

## CHAPTER 6

### Bail

#### SECTIONS

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#### **§ 601. Right to bail.**

(1) Any person arrested for a criminal offense, other than murder in the first degree, shall be entitled as a matter of right to be released on bail before conviction; provided, however, that no person shall be so released while he is so under the influence of intoxicating liquor or drugs that there is a reasonable ground to believe he will be offensive to the general public.

(2) A person arrested for murder in the first degree may be released on bail by any judge who is authorized to be assigned by the Chief Justice to sit in the Appellate Division of the High Court; provided, that the district attorney shall be given reasonable opportunity to be heard before any application for bail is granted.

**Source:** TT Code 1966 § 468; TT Code 1970, 12 TTC 251; TT Code 1980, 12 TTC 251.

**Case annotations:** The object in determining conditions of pretrial release is to assure the presence of the defendant at trial so that justice may be done while keeping in mind the presumption of innocence and permitting the defendant the maximum amount of pretrial freedom. The FSM Supreme Court should attempt to weigh the various forces likely to motivate a defendant to stay and face trial against those forces likely to impel him to leave. FSM Crim. R. 46(a)(2). *FSM v. Jonas (I)*, 231a, 233 (Pon. 1982).

Where the highest prior bail was \$1,500.00 imposition of bail in the amount of \$10,000.00, on the basis of dispute and unsubstantiated government suggestions that the defendant has cash and assets available to him, would be unwarranted. *FSM v. Jonas (I)*, 1 FSM R. 231a, 236 (Pon. 1982).

Relief from improperly set or denied bail must be speedy to be effective. *In re Iriarte (II)*, 1 FSM R. 255, 265 (Pon. 1983).

The bearer of the title of Nahniken, by virtue of his position. s deep ties to Ponapean society, may be expected to appear and stand trail if accused of crime and to submit to sentence if found guilty. Bail, therefore should be granted. *In re Iriarte (II)*, 1 FSM R. 255, 265 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. *In re Iriarte (II)*, 1 FSM R. 255, 272 (Pon. 1983).

The FSM Supreme Court must approach the question of whether bail is "excessive" with a recognition that the defendant is presumed innocent, is to be treated with dignity, and needs a reasonable opportunity to prepare his defense. At the same time the judicial must keep in mind his responsibility to the public to assure that the defendant will be made to respond to the charges leveled at him. *FSM v. Etpison*, 1 FSM R. 370, 372 (Pon. 1983).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. *In re Extradition of Jano*, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. *In re Extradition of Jano*, 6 FSM R. 62, 64 (App. 1993).

### **§ 602. Who may fix bail; Allowing bail after conviction.**

(1) In the case of any person arrested for a criminal offense, other than murder in the first degree, any court or any official authorized to issue a warrant may fix the bail prior to conviction. This may be done at the time of issuing the warrant and endorsed on the warrant or may be done at any time prior to conviction.

(2) After conviction bail may be allowed only if a stay of execution of the sentence has been granted and only in the exercise of discretion by a court authorized to order a stay or by a judge thereof.

**Source:** TT Code 1966 § 469; TT Code 1970, 12 TTC 252; TT Code 1980, 12 TTC 252.

### **§ 603. Notice by police of requests to have bail fixed.**

When any arrested person for whom bail has not been fixed, or to whom bail has been once denied in the case of murder in the first degree, notifies any policeman or jail attendant that he desires to give bail, an official authorized to fix bail shall be promptly notified by the police authorities. The arrested person shall be brought before the official for this purpose if the official so requests.

**Source:** TT Code 1966 § 470; TT Code 1970, 12 TTC 253; TT Code 1980, 12 TTC 253.

#### **§ 604. Amount of bail.**

The amount of bail shall be such as, in the judgment of the court or official fixing it, will insure the presence of the accused in the future. The determination of the court or official should take into account the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the accused to give bail, and the character of the accused.

**Source:** TT Code 1966 § 471; TT Code 1970, 12 TTC 254; TT Code 1980, 12 TTC 254.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions the President and the Executive are found in title 2 of this code.

#### **§ 605. Form and disposition of bail; Sufficiency of sureties.**

(1) Cash or bonds or notes of the United States may be accepted as bail.

(2) If a bail bond is given, one or more sureties may be required. A person of good standing in the community who is in a position of moral or customary authority over the accused, such as his father, the head of his extended family group, or the chief of his lineage or clan, may be accepted as surety without the disclosure of property by way of justification, if the official taking bail or determining the sufficiency of the surety considers that such surety will reasonably guarantee the appearance of the accused. Otherwise, no surety or sureties are to be accepted unless their combined net worth over and above all just debts and obligations is not less than the amount of the bond. Any surety may be required to furnish proof of his sufficiency, either by his own oath or otherwise.

(3) If the official to whom the bail is tendered refuses to accept the surety or sureties offered, the question of their sufficiency shall, at the request of the accused, be referred promptly to a judge for determination. The determination of the judge shall be final.

(4) Any bail accepted shall be promptly transmitted to the clerk of courts for the district; provided, that when a person has been released to appear in accordance with the orders of a community court, the bail shall be transmitted to the clerk of the community court.

**Source:** TT Code 1966 § 472; TT Code 1970, 12 TTC 255; TT Code 1980, 12 TTC 255.

#### **§ 606. Modification of bail.**

The court before which a criminal case is pending may, for cause shown, either increase or decrease the bail or require an additional surety or sureties or allow substitution of sureties. If increased bail or an additional surety or sureties is required, the accused may be committed to custody unless he gives bail in the increased amount or furnishes additional surety or sureties as required.

**Source:** TT Code 1966 § 473; TT Code 1970, 12 TTC 256; TT Code 1980, 12 TTC 256.

**§ 607. Exoneration and release of bail.**

When the condition for which the bail was given has been satisfied, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bail bond or by a timely surrender of the accused into custody.

**Source:** TT Code 1966 § 473; TT Code 1970, 12 TTC 257; TT Code 1980, 12 TTC 257.

**§ 608. Personal recognizance.**

In the case of an arrest for any criminal offense, the lawful punishment for which does not exceed a fine of \$100, or six months imprisonment, or both, any court or official authorized to fix bail may, in the exercise of discretion, order that the arrested person be released on his personal recognizance in such sum as the court or official may fix, without security, into the custody of a responsible member of the community, provided the arrested person has a usual place of abode or of business or employment in the Trust Territory.

**Source:** TT Code 1966 § 475; TT Code 1970, 12 TTC 258; TT Code 1980, 12 TTC 258.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions the President and the Executive are found in title 2 of this code.