



STATE OF DELAWARE  
**THE JUSTICE OF THE PEACE COURT**

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ALAN G. DAVIS  
CHIEF MAGISTRATE

**POLICY DIRECTIVE 23-272**

**TO: ALL JUSTICE OF THE PEACE COURT EMPLOYEES**

**FROM: ALAN G. DAVIS** *AGD*  
**CHIEF MAGISTRATE**

**DATE: NOVEMBER 30, 2023**

**RE: BAIL REVOCATION FOR PERSONS CHARGED WITH A VIOLENT  
FELONY WHILE RELEASED ON BAIL FOR A VIOLENT FELONY**

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**Scope:**

This Policy Directive establishes the bail revocation procedures for adult defendants who are charged with a violent felony while released on bail for a prior violent felony. It addresses the legal requirements of 11 Del. C. § 2116(c) and corresponding procedures.

**Justice of the Peace Court Policy:**

Bail revocation procedures allow the judicial system to reassess the risks posed by defendants who are charged with a violent felony while released on bail for a violent felony. The procedures help reduce the chances of defendants committing further acts of violence while awaiting trial, and maintain the balance between protecting the community and upholding defendants' rights. The Justice of the Peace Court implements bail revocation procedures in compliance with 11 Del. C. § 2116(c) for individuals charged with a violent felony while released on bail for a prior violent felony.

**Other Policy Directives and Legal Memoranda Affected:**

Legal Memorandum 03-267, dated February 12, 2003, addresses revocation of a defendant's bail upon subsequent arrest. As a result of statutory changes to 11 Del. C. § 2116, Legal Memorandum 03-267 is rescinded. This Policy Directive also supersedes any additional memoranda or earlier directives on the subject.

**Effective Date:**

This policy shall take effect immediately and continue until further notice.

**Discussion:**

The Justice of the Peace Court serves as the primary jurisdiction for arraigning adult defendants who are charged with a violent felony while released on bail for a prior violent felony. Under 11 Del. C. § 2116(c), the judge must temporarily revoke bail on a defendant’s original offense when:

- (1) The defendant’s original offense is a violent felony, and the defendant was released from custody on any form of conditions of release bond related to the offense;
- (2) The defendant’s subsequent offense is a violent felony; and
- (3) The defendant was charged with a subsequent offense during the time period the defendant was released on bail for the original offense.

If the Court determines elements (1) - (3) are satisfied, the bail must be revoked. The Justice of the Peace Court does not have discretion in the decision. The defendant must be held without bail for the original violent felony until the Superior Court holds a hearing to determine whether there is proof positive or presumption great the defendant committed a subsequent violent felony during the period of release. See, 11 Del. C. § 2116(c).

In all cases, judges should carefully review the defendant’s charge history record to determine if the offense is a violent felony using the following definitions:

Original Offense	Subsequent Offense
Any violent felony as defined in 11 Del. C. § 4201(c).	Any violent felony as defined in 11 Del. C. § 4201(c), or similar offense as set forth under the laws of another state, the United States, or any territory of the United States.

Note, when the judge orders a bail revocation, the Department of Justice automatically receives electronic notice of the revocation.

Bail revocation does not apply to juveniles. If the defendant’s original offense is pending in Family Court because the defendant was charged with the offense as a juvenile, bail revocation by Justice of the Peace Court is not permitted.

In addition, there are some technical constraints within the CJIS system that require understanding to implement the bail revocation procedures. The CJIS constraints are addressed, as follows:

- (1) Judges must document the bail revocation decision on the Bail & Disposition Worksheet for the defendant’s subsequent offense.

- (2) When bail revocation is ordered, Court Clerks must select the menu option in CJIS under “Court Case Management” titled “Revoke Bail of Upper Court Case”. This menu option automatically sets a defendant’s bail on all violent felonies as “Held without Bail”.
- (3) When bail revocation is ordered, and the defendant has an active event scheduled for a case with the original violent felony, CJIS will not print a commitment noting a “Proof Positive Hearing” as scheduled with the Superior Court. CJIS will not display two different events on a bond and/or commitment. Court clerks must therefore modify the commitment by handwriting PROOF POSITIVE HEARING on the commitment.
- (4) When there is an active capias related to the original violent felony offense, CJIS will not allow entry of bail revocation. The system does not maintain two open events scheduled at the same time, and the capias takes precedence. When the court clears the capias, the case will be scheduled for a capias return hearing in the court that currently has jurisdiction. Once the defendant is present at the capias return hearing, the court conducting the hearing can proceed with the bail revocation decision.
- (5) A charge of possession or purchase of a deadly weapon by person prohibited (PDWPP) is listed as a violent felony in 11 Del. C. § 4201(c) as an offense under 11 Del. C. § 1448(e). However, section 1448(e) is the penalty section of the statute. A defendant is actually charged with PDWPP under 11 Del. C. § 1448(a). This discrepancy creates a technical constraint within the CJIS system and it will not permit or process a bail revocation when a person is charged with PDWPP. Court Clerks must therefore manually complete a commitment and handwrite PROOF POSITIVE HEARING on the commitment.

**Conclusion:**

This policy implements effective bail revocation procedures for persons charged with a violent felony while released on bail for a prior violent felony in compliance with 11 Del. C. § 2116(c).

cc: Honorable Collins J. Seitz, Jr.  
Honorable Kathaleen S. McCormick  
Honorable Jan R. Jurden  
Honorable Carl C. Danberg  
Honorable Michael K. Newell  
Gayle P. Lafferty, State Court Administrator  
All Justice of the Peace Courts  
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