

JUDICIAL
COMMISSIONER
TRAINING

Tennessee Bail Bonds

*Essential training
for setting,
revoking, and
forfeiting bail*

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· Jurisdiction: Tennessee

By the end of this training, you will be able to:

- 01 Apply Tennessee's constitutional and statutory bail framework
- 02 Identify bailable versus non-bailable offenses
- 03 Set bail using the least restrictive conditions
- 04 Apply the rebuttable \$10,000 presumption for serious felonies
- 05 Understand due process requirements for bail revocation
- 06 Recognize bondsmen roles, duties, and prohibited conduct
- 07 Administer bail forfeiture procedures
- 08 Distinguish remedial from punitive detention

The right to bail

TENN. CONST. ART. I, § 15

“That all prisoners shall beailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great.”

TENN. CONST. ART. I, § 16

“That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

KEY PRINCIPLE Bail is **mandatory** in every case except a capital offense where the proof is evident or the presumption great.

Who may set bail

“Before trial, all defendants shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great.”

§ 40-11-102

Committing magistrate	Full authority
Circuit or criminal court judge	Full authority
Clerk	Only when judge absent > 3 hours; capped at \$1,000 misdemeanor / \$10,000 non-person felony / \$50,000 person felony / \$100,000 homicide

When may bail be denied?

STEP 1

Is the offense capital by statutory classification?

STEP 2

Is the proof evident, or the presumption great?

RESULT

Both yes → bail may be denied. Otherwise → set bail.

EXAMPLE First-degree murder is a capital offense — but denial still requires a factual hearing on the strength of the State's proof.

The two-part bail standard

1

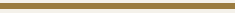
Give first consideration to the safety of the community.

2

Impose the least restrictive conditions that reasonably ensure appearance *and* community safety.

“Least restrictive” is not “lowest amount.” It means conditions tailored to this defendant’s specific risks.

From least to most restrictive



-  Personal recognizance
-  Unsecured appearance bond
-  Supervisory release to a qualified person or organization
-  Restrictions on activities, movement, associations, or residence
-  Deposit of bail — secured bond
-  **Pretrial monitoring** — mandatory for Class A–D felonies where services exist

T.C.A. § 40-11-115 (D)

\$10,000

Rebuttable presumption for serious felonies

No personal recognizance, no unsecured bond. A deposit of bail must be required.

Presumed at \$10,000 or more. Lower bail is permitted only with specific findings on the record.

“Bail of \$5,000 is appropriate” is not a finding. Name the defendant-specific factors.

APPLIES TO

Class A or B felonies · Aggravated assault, including against law enforcement and first responders · Felony domestic assault

Factors to consider when setting bail



The list is non-exclusive. The assessment is always individualized.

HYPOTHETICAL NO. 1

Charge	Class B felony aggravated burglary
Criminal history	None
Employment	Full-time, 5 years, same employer
Residence	Stable, 3 years, same address
Family	Spouse and two children in the area
Violence history	None
Failures to appear	None

Your decision?

- Q1 Does the \$10,000 presumption apply?
- Q2 May the defendant be released on personal recognizance?
- Q3 What findings would justify bail below \$10,000?

2 minutes — discuss in pairs

HYPOTHETICAL NO. 2

Charge	Felony domestic assault, third offense
Criminal history	Two prior domestic assault convictions, same victim
Status at arrest	On probation for the second offense
Failures to appear	Three in the past two years
Employment	Unemployed
Residence	No fixed address — hotel
Protective order	Active; arrested at victim's residence in violation

Your decision?

- Q1 Should the \$10,000 presumption be rebutted?
- Q2 What bail amount is appropriate?
- Q3 What additional conditions does the victim's safety require?

2 minutes — discuss in pairs

Licensure and dual regulation

LICENSURE REQUIREMENTS

- Application to the Tennessee Board of Professional Bondsmen
- TBI criminal history background check
- Company owners: two years' experience writing bail in Tennessee

TWO LEVELS OF OVERSIGHT

State — Board of Professional Bondsmen licenses, suspends, revokes

Local — individual courts retain independent authority over bonding privileges (§ 40-11-125)

Bondsmen may not ...

- × Suggest or name attorneys for clients
- × Pay kickbacks to clerks, jailers, officers, or officials
- × Pay fees to attorneys, except in bond defense
- × Pay rebates to principals
- × Operate without a permanent office, telephone, and signage
- × Act as attorney at trial for the principal
- × Solicit business in or around jails
- × Surrender the principal arbitrarily
- × Accept anything except premium — collateral must be reasonable and receipted

Observed misconduct should be reported to the court *and* the Board.

T.C.A. §§ 40-11-125, -317

Grounds for discipline — and bankruptcy

BOARD MAY SUSPEND OR REVOKE

- Violating the bail bond laws
- An unsatisfied final forfeiture judgment
- Professional misconduct under § 40-11-126
- Two or more Class A or B misdemeanors within five years

BANKRUPTCY CONSEQUENCES

A discharge leaving unsatisfied forfeitures allows the court to prohibit future bonding.

The Board may separately suspend or revoke the license.

The bail forfeiture sequence

01	02	03	04
Failure to appear	Process issues	180-day window	Final judgment
Court enters the order of forfeiture; clerk mails notice to the defendant.	Scire facias served on the surety; capias issued for the defendant.	Surety may return the defendant or seek relief. Arrest on the capias releases the surety.	Entered against defendant and sureties, then a 30-day hold before execution.

180 days for the surety to act

30 days hold before execution

Two statutory defenses to forfeiture

DEFENSE 1

A licensed physician’s statement shows the defendant was prevented from appearing by mental or physical disability.

DEFENSE 2

Evidence shows the defendant is incarcerated in another jurisdiction.

DETAINDER REQUIREMENTS

Surety files a detainer with the detaining authority.

Bond remains in effect; surety is liable for return expenses.

If the detainer is refused, or the defendant released despite it, the surety is not liable.

Relief from forfeiture is discretionary — not unbounded

Courts may relieve a surety from forfeiture, but must exercise that discretion consistently with the statutory provisions.

Appellate standard: abuse of discretion — an incorrect legal standard or an illogical conclusion.

THE COURT MAY CONSIDER — § 40-11-204(C)

- Good faith efforts to locate the defendant and ensure appearance
- Records retained — contact information, residence, employment, associations
- Concrete steps taken to track and locate the defendant

Due process required to revoke bail

- 1

Notice of the alleged grounds
- 2

Disclosure of the evidence
- 3

An evidentiary hearing
- 4

Opportunity to present evidence and confront witnesses
- 5

State proves grounds by a preponderance

Pretrial bail is a significant liberty interest. Revocation under § 40-11-141(b) is never summary.

T.C.A. § 40-11-116 (D)

Pretrial monitoring is mandatory for serious felonies

Class A, B, C, or D felony charged

+

Pretrial services available in the county

→ The court *must* require participation in pretrial monitoring.

AGENCY DUTIES Ensure compliance with conditions, and notify the court promptly of any failure to comply.

PRACTICAL CHALLENGES

Five common pitfalls, and the fix

PITFALL	FIX
Failing to make specific findings	Articulate defendant-specific factors on the record
Setting bail based solely on the offense	Always conduct an individualized assessment
Conditions that are not least restrictive	Start with the least onerous condition addressing the identified risk
Forgetting pretrial monitoring	Confirm services; include for all Class A–D felonies
Revoking bail without a hearing	Always schedule an evidentiary hearing with notice

Record-keeping best practices

- 01 Document all findings on the record — presumption rebuttal, bail denial, revocation
- 02 Maintain a bail register: defendants, amounts, conditions, sureties, compliance
- 03 Ensure timely notice of forfeiture orders and service of scire facias
- 04 Coordinate with pretrial services — release orders and defendant contact information
- 05 Use standard forms and checklists for consistency

Resources for ongoing updates

Tennessee Board of Professional Bondsmen	[BOARD CONTACT / WEBSITE]
Administrative Office of the Courts	[AOC WEBSITE]
T.C.A. Title 40, Chapter 11	[LEGAL RESEARCH PLATFORM]
Tennessee Supreme Court opinions	[TN COURTS WEBSITE]
Continuing legal education	[CLE PROVIDERS]
Local pretrial services agencies	[COUNTY CONTACT]

Review annually: the General Assembly convenes each January, and appellate decisions follow.

Checklist for setting bail

- ☐ Verify the defendant is charged with a bailable offense
- ☐ Identify the offense classification — misdemeanor or felony, Class A–E
- ☐ Determine whether § 40-11-115(d) applies
- ☐ If it applies: no recognizance or unsecured bond; apply the \$10,000 presumption
- ☐ If Class A–D felony and services available: require pretrial monitoring
- ☐ Assess community safety: danger to individuals, violence history, protective orders
- ☐ Assess flight risk: prior FTAs, community ties, employment, stable residence
- ☐ Determine the least restrictive conditions
- ☐ If rebutting the presumption: make specific findings on the record
- ☐ Document conditions in a written order; provide copies to defendant and surety

Checklist for bail revocation hearings

- ☐ State files a written motion alleging § 40-11-141(b) grounds
- ☐ Court provides written notice of the alleged grounds
- ☐ Court discloses the evidence to the defendant
- ☐ Court schedules an evidentiary hearing
- ☐ Defendant appears with counsel, or waives counsel
- ☐ State presents evidence and proves grounds by a preponderance
- ☐ Defendant may present evidence, cross-examine, and contest allegations
- ☐ Court makes findings on the record and enters a written order

Constitutional and statutory framework

- 01 The right to bail is constitutionally protected, but not absolute
- 02 Bail may be denied only in capital cases where proof is evident or the presumption great
- 03 Community safety first, then reasonable assurance of the defendant's appearance
- 04 Conditions must be the least restrictive reasonably necessary
- 05 Serious felonies: \$10,000 presumption, no recognizance or unsecured bond, specific findings to rebut

Procedural requirements

- 01 Pretrial monitoring is mandatory for Class A–D felonies where services exist
- 02 Bondsmen answer to both the Board and the courts; solicitation, kickbacks, and arbitrary surrender are prohibited
- 03 Forfeiture follows a fixed sequence: notice, scire facias, 180-day window, final judgment
- 04 Revocation requires an evidentiary hearing with notice, disclosure, and the preponderance standard
- 05 Two defenses to forfeiture: certified disability, and incarceration with a filed detainer

Commissioners must make individualized, fact-specific determinations — and document those findings clearly on the record.

YOUR ROLE

Protect constitutional rights

YOUR ROLE

Ensure public safety

YOUR ROLE

Maintain the integrity of pretrial release

OPEN FORUM

Questions and discussion

- What challenges arise in your jurisdiction?
- What scenarios have you encountered?
- What additional resources or training would help?

FOLLOW-UP

Contact information

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Board of
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County
service

Adminis
Office of
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FOLLOW-UP

Contact information

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Board of Professional Bondsman	[BOARD CONTACT]
County pretrial services	[LOCAL CONTACT]
Administrative Office of the Courts	[AOC CONTACT]
Additional training	[CLE OPPORTUNITIES]

CLOSING

Thank you for participating

CERTIFICATE OF COMPLETION

Certificates will document the hours of instruction and the topics covered.

COURSE EVALUATION

Please complete the evaluation form so we can improve future trainings.

Glossary of key terms

Bail — security for the defendant’s release and appearance

Capital offense — punishable by death or life imprisonment, e.g. first-degree murder

Conditional forfeiture — forfeiture that may be set aside if the defendant is returned or conditions met

Detainer — request filed by one jurisdiction to hold a defendant for return

Scire facias — writ requiring the surety to show cause why forfeiture judgment should not be enforced

Excessive bail — bail higher than reasonably necessary for appearance and safety (Art. I, § 16)

Least restrictive conditions — the least onerous conditions reasonably likely to ensure safety and appearance (§ 40-11-116)

Pretrial monitoring — supervision to ensure compliance with release conditions

Rebuttable presumption — a presumption overcome by specific findings (\$10,000 for serious felonies)

Charge	First-degree murder
State's proof	Eyewitness testimony, defendant's fingerprints on the weapon, confession to police
Defense	No prior criminal history; strong community ties

Is the defendant entitled to bail?

First-degree murder is a capital offense, so the court must hold a hearing on whether the proof is evident or the presumption great.

Eyewitness testimony, physical evidence, and a confession support a finding that the proof is evident. Unless the defense rebuts the strength of that proof, bail may be denied.

Bail-setting worksheet

Defendant name _____

Case number _____

Offense charged _____

Classification ☐ Misdemeanor ☐ Felony, Class _____

COMMUNITY SAFETY ASSESSMENT

☐ Danger to specific individuals ☐ Violence history ☐ Protective orders

Findings _____

§ 40-11-115(d) applies? ☐ Yes ☐ No

If yes ☐ \$10,000 presumption applies ☐ Rebutted

Conditions ☐ Recognizance ☐ Unsecured ☐ Secured \$ _____

☐ Pretrial monitoring ☐ No-contact ☐ GPS ☐ Other _____

FLIGHT RISK ASSESSMENT

☐ Prior FTAs ☐ Community ties ☐ Employment ☐ Stable residence

Findings _____

SPECIFIC FINDINGS IF REBUTTING THE PRESUMPTION

Model language for rebutting the \$10,000 presumption

“The court finds that although the defendant is charged with [CLASS B FELONY / AGGRAVATED ASSAULT / FELONY DOMESTIC ASSAULT], the following defendant-specific factors support a finding that bail in the amount of \$[AMOUNT], combined with [CONDITIONS], will reasonably ensure the defendant’s appearance and the safety of the community ...”

Strong community ties — stable residence, family in the area

Lack of violent criminal history — no prior violence, no weapons offenses

Stable employment — full-time, length of employment

No prior failures to appear — clean court appearance record

“The rebuttable presumption of \$10,000 or more under Tenn. Code Ann. § 40-11-115(d)(2) is rebutted by these specific findings.”

Adapt to the facts of each case. Generic language will not sustain the finding on review.

Tennessee Bail Bonds: Essential Training for Judicial Commissioners

- Apply the constitutional and statutory bail framework
- Set appropriate, individualized bail conditions
- Regulate professional bondsmen
- Administer forfeiture and revocation with due process

*Continue learning. Protect rights. Ensure safety.
Maintain integrity.*

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