

The Right to Bail in Puerto Rico

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On August 19, 2012, Puerto Ricans will vote to decide if Puerto Rico's Constitution should be amended to limit the right to bail in the Commonwealth's jurisdiction. Supporters of the amendment, the two political parties who had controlled the local government for decades, argue that the amendment is necessary as a crime control weapon. Opponents to the amendment, Colegio de Abogados, civil rights advocates, minority political parties, among others, argue that the proposed amendment won't solve the criminal problem in the island. This brief article outlines the legal frame of the right to bail in Puerto Rico.

When we refer to the right to bail in Puerto Rico, we are limited to the Commonwealth of Puerto Rico's jurisdiction. Puerto Rico is subject to the United States Constitution and federal law as in the states, therefore the Bail Reform Act¹ and Supreme Court decisions as US v. Salerno,² and other relevant statutes and decisions are applicable in Puerto Rico, which mean that there are many defendants in Puerto Rico in federal custody without bail pending trial. The applicability of the federal law in Puerto Rico, including the bail issue, has not been thoroughly examined to determine their success in crime deterrence in Puerto Rico. However, recently issues of detention without bail have been covered by the local media.³

The Constitution of Puerto Rico effective since July 25, 1952, was approved by U.S. Congress. Although it has a Bill of Rights similar to the United States Constitution, it was influenced by the Universal Declaration of Human Rights. Death penalty is forbidden.⁴ Wire-tapping is prohibited.⁵

Regarding bail, the Constitution states:

“Before conviction every accused shall be entitled to be admitted to bail. Incarceration prior to trial shall not exceed six months nor shall bail or fines be excessive.”⁶

Jurisprudence of the Supreme Court of Puerto Rico has consistently held that the right to a bail is within the presumption of innocence.⁷

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¹ 18 U.S.C. §§ 3141-3156.

² 481 U.S. 739 (1987).

³ On July 16, 2012 a US Magistrate Judge entered an order of discharge in the case of USA v. Jordan Ayala-Cruz, (Crim. No. 12-MJ 991). Apparently the defendant was erroneously charged with an offense he didn't commit. He was detained without bail since July 3, 2012, becoming part of the political campaign regarding the bail issue.

⁴ P.R. Const. Art. II, § 7

⁵ P.R. Const. Art. II, § 7

⁶ P.R. Const. Art. II, § 11

⁷ “La fianza es un modo de implantar la presunción de inocencia, pues sería un contrasentido encarcelar a una persona que se considera inocente y que eventualmente puede ser exonerada de culpa. La fianza no se fija con el propósito de castigar a la persona acusada.” Pueblo v. Martínez Hernández, 158 D.P.R. 388, 389 (2003). See also:

Bail is set in the initial appearance of a defendant in court, which is the hearing to determine probable cause for arrest. A compliant is issued where the amount of bail is established.⁸ For the purpose of determining bail and its conditions the court must take into account the evaluation report and the recommendations rendered by the Office of Pretrial Services.

Rule 218 of Criminal Procedure presents criteria for setting bail. In setting the amount of the bail the court shall consider:

- (1) Nature and circumstances of the offense charged.
- (2) Links of the accused with the community, among them his time of residence, his employment record and his family relations.
- (3) The character, dangerousness and mental condition of the person charged of an offense. To such effects, the court may avail itself of the record of prior convictions or of any other information deemed creditable and that is pertinent to the matter.
- (4) Economic means of the accused.
- (5) Record of the accused on previous appearances and compliance with judicial orders.
- (6) The evaluation, reports and recommendations made by the Office of Pretrial Services.⁹

In cases where the offense charged is murder, rape, kidnapping, domestic violence and those felonies during which any type of weapon is used, the court may impose the following additional conditions:

- (A) Remain under the supervision of the electronic supervision program and under the jurisdiction of the Office of Pretrial Services, which shall act as custodians and shall be bound to supervise them, produce them in court and report any violation of the conditions imposed.
- (B) Avoid having any contact with the alleged victim of the crime or the potential witnesses.
- (C) Not to commit any crime whatsoever during the period in which the person is free nor establish any relationship with persons who plan, intend to commit or commit delinquent acts.

Sánchez Alvarez v. Alcaide, 78 D.P.R. 849 (1955); Pueblo v. Soto Ortiz, 151 D.P.R. 619 (2000); Pueblo v. De Jesús Carrillo, 179 D.P.R. 253 (2010).

⁸ Next stages in P.R.'s Criminal Procedure are; preliminary hearing, arraignment and trial.

⁹ 34 L.P.R.A. Ap. II R. 218

(D) Not to possess firearms or any other weapon that may cause death.

(E) Not to consume alcoholic beverages or drugs or any other controlled substance.¹⁰

According to The Legal Aid Society of Puerto Rico, the average bail for a defendant charged with murder is \$725,000.00. Over 90% of defendants are unable to post bail. 2% of defendants commit a new offense while being on bail.

If approved, the proposed amendment will ask for a waiver of a constitutional right with an impact in criminal litigation in Puerto Rico. It will affect the presumption of evidence as has been interpreted by the Supreme Court of Puerto Rico and constitutional prohibition to incarceration prior to trial exceeding six months.¹¹

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¹⁰ Ibid

¹¹ P.R. Const. Art. II, § 11.