court to include factors and conditions of bail in the bond schedule that the court must establish.

1998:

Rule 46 Bail

Rule 46 was reorganized in keeping with the Constitutional Amendment to Article I, Section 9 passed by Ohio's voters on November 4, 1997. This amendment allows a court to determine at any time the type, amount, and conditions for bail in all cases where incarceration is a possible punishment. Therefore, Crim. R. 46 now applies the same procedures to all offenses without regard to whether the alleged offense is serious or petty.

Since a court may consider imposing conditions related to public safety and not just appearance, the rule was amended to eliminate the term “appearance bond.” Likewise, the rule reflects that the factors to be considered by a court in determining the type, amount, and conditions of bail need not be limited to those that will just ensure the accused will appear in court.

The amended rule provides that a person who appears pursuant to a summons should be issued a recognizance bond unless, for good cause, additional or different types, amounts, or conditions are required to ensure appearance or to protect the safety of the community.

The amended rule permits a court to forfeit bail only upon a person's failure to appear. However, the court has the discretion not to forfeit bail and may take action to amend instead. Bail may also be amended for failure to follow any of the conditions contained in the bail order.

1994:

Rule 46 Bail

In Criminal Rule 46(C) the word “preconviction” has been substituted for “pretrial” as the word “pretrial” could have been construed to mean only until the commencement of trial. However, after the commencement of trial there will ordinarily be a time gap before conviction for actual “conviction” does not occur until after both a plea or a finding of guilt after trial and imposition of sentence. Only then is there a final appealable order. Hence, Rule 46(C) now covers the period from arrest until conviction.

Also, in Rule 46(C), the word “felony” has been changed to “serious offense.” A “serious offense” is defined in [Criminal Rule 2\(C\)](#) as any felony or misdemeanor for which the penalty prescribed by law includes confinement for more than six months. Certain misdemeanor offenses permit imprisonment for one year, e.g. [R.C. 4511.99\(4\)\(a\)](#), a driving while intoxicated statute. These are misdemeanors but also “serious offenses.” By substituting the term “serious offense” for “felony,” the preconviction

release provisions of Rule 46(C) now apply not only to felonies but also to misdemeanors which rise to the level of serious offenses.

Similarly, the word “misdemeanor” has been changed to “petty offense” in Rule 46(D) to prevent the setting of bail by the clerk of court in a misdemeanor case where the misdemeanor is a serious offense. This does not prevent the clerk of court from releasing a defendant in the case of a misdemeanor other than a serious offense as a petty offense is defined in Rule 2(D) as a misdemeanor other than a serious offense.

The words “serious offense” have been substituted for “felony” in Rule 46(E)(1), and the words “petty offense” for “misdemeanor” in Rule 46(E)(2) for the same reasons. The word “preconviction” has been added to Rule 46(F) in the interest of clarity.

[Notes of Decisions \(123\)](#)

Rules Crim. Proc., Rule 46, OH ST RCRP Rule 46
Current with amendments received through August 1, 2021.

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