

## §1027. Standards for release for formerly capital offenses

**1. In general.** At the initial appearance before a judicial officer of a defendant in custody preconviction for a formerly capital offense, the judicial officer shall issue an order under section 1026, unless the attorney for the State moves for a Harnish bail proceeding. If the attorney for the State requests a Harnish bail proceeding before bail has been set, the judicial officer shall order the defendant held pending a hearing under subsection 2. The attorney for the State may move for a Harnish bail proceeding at any time preconviction. If the attorney for the State moves for a Harnish bail proceeding after bail has been set, the court may hold the defendant pending a hearing under subsection 2 or may continue the defendant's bail.

[PL 1987, c. 758, §20 (NEW).]

**2. Harnish bail proceeding.** A Harnish bail proceeding must be held within 5 court days of the State's request unless the court, for good cause shown and at the request of either the defendant or the attorney for the State, grants a continuance. Evidence presented at a Harnish bail proceeding may include testimony, affidavits and other reliable hearsay evidence as permitted by the court. If, after the hearing, the court finds probable cause to believe that the defendant has committed a formerly capital offense, it shall issue an order under subsection 3. If, after the hearing, the court does not find probable cause to believe that the defendant's alleged criminal conduct was formerly a capital offense, it shall issue an order under section 1026 and may amend its bail order as provided under section 1026, subsection 3, paragraph C.

[PL 1995, c. 356, §6 (AMD).]

**3. When conditional right has been extinguished at Harnish bail proceeding.** The court's finding that probable cause exists to believe that the defendant committed a formerly capital offense extinguishes the defendant's right to have bail set. The court shall make a determination as to whether or not the setting of bail is appropriate as a matter of discretion. The court may set bail unless the State establishes by clear and convincing evidence that:

- A. There is a substantial risk that the capital defendant will not appear at the time and place required or will otherwise pose a substantial risk to the integrity of the judicial process; [PL 2007, c. 374, §11 (AMD).]
- B. There is a substantial risk that the capital defendant will pose a danger to another or to the community; or [PL 1997, c. 543, §8 (AMD).]
- C. There is a substantial risk that the capital defendant will commit new criminal conduct. [PL 1997, c. 543, §9 (NEW).]

In exercising its discretion, the court shall consider the factors listed in section 1026. If the court has issued a bail order on the basis of its discretionary authority to set bail in a case involving a formerly capital offense, the court having jurisdiction of the case may modify or deny bail at any time upon motion by the attorney for the State or the defendant or upon its own initiative and upon a showing of changed circumstances or the discovery of new and significant information.

[PL 2007, c. 374, §11 (AMD).]

### SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1995, c. 356, §6 (AMD). PL 1997, c. 543, §§8,9 (AMD). PL 2007, c. 374, §11 (AMD).

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