

**LET'S  
TALK  
BAIL**

**JUDICIAL  
COMMISSIONER  
ASSOCIATION OF  
TENNESSEE**

COURTNEY KING  
BUERGER, MOSELEY & CARSON, PLC

AUGUST 4, 2025

# TOPICS WE WILL COVER TODAY:

- History of Bail
- Authority to Release Defendants
  - Release on recognizance or unsecured appearance bond
  - Release with conditions
  - Setting monetary bail
- ROR – Factors that MUST be Considered
- Conditions of Release
  - When are they permitted?
  - When are they required?
  - Examples:
    - Ignition Interlocks
    - Transdermal Monitoring (SCRAM) Devices
    - Global Positioning Monitoring Devices
    - 12-hour holds
- Monetary Bail – Factors that MUST be Considered



# TENNESSEE'S CONSTITUTIONAL RIGHT TO BAIL

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- **Article I, Section 15:** “[A]ll prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great.”
  - This is echoed in T.C.A. § 40-11-102 (“Before trial, all defendants shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great.”).
- **Article I, Section 16:** “[E]xcessive bail shall not be required . . . .”

Sect. 15.<sup>th</sup> That all prisoners shall be  
bailable by sufficient Sureties, unless for Capital  
offences, when the proof is evident or the presump-  
tion great, and the privilege of the writ

Sect. 16.<sup>th</sup> That excessive Bail shall not  
be required, nor excessive fines imposed, nor  
cruel and unusual punishments inflicted.

# CONSTITUTIONAL AMENDMENT?

## SJR0919/HJR0859 – SJR0025/HJR0049

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Would amend the TN Constitution to allow denial of bail to defendants charged with:

- A Capital Offense
- An Act of Terrorism
- “Any other offense, as of November 3, 2026, for which a defendant, if convicted, could not be released prior to the expiration of at least 85 percent of the entire sentence imposed.”
  - Certain homicides (criminally negligent, reckless, vehicular)
  - Manufacture, delivery or sale of a controlled substance (A, B, C felony) with 2+ prior convictions for same
  - Carjacking
  - Involuntary labor servitude
  - Trafficking persons for forced labor or services
  - Aggravated Arson
  - Attempted First Degree Murder
  - Aggravated or Especially Aggravated: Kidnapping, Robbery, Burglary
  - Possession of a firearm during the commission / attempt to commit a dangerous felony
- Second-Degree Murder
- Aggravated Rape of a Child
- Aggravated Rape
- Grave Torture

# CONSTITUTIONAL AMENDMENT?

## SJR0919/HJR0859 – SJR0025/HJR0049

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- Pass the Senate by majority vote ✓ March 7, 2024
- Pass the House by majority vote ✓ April 24, 2024
- Pass the Senate again by 2/3 vote ✓ March 17, 2025
- Pass the House again by 2/3 vote ✓ April 21, 2025
- Pass by majority of voters in the next general gubernatorial election **TBD November 3, 2026**

# T.C.A. § 40-11-104

## AUTHORITY TO RELEASE DEFENDANTS

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### JUDICIAL COMMISSIONERS

At any time prior to or at the time the defendant is bound over to the grand jury, judicial commissioners may:

- ROR pursuant to T.C.A. § 40-11-115\* or -116\*; or
- Admit to bail pursuant to T.C.A. § 40-11-117 or -122

### THE TRIAL COURT

At any time, except where contrary to law, the trial court may:

- ROR pursuant to T.C.A. § 40-11-115; or
- Admit to bail pursuant to T.C.A. § 40-11-116, -117 or -122; or
- Alter bail or other conditions of release pursuant to T.C.A. § 40-11-144

## **NEW LAW - T.C.A. § 40-11-148(c) (July 1, 2024)**

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“If a defendant charged with a Class A, B, C, or D felony has been arrested pursuant to a warrant issued under § 40-11-112(b) for failure to comply with the conditions of release, then the defendant **shall only be released by a criminal or circuit court judge.**”

# T.C.A. § 40-11-114

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When not given in open court, bail is given by a written undertaking that:

1. Outlines the conditions of release
2. Contains the agreement of the defendant to:
  - A. Appear in the court having jurisdiction of the offense as directed by the court; and/or
  - B. Pay a certain amount of money for nonappearance
3. Is signed by the defendant, and
4. If made under § 40-11-122(2) (allowing for a written undertaking by defendant and two sureties who are not attorneys or bondsmen), is signed also by court-approved and sufficient surety or sureties.

\*Note: A fax copy has the same legal effect as the original written undertaking.

# HYPOTHETICAL

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You set bond and bond conditions for a defendant. When you ask the defendant to sign that he acknowledges the conditions of bond, he says, “You can’t tell me what to do,” and refuses to sign. It’s clear that he’s just being difficult.

**What now?**

**No bond until defendant complies.**

Law requires an opportunity to make bail, *not* that bail be unconditionally given.

Refusal to comply with conditions means defendant can be held until he/she agrees to comply.

# OPTIONS AVAILABLE TO JUDICIAL COMMISSIONERS FOR THE RELEASE OF A DEFENDANT

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**Release on recognizance or  
Release on execution of an unsecured appearance bond**

(T.C.A. § 40-11-115)



**Impose conditions on release**

(T.C.A. § 40-11-116)



**Require monetary bail**

(T.C.A. § 40-11-117)

\***Holding without bail:** Available ONLY for *capital offenses* “where the proof is evident or the presumption great” (Tenn. Const. Art. I, § 15; T.C.A. § 40-11-102) or for *probation/parole violations* of defendants who have already been convicted of the original criminal offense and are awaiting revocation hearings by the Trial Court or Board of Parole (\*unless that constitutional amendment passes).

# OPTIONS AVAILABLE TO JUDICIAL COMMISSIONERS FOR THE RELEASE OF A DEFENDANT

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**Primary Consideration**

**=**

**Safety of the Community**

**(T.C.A. 40-11-115(a)(2) (July 1, 2024))**

**RELEASE ON RECOGNIZANCE OR  
UNSECURED APPEARANCE BOND**

# **IMPORTANT LIMITATION: T.C.A. § 40-11-115(d) (July 1, 2023)**

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Judicial commissioners **SHALL NOT** ROR defendants charged with:

- A Class A felony;
- A Class B felony;
- Aggravated Assault (T.C.A. § 39-13-102);
- Aggravated Assault Against a Law Enforcement Officer\* or First Responder (T.C.A. § 39-13-116); or
- Felony Domestic Assault (T.C.A. § 39-13-111),

without the approval of a general sessions, criminal court, or circuit court judge with jurisdiction over the charges.

\*added effective July 1, 2024

# RELEASE ON RECOGNIZANCE OR UNSECURED APPEARANCE BOND

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**T.C.A. § 40-11-115(b)—Factors that should be considered to determine whether release will reasonably assure appearance as required *and the safety of the community*:**

1. The defendant's length of residence in the community;
2. The defendant's employment status;
3. The defendant's prior criminal record, including prior RORs or release on bail;
4. Whether, at the time of being charged with the offense, the defendant was on release pending trial, sentencing, or appeal in connection with another offense;

# RELEASE ON RECOGNIZANCE OR UNSECURED APPEARANCE BOND

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5. The nature of the offense, the apparent probability of conviction, and **the likely sentence**, insofar as these factors are relevant to the risk of nonappearance;
6. Any substance use or mental health issues that would be better addressed in a community-based treatment program\*; and
7. Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear, **including, but not limited to, whether the defendant is lawfully present in this state.**

*- new language added effective July 1, 2024.*

# T.C.A. § 40-11-115(c)

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Defendant is charged with a violation of T.C.A. § 55-50-504  
(driving on a cancelled, suspended or revoked license)

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License was cancelled, suspended, or revoked solely for failure to pay litigation taxes,  
court costs, or fines imposed as the result of the disposition of any criminal charge

+

The defendant does *not* have a prior conviction  
for failure to appear in the past 10 years

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**Defendant SHALL be released ROR or on unsecured appearance bond**

## T.C.A. § 40-11-115(e) (July 1, 2023)

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A defendant charged with Aggravated Assault (T.C.A. § 39-13-102) or Assault Against a Law Enforcement Officer\*, First Responder or Nurse (T.C.A. § 39-13-116), where the offense involved strangulation of the victim, **SHALL NOT be released ROR or on an unsecured appearance bond.**

“The magistrate must require the defendant to post bail to reasonably ensure the appearance of the person as required and the safety of the community, in addition to other conditions of release imposed.”

## **NEW LAW - T.C.A. § 40-11-115(f) (April 24, 2025)**

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“In determining . . . whether or not a defendant shall be released, the magistrate may consider hearsay evidence when the magistrate finds that the evidence is reliable if the defendant is accorded a fair opportunity to rebut any reliable hearsay evidence considered by the magistrate.”

This could include documents such as police database printouts, rap sheets and probation violation reports, even if no witness is present to testify about them.

# CONDITIONS OF RELEASE

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If a defendant does not qualify for release on recognizance, “the magistrate shall impose *the least onerous conditions* reasonably likely to assure **the safety of the community and** the defendant’s appearance in court.”

- T.C.A. § 40-11-116(a)  
(amended July 1, 2024)

Conditions of release can be imposed **with** or **without** setting bond. They can accompany a release on recognizance or unsecured appearance bond, or a secured bond.

# CONDITIONS OF RELEASE

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## Generally

**If conditions of release are necessary, a judicial commissioner may impose one or more of the following conditions:**

1. Release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court (NOT the DOC);
  - *A judicial commissioner is NOT permitted to release a defendant charged with a Class A felony, Class B felony, Aggravated Assault, Aggravated Assault against a First Responder, or felony Domestic Assault on this condition without the approval of a general sessions or circuit court judge. (T.C.A. 40-11-116(c) (July 1, 2023))*
2. Impose reasonable restrictions on the activities, movements, associations and residences of the defendant; and/or
3. Impose any other reasonable restriction designed to assure the defendant's appearance, including, but not limited to, the deposit of bail.

(T.C.A. § 40-11-116(b)).

# EXAMPLES OF CONDITIONS OF RELEASE

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- **Breath Alcohol Ignition Interlock Devices (“BAIIDs”)** – Devices designed to allow a driver to start a vehicle if the driver’s Breath Alcohol Concentration (BrAC) is below the set point and to prevent the driver from starting the vehicle if the BrAC is at or above the set point. (1340-03-06-.02(5)).
- **Transdermal Monitoring (“SCRAM”) Devices** – Any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin at least once per one-half (1/2) hour regardless of the person's location, and which detects the presence of alcohol or drugs and tampering, obstructing, or removing the device.
- **Global Positioning Monitoring Devices** – A system that electronically determines and reports the location of an individual through the use of a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology.
  - Does NOT include a system that is implanted in or otherwise invades or violates the individual’s body

**OFFENSES THAT  
REQUIRE SPECIFIC  
CONDITIONS OF RELEASE**

## **NEW LAW - T.C.A. § 40-11-116(d) (July 1, 2024)**

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“If the magistrate imposes conditions on release of a defendant charged with a Class A, B, C, or D felony **and pretrial services are available within the county**, *then the court shall also require the defendant to participate in pretrial monitoring* to ensure that the defendant is complying with the conditions. If the defendant fails to comply with the conditions of release, then the pretrial monitoring agency shall notify the court having jurisdiction of the defendant’s failure to comply.”

# CONDITIONS OF RELEASE

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Commission of certain offenses while out on bail for certain offenses

T.C.A. § 40-11-148(b)

When the defendant is charged with:

- Driving under the influence (T.C.A. § 55-10-401);
- Vehicular assault (T.C.A. § 39-13-106);
- Aggravated vehicular assault (T.C.A. § 39-13-115);
- Vehicular homicide (T.C.A. § 39-13-213(a)(2)); or
- Aggravated vehicular homicide (T.C.A. § 39-13-218)

AND

the above offense, for which bail is being set, was committed while the defendant was released on bail for a prior charge of any of the above listed offenses

→ **Judicial commissioners are *required to consider* the use of special conditions for the defendant, including:**

- Transdermal monitoring devices or other alternative alcohol monitoring devices;
- Electronic monitoring with random alcohol or drug testing; or
- Pretrial residency at an in-patient alcohol or drug rehabilitation center\*

# REMINDER!

## **NEW LAW** - T.C.A. § 40-11-148(c) (July 1, 2024)

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“If a defendant charged with a Class A, B, C, or D felony has been arrested pursuant to a warrant issued under § 40-11-112(b) for failure to comply with the conditions of release, then the defendant **shall only be released by a criminal or circuit court judge.**”

# T.C.A. § 40-11-118(d)(1)

DUI (T.C.A. § 55-10-401),  
Vehicular Assault (T.C.A. § 39-13-106),  
Aggravated Vehicular Assault (T.C.A. § 39-13-115)  
Vehicular Homicide (T.C.A. § 39-13-213(a)(2)), or  
Aggravated Vehicular Homicide (T.C.A. § 39-13-218)

+

Alleged offense involved the use of alcohol

+

**Any** of the following conditions is present:

Alleged offense resulted in a  
collision involving property damage

A minor was present in the vehicle  
at the time of the alleged offense

The defendant's license has  
previously been suspended for  
refusing to submit to a breath test,  
blood test, or both

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Defendant has a prior conviction for  
Reckless Driving, Reckless  
Endangerment, DUI, Vehicular  
Assault, Aggravated Vehicular  
Assault, Vehicular Homicide,  
Aggravated Vehicular Homicide

**An Ignition Interlock Device shall be a condition of the defendant's bail agreement\*,  
*unless* the judicial commissioner determines that ordering an ignition interlock device  
is not in the best interest of justice and public safety.**

\*see next slide for important notes

# IMPORTANT NOTES

T.C.A. § 40-11-118(d)(1)(B): If defendant is indigent, **must** order the portion of the costs of the device that the defendant is unable to pay be paid by the electronic monitoring indigency fund (EMIF).

T.C.A. § 40-11-118(d)(1)(C): If the court does not require a functioning ignition interlock device as a bail condition, the court **SHALL include in its order written findings on why the requirement would not be in the best interest of justice and public safety.**

# T.C.A. § 40-11-118(f)(1)(A)

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Vehicular Assault (T.C.A. § 39-13-106),  
Vehicular Homicide (T.C.A. § 39-13-213(a)(2)), or  
Aggravated Vehicular Homicide (T.C.A. § 39-13-218)

+

**Prior alcohol-related conviction**  
(DUI, Vehicular Homicide (by intoxication), Vehicular Assault,  
Aggravated Vehicular Homicide)

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**A Transdermal Monitoring Device  
shall be a condition of the defendant's bail agreement\***

\*see next slide for important notes

# T.C.A. § 40-11-118(f)(1)(B)

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DUI 3<sup>rd</sup> or greater (T.C.A. § 55-10-401)\*

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Alleged offense involves use of alcohol

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**A Transdermal Monitoring Device  
shall be a condition of the defendant's bail agreement\***

\*see next slide for important notes

# IMPORTANT NOTES

T.C.A. 40-11-118(f)(1)(B) – **If defendant is charged with DUI 3<sup>rd</sup> or greater and the alleged offense involves use of alcohol**, the judicial commissioner SHALL order the transdermal alcohol monitoring device for a minimum period of 90 days of continuous sobriety without any confirmed drinking or tampering events (effective July 1, 2023).

- Only exception to this minimum period is if defendant's case is resolved within the 90-day period.

T.C.A. § 40-11-118(f)(2), (3) – **When a transdermal monitoring device is required as a condition of bail under § 40-11-118(f):**

- **All expenses associated with a transdermal monitoring device as a condition of bail shall be paid by the offender.**
  - NOT Electronic Monitoring Indigency Fund eligible
- The offender shall choose, from a court-approved list, an entity to provide, administer, and monitor the transdermal device ordered as a condition of bail.
- The offender on bail shall remain subject to transdermal monitoring for the duration of the time the offender is released on bail, *unless the judge or judicial commissioner specifically provides otherwise.*
  - **Best practice:** Leave the decision on when to remove a device to the judge.

# T.C.A. § 40-11-118(d)(2)

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DUI (T.C.A. § 55-10-401),  
Vehicular Assault (T.C.A. § 39-13-106),  
Aggravated Vehicular Assault (T.C.A. § 39-13-115),  
Vehicular Homicide (T.C.A. § 39-13-213(a)(2)), or  
Aggravated Vehicular Homicide (T.C.A. § 39-13-218)

+

Defendant has one or more prior conviction for Reckless Driving, Reckless Endangerment, DUI, Vehicular Assault, Aggravated Vehicular Assault, Vehicular Homicide, Aggravated Vehicular Homicide

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Defendant is not subject to the requirements of T.C.A. § 40-11-118(f) (not necessarily alcohol-related)

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**The judicial commissioner SHALL consider the use of special conditions, including:**

- 1. The use of transdermal monitoring devices or other alternative alcohol monitoring devices\***
- 2. The use of electronic monitoring with random alcohol or drug testing; or**
- 3. Pretrial residency in an in-patient alcohol or drug rehabilitation center**

\*see next slide for an important note

# IMPORTANT NOTE

If use of a transdermal monitoring device or other alternative alcohol monitoring device is ordered, and the judicial commissioner determines the defendant to be indigent, the judicial commissioner **SHALL** order the portion of the costs of the device that the defendant is unable to pay be paid by the electronic monitoring indigency fund (EMIF).

# T.C.A. § 40-11-150(a)

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Child Abuse / Aggravated Child Abuse

Child Neglect / Aggravated Child Neglect

Child Endangerment /  
Aggravated Child Endangerment

Neglect / Aggravated Neglect  
of an Elderly or Vulnerable Adult

Abuse / Aggravated Abuse  
of an Elderly or Vulnerable Adult

Stalking / Aggravated Stalking /  
Especially Aggravated Stalking

Violation of an Order of Protection

Any offense against a person where the  
victim is a victim of domestic abuse,  
sexual assault, or stalking as defined in

T.C.A. § 36-3-601\*  
(next slide)

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**Review of facts of the arrest and detention of the defendant and,  
via written findings where possible, determine whether the defendant is:**

- 1. A threat to the alleged victim;**
- 2. A threat to public safety; and**
- 3. Reasonably likely to appear in court.**

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**Impose one or more condition of release or bail to protect the victim & ensure defendant's appearance**

(see next slides)

# T.C.A. § 36-3-601: Victim

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## **Domestic Abuse Victim**

- (A) Adults or minors who are current or former spouses;
- (B) Adults or minors who live together or who have lived together;
- (C) Adults or minors who are dating or who have dated or who have or had a sexual relationship;
  - “Dating” & “dated” do not include fraternization between two individuals in a business or social context.
- (D) Adults or minors related by blood or adoption;
- (E) Adults or minors who are related or were formerly related by marriage; or
- (F) Adult or minor children of a person in a relationship that is described in (A)-(E).

**Sexual Assault Victim** – Any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape (T.C.A. §§ 39-13-502, 39-13-503, 39-13-506, 39-13-522) or sexual battery (T.C.A. §§ 39-13-504, 39-13-505, 39-13-527).

**Stalking Victim** – Any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking (T.C.A. § 39-17-315).

# T.C.A. § 40-11-150(b)

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## Conditions may include:

1. An order enjoining defendant from threatening to commit or committing specified offenses against the alleged victim;
2. An order prohibiting defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;
3. An order directing defendant to vacate or stay away from the alleged victim's home and to stay away from any other location where the victim is likely to be;

# T.C.A. § 40-11-150(b) (continued)

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4. An order prohibiting defendant from using or possessing a firearm or other weapon specified by the judicial commissioner;
5. An order prohibiting defendant from possessing or consuming alcohol, controlled substances or controlled substance analogues;
6. An order requiring defendant to carry or wear a global positioning monitoring system device and, if able, pay the costs associated with operating that device and the electronic receptor device provided to the victim (see T.C.A. § 40-11-152); and
7. **Any other order required to protect the safety of the alleged victim and to ensure the appearance of defendant in court.**

# T.C.A. § 40-11-150(c)

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**In addition to** imposing one (1) or more conditions of release, a judicial commissioner shall:

- (1) Issue a written order for conditional release (see next slide) containing the conditions of the release on a form prepared and distributed by the AOC;
- (2) Immediately distribute a copy of the order to the law enforcement agency having custody of the defendant, which agency shall file and maintain the order in the same manner as is done for orders of protection; and
- (3) Provide the law enforcement agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.

_____ Court _____ County _____, TN	<b>ORDER GRANTING BAIL FOR          ABUSE CASES</b>	<b>Case Number</b> _____
<b>STATE OF TENNESSEE vs.</b> _____		

Pursuant to Tennessee Code Annotated, Section 40-11-150, the Court has reviewed the facts of the arrest and detention of the defendant and determines and finds that the defendant: (check where applicable)

- 1. Is a threat to the alleged victim, \_\_\_\_\_ (hereinafter referred to as "the alleged victim" or "victim") or other family or household member.
- 2. Is a threat to the public safety.
- 3. Is reasonably likely to appear in court.
- 4. Has been arrested for a criminal offense defined in title 39, chapter 13, in which the alleged victim of the offense is a domestic abuse victim as defined in §36-3-601, and that there is probable cause to believe the respondent either:
  - (A) Caused serious bodily injury, as defined in §39-11-106, to the alleged domestic abuse victim; or
  - (B) Used or displayed a deadly weapon, as defined in §39-11-106.
- 5. Has been arrested for the offense of aggravated assault, under T.C.A. §39-13-102(a)(1)(i), (a)(1)(iii), or (a)(1)(iv), in which the alleged victim of the offense is a domestic abuse victim as defined in §36-3-601, and that there is probable cause to believe the respondent:
  - (A) Caused serious bodily injury, as defined in T.C.A. §39-11-106, to the alleged domestic abuse victim;
  - (B) Strangled or attempted to strangle the alleged domestic abuse victim; or
  - (C) Used or displayed a deadly weapon, as defined in T.C.A. §39-11-106.

**\*\* (Sections A - E below must be checked if the court finds #4 OR #5 above) \*\***

**NO CONTACT ORDER**

Pursuant to the above findings, the Defendant's release or bail is conditioned on the following and it is **ORDERED** that the following NO CONTACT order(s) are entered:

*(Sections A - E below must be checked if the court finds #4 OR #5 above)*

- A. The defendant is enjoined from threatening to commit or committing specified offenses set forth in the warrant and against the alleged victim or other family or household member.
- B. The defendant is prohibited from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim either directly or indirectly. Contact includes but is not limited to telephoning, emailing, text messaging, communicating through the use of social media platforms, talking to, or using third parties to initiate contact.
- C. The defendant is directed to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be.
- D. The defendant is prohibited from using or possessing a firearm or other weapon specified by the court as follows: \_\_\_\_\_
- E. The defendant is prohibited from possessing or consuming alcohol or controlled substances.
- F. The defendant is ordered to not abuse, threaten to abuse, hurt or try to hurt, or frighten the alleged victim and/or the alleged victim's minor children under 18.
- G. Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court as determined by this court as follows: \_\_\_\_\_

**Regarding the GLOBAL POSITIONING MONITORING SYSTEM, the Court finds as follows:**

*(If the court finds #5 above the court must require GPS. GPS can be waived if court finds #1 and #2 are no longer applicable)*

- That the defendant's participation in a global positioning monitoring system will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial. That the court has discussed the global positioning monitoring position with the victim per T.C.A. § 40-11-152(d) and the victim has consented to participate in the system, including victim notification. The court has informed the victim that he/she should contact \_\_\_\_\_ if he/she is in need of immediate assistance.
- That the court has discussed the global monitoring position system with the victim per T.C.A. § 40-11-152(d) and the victim has refused to participate in the system.
- That the defendant no longer poses a threat to the victim or public safety, and therefore the use of global position system monitoring is WAIVED.

**ORDER REQUIRING GLOBAL POSITIONING MONITORING SYSTEM**

(Check all applicable)

- The defendant shall wear a global positioning monitoring system device.
- The defendant shall pay the costs associated with operating that device and any electronic receptor device or cellular device application provided to the victim, pursuant to T.C.A. § 40-11-152.
- The entity that operates the global position monitoring system shall notify the law enforcement officer, listed above, and the appropriate emergency communications dispatch center if a defendant violates a condition of the bond imposed under this section.
- The entity that operates the cellular device application or electronic receptor device shall provide the victim with an email containing the enrollment procedures for the victim notification cellular device application or electronic receptor device.
- The defendant is directed to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be, including these specific locations that the victim has requested the defendant to stay away from: \_\_\_\_\_

BAIL SET AT: \_\_\_\_\_ TWELVE (12) HOUR HOLD EXPIRES: \_\_\_\_\_ : \_\_\_\_\_ M.

If #5 above applies, Twelve (12) Hour Hold Extended \_\_\_\_\_ Hours (up to 24 Hours after the time of arrest). TWELVE (12) HOUR HOLD PLUS ADDITIONAL \_\_\_\_\_ HOUR HOLD EXPIRES: \_\_\_\_\_ : \_\_\_\_\_ M.

IT IS FURTHERED ORDERED that a copy of this order be given to the defendant, the victim, and all appropriate law enforcement agencies.

\_\_\_\_\_  
 Judge Date

I acknowledge these conditions:

\_\_\_\_\_  
 Defendant Date

**ORDER DISCHARGING DEFENDANT FROM CONDITIONS OF BAIL**

For good cause, IT IS ORDERED that the defendant is discharged from all conditions of bail set above, except \_\_\_\_\_ and the clerk shall send notice to appropriate law enforcement agencies.

\_\_\_\_\_  
 Judge Date

**NOTICE TO DEFENDANT**

If you violate this order thinking that the other party has given you permission to do so, you are wrong and can be arrested and prosecuted. The terms of this order cannot be changed by agreement of the parties. Only the court can change this order. VIOLATION OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT AND/OR A CLASS A MISDEMEANOR PURSUANT TO T.C.A. §39-13-113 AND MAY CAUSE YOUR BAIL TO BE REVOKED.

If you hurt or try to hurt anyone while this Order, probation or diversion is in effect, you may face separate charges for aggravated assault, a Class C felony. (T.C.A. § 39-13-102(c)).

# NEW LAW - T.C.A. § 40-11-152 (July 1, 2024)

## GLOBAL POSITIONING MONITORING SYSTEM

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A judicial commissioner **may** order any defendant arrested for: stalking, aggravated stalking or especially aggravated stalking; any criminal offense against a person in which the victim is a victim of domestic violence, sexual abuse, or stalking; or violation of an order of protection, to do the following as a condition of bail:

1. Carry or wear a GPS device and pay the costs of operating that system\*;

**AND**

2. If the alleged victim of the offense consents to participate after receiving the **statutorily required information** (next slide), order the defendant to pay, if able, the costs associated with providing the victim with a cellular device application or an electronic receptor device that:
  - is capable of receiving the monitoring system information from the device carried or worn by the defendant; and
  - notifies victim if defendant is at/near a location defendant has been ordered to stay away from; and
  - notifies the victim if the defendant is within a prescribed proximity of the victim's cellular device or electronic receptor device.

## STATUTORILY REQUIRED INFORMATION

**Before ordering the defendant to pay, if able, the costs associated with providing the victim with an electronic receptor device, a judicial commissioner MUST provide to an alleged victim information regarding:**

1. The victim's right to participate or to refuse to participate, and the procedure for requesting termination of the victim's participation;
2. How the technology functions, the risks and limitations of the technology, and the extent to which the system will track and record the victim's location and movements;
3. Any locations that defendant is ordered to refrain from going to or near and the minimum distances, if any, that defendant must maintain from those locations;
4. Any sanctions that may be imposed on defendant for violating a bond condition imposed under § 40-11-152;

5. The procedure the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the monitoring equipment fails;
6. Community services available to assist the victim in obtaining shelter, counseling, education, childcare, legal representation, and other assistance available to address the consequences of domestic violence; and
7. The fact that the victim's communications with the judicial commissioner concerning the monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.

**The ~~judicial commissioner~~ **arresting officer** shall provide to a victim who participates in a monitoring system the name and phone number of an appropriate emergency communications dispatch center and the arresting agency whom the victim may call to request immediate assistance if the defendant violates a condition of bond.**

# **NEW LAW** - T.C.A. § 40-11-152 (July 1, 2024) **GLOBAL POSITIONING MONITORING SYSTEM**

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If a defendant is released without a GPS device, the court shall make reasonable efforts to directly contact the victim and inform him/her that the offender will be released without a GPS device and that the victim will not be provided with access to notifications of the offender's proximity.

# T.C.A. § 40-11-152(c)

## GLOBAL POSITIONING MONITORING SYSTEM

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- Before ordering the defendant to **carry or wear a global positioning monitoring system device**, a judicial commissioner must:
  1. Afford an alleged victim an opportunity to provide the judicial commissioner with a list of areas from which the victim would like the defendant excluded; and
  2. Consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going near or to.
- **If the condition is imposed**, the judicial commissioner shall specifically describe the locations that the defendant has been ordered to refrain from going to or near AND the minimum distances, if any, that the defendant must maintain from those locations.

# T.C.A. § 40-11-152

## GLOBAL POSITIONING MONITORING SYSTEM

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### Other “Need-to-know” Provisions:

- (f) In determining whether to order a defendant’s participation in a global positioning monitoring system, a judicial commissioner **shall consider** the likelihood that the defendant’s participation will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial.
- (g) Alleged victim may terminate his or her participation in the monitoring system at any time.
  - The judicial commissioner may not impose sanctions on the victim for requesting termination of the victim’s participation in or refusing to participate in a monitoring system.
- (i) The judicial commissioner that imposes a global positioning monitoring system condition **shall:**
  - Provide the electronic monitoring provider with contact information for the appropriate emergency communications dispatch center and the arresting agency; and
  - Order the electronic monitoring provider to notify the appropriate entities order pursuant to the written protocol in the contract with the court.

# T.C.A. § 55-10-419

## ELECTRONIC MONITORING INDIGENCY FUND

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Effective October 1, 2023

The EMIF includes two accounts monitored by the State Treasury:

### 1. Ignition Interlock Device Account

- Covers eligible costs associated with the lease, purchase, installation, removal, and maintenance of IIDs, or with any other cost or fee associated with a functioning IID for persons determined by the court to be indigent.
- If defendant is indigent, the court shall order the defendant to pay \$30 per month, plus any other portion of the costs that he/she is able to pay, as determined by the court. Any portion defendant is unable to pay shall come from the EMIF account.

### 2. “Alternative Device Account”

- Transdermal Monitoring Device, Other Alternative Alcohol or Drug Monitoring Device, or Global Positioning Monitoring Device
- Covers eligible costs associated with the use of such devices when required by the court upon conviction, or, with respect to *global positioning monitoring devices*, if required as a bond condition pursuant to T.C.A. § 40-11-152, for persons determined by the court to be indigent.
- If defendant is indigent, the court shall order defendant to pay \$30 per month, plus any portion of the costs that he/she is able to pay, as determined by the court. Any portion defendant is unable to pay shall come from the EMIF account, subject to availability of funds.
- Counties have to opt in.

→ No more than \$200 per month for each device ordered, with at least \$30 of that amount coming from the defendant.

# T.C.A. § 40-11-106

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“Before the sheriff, magistrate, or other officer admits to bail and releases a defendant who is arrested for **any kidnapping offense involving a hostage or victim**, the releasing authority *shall make all reasonable and diligent efforts to notify the hostage or victim of the alleged offense that the defendant has been admitted to bail and is being released.*”

→If the hostage or victim is under 18 or otherwise unavailable, the releasing authority shall make all reasonable and diligent efforts to notify the family, if any, of the hostage or victim that the defendant is being released.

# T.C.A. § 40-35-321(e)

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## Violent Felony

First Degree Murder  
Second Degree Murder  
Aggravated Kidnapping  
Especially Aggravated Kidnapping  
Aggravated Assault  
Aggravated Child Abuse  
Robbery  
Aggravated Robbery  
Especially Aggravated Robbery

Aggravated Burglary  
Especially Aggravated Burglary  
Carjacking  
Sexual Battery  
Sexual Battery by an Authority Figure  
Aggravated Sexual Battery  
Statutory Rape by an Authority Figure  
Aggravated Statutory Rape  
Rape

Aggravated Rape  
Rape of a Child  
Aggravated Rape of a Child  
Aggravated Arson  
Aggravated vehicular homicide  
Criminally negligent homicide  
Reckless homicide  
Vehicular homicide  
Voluntary manslaughter

or, for any of these offenses:

Attempt  
Solicitation  
Conspiracy  
Criminal Responsibility  
Facilitating the Commission  
Accessory After the Fact

=

**Provision of a DNA sample is required  
as a condition of release on bond or recognizance**

# 12-HOUR HOLDS

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# T.C.A. § 40-11-150(h), (k)

Domestic Abuse  
(any crime where victim is a victim  
under [T.C.A. § 36-3-601](#))\*

Sexual Assault  
(including any form of  
Rape or Sexual Battery,  
all degrees)

Stalking  
(all degrees)

=

**12-Hour Hold**

Physical Harm or Abuse  
of an Elderly or Vulnerable Adult

Neglect or Aggravated Neglect  
of an Elderly or Vulnerable Adult

=

**12-Hour Hold**

## Exception

May release in less than 12 hours if,  
*in written findings* attached to the  
warrant, the judicial commissioner  
finds the offender is not a threat to  
the victim.

→ IF RELEASED PRIOR TO END  
OF THE 12-HOUR HOLD, the  
judicial commissioner shall make  
**all reasonable efforts to directly  
contact the victim** and inform the  
victim that the person charged with  
the offense will be released prior to  
the conclusion of the 12-hour  
period.

# T.C.A. § 40-11-150(m)

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Any offense where victim is a [domestic abuse victim](#)

+

Finding that there is probable cause to believe the defendant either:

Caused serious bodily injury to the victim (T.C.A. § 39-11-106)

-OR-

Used or displayed a deadly weapon (T.C.A. § 39-11-106)

=

**12-hour hold**

(unless finding that defendant no longer poses a threat to victim/public safety)

+

**No Contact Order prior to release**

containing all conditions applicable for the protection of the victim

# NEW LAW - T.C.A. § 40-11-150(n) (July 1, 2024)

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Aggravated Assault where victim is a [domestic abuse victim](#)

+

Finding that there is probable cause to believe the defendant either:

Caused serious bodily injury to the victim (T.C.A. § 39-11-106)

Strangled or attempted to strangle the victim

Used or displayed a deadly weapon (T.C.A. § 39-11-106)

=

**May extend 12-hour hold to 24 hours after time of arrest**  
(unless finding that defendant no longer poses a threat to victim/public safety)

+

**No Contact Order prior to release**  
containing all conditions applicable for the protection of the victim

+

**Order the defendant to wear a GPS device pursuant to T.C.A. § 40-11-152**

# T.C.A. § 40-11-153

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Unauthorized Camping on State Property (T.C.A. § 39-14-414)

Vandalism (T.C.A. § 39-17-303)

Inciting to Riot (T.C.A. § 39-17-304)

= **12-Hour Hold**

Rioting / Aggravated Rioting (T.C.A. §§ 39-17-302, 39-17-303)

Disrupting a Meeting or Procession (T.C.A. § 39-17-306)

Obstructing a Highway (T.C.A. § 39-17-307(a)(1))

## Exception

May release the defendant in less than 12 hours if the judicial commissioner finds, in writing, attached to the warrant and preserved as part of the record, that defendant is not likely to immediately resume the criminal behavior based on the circumstances of the arrest and defendant's prior criminal history, if any.

# SETTING MONETARY BAIL

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“Absent a showing that conditions on a release on recognizance will reasonably ~~assure~~ **ensure the safety of the community and** the appearance of the defendant as required, the magistrate shall, ~~in lieu of the conditions of release set out in § 40-11-115 or § 40-11-116,~~ **must** require bail to be given.”

- Tenn. Code Ann. § 40-11-117 (July 1, 2024)

***Weatherspoon v. Oldham*, 2018 U.S. Dist. LEXIS 30386 (W.D. Tenn. Feb. 26, 2018)** (finding that the trial court violated plaintiff’s Procedural Due Process rights by failing to consider whether non-monetary conditions of release could satisfy the purposes of bail).

# T.C.A. § 40-11-148(a) (July 1, 2023)

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If a defendant is charged with the commission of one or more bailable offenses while out on bail / ROR for a criminal offense, the judicial commissioner **MUST set monetary bail on the new offense “in an amount not less than twice that which is customarily set for the [new] offense charged.”**

# REMINDER!

## **NEW LAW** - T.C.A. § 40-11-148(c) (July 1, 2024)

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“If a defendant charged with a Class A, B, C, or D felony has been arrested pursuant to a warrant issued under § 40-11-112(b) for failure to comply with the conditions of release, then the defendant **shall only be released by a criminal or circuit court judge.**”

# SETTING BAIL

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“Bail shall be set *as low as the court determines is necessary* to reasonably assure the **safety of the community and the appearance of the defendant as required.**”

– T.C.A. § 40-11-118  
(July 1, 2024)

**In determining the amount of bail necessary to reasonably assure the appearance of the defendant while at the same time protecting the safety of the public, a judicial commissioner shall consider the following:**

1. The defendant’s length of residence in the community;
  2. The defendant’s employment status and history and financial condition; **provided, that, the defendant’s ability to pay shall not be considered.**
- \*Effective May 1, 2024

3. The defendant's family ties and relationships;
4. The defendant's reputation, character and mental condition;
5. The defendant's prior criminal record, record of appearance at court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings;

6. The nature of the offense and the apparent probability of conviction and the likely sentence;
7. The defendant's **prior juvenile record, as authorized by 37-1-133(b)(1), and** prior criminal record and the likelihood that because of that record the defendant will pose a risk of danger to the community; \*Effective May 9, 2025

8. The identity of responsible members of the community who will vouch for the defendant's reliability (Can't vouch for more than 2 defendants at any time while charges are pending or forfeiture is outstanding); and
9. Any other factors indicating the defendant's ties to the community or bearing on the risk of the defendant's willful failure to appear, **including, but not limited to, whether the defendant is lawfully present in this state.** \*Effective July 1, 2024

# ALTERING BAIL

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A judicial commissioner **DOES NOT** have authority to alter bail or conditions of release after a defendant has already been admitted to bail.

T.C.A. § 40-11-143; Tenn. AG Op. No. 12082 (Aug. 23, 2012).

**Only the Court can make changes!**

# **CASE LAW**

# JUDICIAL COMMISSIONERS MUST CONDUCT AN **INDIVIDUALIZED ASSESSMENT** OF THE § 40-11-118 FACTORS FOR EACH SPECIFIC DEFENDANT

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**Hill v. Hall, 2019 U.S. Dist. LEXIS 173758 (M.D. Tenn. Oct. 7, 2019):** Emphasizing that, in determining options for release, important considerations include:

1. The defendant's ability to pay; and
2. Whether non-monetary alternatives could serve the same purposes as bail.

**Tenn. Att'y Gen. Op. No. 05-018 (Feb. 4, 2005)**

- Opining that Tennessee law entitles a defendant “to an *individual determination of bond* whether the arrest is warrantless arrest, arrest pursuant to a warrant, or an arrest pursuant to a capias or attachment.” (emphasis added).

# JUDICIAL COMMISSIONERS MUST CONDUCT AN **INDIVIDUALIZED ASSESSMENT** OF THE § 40-11-118 FACTORS FOR EACH SPECIFIC DEFENDANT

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## *Staley v. Wilson County* (M.D. Tenn. 2006)

- Class action suit against Wilson County, alleging its judicial commissioners set bail for arrested individuals based on an arbitrary formula that was not based on the individual's particular likelihood to flee or be a danger to the community if released.
- Wilson County judicial commissioners used a preset bail schedule based on the offense charged or other criteria that was not based on the individual, on some occasions would refuse to set bail, or would at times increase bail based on a request by a police officer.
- The parties reached a Settlement Agreement that provided for a comprehensive overhaul of the system of setting bail by Wilson County Judicial Commissioners, including required training of judicial commissioners and the creation of a system to track bail set by judicial commissioners.

# USE OF A MATRIX, GUIDELINE, OR SUGGESTED RANGE IN SETTING BAIL

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Use of a matrix, guideline, or suggested range in setting bail is permissible as long as the judicial commissioner conducts an individualized assessment of the bail factors and the bond is adjusted accordingly.

- ***Malmquist v. Metro. Gov't of Nashville*, 2011 U.S. Dist. LEXIS 136696, at \*28-29 (M.D. Tenn. 2011)** – Finding that there is no “blanket prohibition against a magistrate beginning the bail determination process with a default amount corresponding to the particular charge of arrest – or ending with that same amount – when setting bail in the exercise of his or her discretion, according to the factors and directives set out in T.C.A. § 40-11-118.”
- ***Fields v. Henry County*, 701 F.3d 180 (6th Cir. 2012)** – noting that use of guidelines in setting bail is not inherently unconstitutional as long as the bail set is proportional to the circumstances presented.

## ***McNeil v. Cmty. Prob. Servs., LLC* (M.D. Tenn. 2018)**

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A group of probationers sued Giles County, its Sheriff, and several probation companies, alleging the defendants violated their “substantive right against wealth-based detention” under the equal protection and due process clauses of the Constitution by setting bail (1) without regard to their ability to pay, (2) outside the presence of the arrestees, and (3) without determining whether they posed a danger to the community or risk of flight.

- Court granted a preliminary injunction prohibiting the Sheriff from “detaining any person on misdemeanor probation...based on a secured financial condition of release” unless bail was set after considering the arrestee’s ability to pay, necessity of detention, and alternatives to bail.
- The County and Sheriff settled with the plaintiffs for \$2 million in late 2021.

## ***Nashville Cmty. Bail Fund v. Gentry* (M.D. Tenn. 2020)**

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- NCBF – a nonprofit in Nashville that pays cash bail for individuals who cannot afford to do so – relies on a “revolving fund”: Pays cash bail, and when defendant’s case is completed, accepts the refund and places it back into NCBF’s budget to be applied toward posting cash bail for another pretrial detainee.
- 20<sup>th</sup> Judicial District Local Rules of Practice and Clerk (Gentry) conditioned acceptance of a cash bond on the depositor’s signing an acknowledgment that fines, costs, and restitution would be subtracted from the cash bond before return. NCBF sued on 2/5/2020.

**Held: Requiring defendant to agree to post-conviction bail garnishment in order to secure pretrial release constitutes excessive bail under the Eighth Amendment.**

## ***Nashville Cmty. Bail Fund v. Gentry* (M.D. Tenn. 2020)**

In its opinion, the Court discussed the effect of a failure to obtain pretrial release:

- **“A person on pretrial release can continue to work, make money, and take part in family life, while a detained person may lose his job or even custody of his children.”**
- **“A person on pretrial release can also participate more directly and comprehensively in his defense.”**
  - Can seek continuances to investigate without spending more time in jail
  - Not subject to the daily psychological toll of incarceration
  - Can make decisions about how to proceed with his case while surrounded by family and friends

# ***Torres v. Collins* (E.D. Tenn. 2020)**

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- Plaintiffs alleged that Hamblen County “routinely impose[d] money bail without any consideration of or findings about an individual’s financial circumstances,’ which results in wealth-based detention of indigent individuals.”
  - The parties stipulated that initial bail is set without consideration of the individualized bail factors, that no factual findings are made, and that, while pretrial detainees can ask for a bond modification at a 48-hour review hearing, their requests are generally ignored.
- The Court:
  - Granted a preliminary injunction in 2020 based on plaintiffs’ due process argument
  - Granted summary judgment in 2023 in favor of defendants as to the equal protection claim.
  - Granted summary judgment in 2023 in favor of plaintiffs as to their procedural due process and right to counsel claims.
  - In September 2024, granted summary judgment to defendants in part and entered a permanent injunction against defendants with respect to the procedural due process claim.

## **Torres v. Collins – Equal Protection Argument**

- There is nothing inherently unconstitutional about setting initial bail *ex parte* without a hearing. (Preliminary Injunction Order.)
- “To the extent that the amount of bail may disadvantage those unable to pay due to indigency, that fact alone does not show that they were treated differently.” (Preliminary Injunction Order.)
- “The record does not show that Defendants singled Plaintiffs out because of their inability to pay. The imposition of bail offers an arrestee the opportunity to prove that he will appear for his trial by making a concession of some sort—in this case a financial concession . . . Here, Defendants detained Plaintiffs because they could not offer the concession required to ensure that they would appear for trial.” (2023 Order.)
  - They were not discriminated against based on inability to pay, but rather, based on failure to ensure appearance at trial.

## **Torres v. Collins – Procedural Due Process Argument**

- In granting the preliminary injunction, the Court took issue with the fact that requests for bond modifications are not “generally considered” at the initial appearance where “the bail amount is initially set without any regard for an arrestee’s individual circumstances.”
- “Although there is a generally recognized interest in protecting the public and ensuring court appearances, those interests are only a starting point and not a substitute for an actual inquiry and weighing of interests and factors in addressing bail issues.”
- “Assuming the judge hears bail modification requests at the initial appearance hearings, the transcripts from those hearings that have been provided to this Court demonstrate a complete lack of any meaningful individualized hearing.”

## Torres v. Collins – Order Granting Preliminary Injunction

“[T]he government has a compelling interest in protecting the public and ensuring a criminal defendant attends trial. However, that interest does not exist in a vacuum. **The government must actually utilize procedures that provide for a meaningful, individualized hearing where the government’s interest is weighed against the liberty interest of an arrestee. Central to that inquiry is the necessity of bail and an arrestee’s ability to pay bail.** To comport with due process, that hearing must also include an opportunity to be heard and present evidence, a consideration of alternative conditions for release and, at a minimum, verbal findings of fact regarding these factors. Further, the Court holds that a bail hearing must be within a reasonable period of time of arrest. The Supreme Court held that the probable cause determination had to be within 48 hours. . . . It has not applied that same time restriction to bail hearings. However, some courts have. *Dixon v. City of St. Louis*, 2019 WL 2437026 (E.D. Mo. June 11, 2019) (requiring individualized hearing within 48 hours of arrest that includes inquiry into an arrestee’s ability to pay and opportunity to be heard).”

Order, pp. 26-27.

## **Torres v. Collins – 2024 Order**

- The Court granted summary judgment to defendants on the substantive due process claim, finding that the Eighth Amendment was the proper vehicle for the claims, but Plaintiffs did not assert such a claim.
- The Court found that Plaintiffs established an actual constitutional violation – procedural due process and Sixth Amendment violations (though Plaintiffs disclaimed any Sixth Amendment claim).
  - The Court therefore made its preliminary injunction permanent – the court **MUST** conduct an individualized hearing on an arrestee’s bail conditions.

**Case has been fully resolved.**

# WHAT THIS MEANS FOR JUDICIAL COMMISSIONERS

Regardless of the holding in *Torres*, Tennessee's Attorney General has opined for many years that judicial commissioners must also make individualized findings when setting bail...and this is clearly supported by the statutory language.

While you are not in a position to hold a full-blown evidentiary hearing, you should still gather whatever relevant information you can and evaluate bond based on ALL of the factors, giving consideration to the interests of the defendant, the State, and the public.

## WHAT THIS MEANS FOR JUDICIAL COMMISSIONERS

While the holding in *Torres* focused on bail review hearings during the initial court appearance, the Court's emphasis on the **importance of individualized determinations** regarding the **necessity of bail** and, specifically, the **ability of the defendant to pay**, gives us an indication of what courts are likely to focus on in reviewing challenges of all bail determinations – including those made by a judicial commissioner.

# BUT...

## **Just. City, Inc. v. Bonner**

- On July 31, 2024, Just. City sued the Shelby County Sheriff, Judge Wilson, and Shelby County judicial commissioners in their official capacities to prevent enforcement of HB1719, the amendment to T.C.A. 40-11-118(b) that required judicial officers setting bail to consider a detainee's "financial condition; provided, that, the defendant's ability to pay shall not be considered."
- Just. City alleged the new law violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment by making "Shelby County officials abandon their constitutional obligations" and the terms of a memorandum of understanding with Just City regarding the use of a written assessment to calculate ability to pay when setting bail.
- Just City sought a preliminary injunction and expedited declaratory judgment.
- Defendants filed a motion to dismiss.

## **Just. City, Inc. v. Bonner**

- On November 29, 2024, the W.D. Tenn. issued an order in the case. The Court:
  - DENIED Just City's request for preliminary injunction & request for expedited declaratory judgment.
    - Cited *Nashville Cmty. Bail Fund* in addressing third party standing, holding that Just City may lack standing to bring its claims.
    - In addressing the constitutionality arguments, the Court noted that while the cited TN cases referred to ability to pay, the cases “lack discussion of other parts of the statute that bail-setters consider here—like financial condition, financial ties, and the need for detention based on flight risk or danger to the community. And so these cases suggest that considering a detainee's ability to pay is enough to pass constitutional muster when other considerations are absent, but they do not show it is a requirement.”
    - **The Court therefore determined that Just City was not likely to succeed on the merits of its constitutional claims.**

## **Just. City, Inc. v. Bonner**

- On November 29, 2024, the W.D. Tenn. issued an order in the case. The Court:
  - DENIED the defendants' motion to dismiss.
  - Found that Just City plead an injury in fact, causation, and redressability to demonstrate standing.
  - Noted: “Just City alleges that indigent detainees remain in jail just because they lack resources. Tennessee state judges must issue bail orders without considering their ability to pay. . . . And that “[t]he Sheriff began enforcing the resulting unconstitutional bail orders to detain arrestees who are unable to pay for their release.” . . . If such orders are unconstitutional as wealth-based detentions—which existing case law suggests might be true, see, e.g., *Bearden*, 461 U.S. 660; *Walker*, 901 F.3d 1245—then these alleged facts state a plausible claim to relief on Just City's constitutional challenge to the statute.”

## **Just. City, Inc. v. Bonner**

- *Bearden v. Georgia* (U.S. 1983) (cited by *Bonner* Court) - SCOTUS ruled that a sentencing court cannot properly revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence and findings that he was somehow responsible for the failure or that alternative forms of punishment were inadequate to meet the State's interest in punishment and deterrence. Applied to CONVICTED defendants.
- *Walker v. City of Calhoun* (11<sup>th</sup> Cir. 2018) (cited by *Bonner* Court) – 11<sup>th</sup> Circuit analyzed the scope of *Bearden*, an indigent detainee's liberty rights, and what standards to apply to wealth-based detentions. The Court noted that "differential treatment by wealth is impermissible only where it results in a total deprivation of a benefit because of poverty." In other words, treating people differently based on their ability to pay a fee is not a constitutional problem in every instance.

## **Just. City, Inc. v. Bonner**

- Just City filed an Amended Complaint on March 6, 2025 and moved to certify the case as a class action – adding individual detainees as plaintiffs (to defeat their issues with standing).
- The parties are engaging in discovery.
- Defendants were ordered to respond to discovery on July 18, 2025.
- We will see where this goes...

# ***Knox County***

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- In 2022, the Southern Poverty Law Center and Civil Rights Corps wrote a letter to Knox County officials alleging that Knox County's bail practices violated state and federal law
- The complaints mostly centered on the individualized bail hearings afforded by the court as opposed to the initial bail determination, but there were complaints about the initial bail determinations:
  - “The magistrate’s bail determination appeared to be utterly arbitrary: when SPLC attorneys asked how magistrates determined the bail amount, one magistrate licked his finger and pointed to the sky, as if pulling a number out of thin air or deciding which way the wind was blowing; another magistrate conceded to a reporter that his bail practices violated the Constitution.”
- No litigation thus far

# *Sullivan County*

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- In 2023, the Civil Rights Corp., the same group that spearheaded the Hamblen County case, sent a memorandum to Sullivan County criticizing their bail practices.
- CRC claimed they observed the following practices while inspecting bail hearings in Sullivan County: Magistrates set bail 12-24 hours before a hearing and there is no transcript or recording of the bail determination; if the defendant cannot afford bail, they can be detained in the Sullivan County jail for one to two weeks before arraignment; judges affirm money bail set by magistrates with no evidentiary hearing and arraignments are not transcribed or reported; defendants typically have no lawyer representation at bail hearings; and the county has a Pretrial Release Program, but many judges veto nominations for release.
- No litigation thus far.

**QUESTIONS????**