§1074. Property of defendant and 3rd parties as bail

1. Cash. Whenever cash is deposited as bail to secure the appearance of and conformance to conditions of release by a defendant in a criminal proceeding, either preconviction or post-conviction, the cash is deemed to be the property of the defendant unless, at the time the cash is deposited, the defendant or the person offering the cash as bail designates under oath another person to whom the cash belongs. If a person other than the defendant has been designated as the owner of the cash, it must be returned to that person unless otherwise forfeited or subject to setoff under subsection 3-A. If the defendant is deemed to be the owner of the cash, it must be returned to the defendant unless otherwise forfeited or subject to setoff as provided in this section.
[PL 2013, c. 211, §1 (AMD).]

1-A. Miscellaneous costs. The Chief Justice of the Supreme Judicial Court is authorized to use General Fund appropriations to cover miscellaneous costs associated with the operation of the account of deposited cash bail.
[PL 2003, c. 673, Pt. P, §1 (NEW).]

2. Real estate. When a defendant in a criminal proceeding is the owner of real estate and offers that real estate as security for appearance before any court, the defendant must file a bail lien and otherwise comply with the requirements of section 1071 as if the defendant were a surety. A discharge of the bail lien is governed by section 1071, unless the bail has been forfeited or is subject to setoff in accordance with this section.
[PL 1987, c. 758, §20 (NEW).]

3. Setoff of defendant's property. When a defendant has deposited cash or other property owned by the defendant as bail or has offered real estate owned by the defendant and subject to a bail lien as bail and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the defendant or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by a defendant that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee imposed upon a defendant as part of the sentence for conviction of any offense arising out of the criminal proceeding for which the bail has been posted and the sentence for conviction of any offense in an unrelated civil or criminal proceeding; [PL 2003, c. 87, §1 (AMD).]

B. Any amount of restitution the defendant has been ordered to pay as part of the sentence imposed in the proceeding for which bail has been posted and in any unrelated proceeding; [PL 2003, c. 87, §1 (AMD).]

C. Any amount of attorney's fees or other expense authorized by the court at the request of the defendant or attorney and actually paid by the State on behalf of the defendant on the ground that the defendant has been found to be indigent in the proceeding for which bail has been posted and in any unrelated proceeding; and [PL 2003, c. 87, §1 (AMD).]

D. Any surcharge imposed by Title 4, section 1057. [PL 1987, c. 758, §20 (NEW).]

The court shall apply any bail collected pursuant to this subsection first to restitution then to attorney's fees and then to fines and surcharges.
[PL 2017, c. 284, Pt. UUUU, §15 (AMD).]

3-A. Setoff of 3rd party's property. When a person other than the defendant has deposited cash or other property owned by the person as bail on behalf of the defendant or has offered real estate owned by the person and subject to a bail lien as bail on behalf of the defendant and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the

person or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section. The court may order all or a portion of the bail owned by the person that has not been forfeited to be first paid and applied to one or more of the following:

A. Any fine, forfeiture, penalty or fee owed by the person arising out of any civil or criminal proceeding; [PL 2013, c. 211, §1 (NEW).]

B. Any amount of restitution the person has been ordered to pay as part of any court proceeding; [PL 2013, c. 211, §1 (NEW).]

C. Any amount of attorney's fees or other expense authorized by the court at the request of the person or the person's attorney and actually paid by the State on behalf of the person on the ground that the person has been found to be indigent in any proceeding; and [PL 2013, c. 211, §1 (NEW).]

D. Any surcharge imposed by Title 4, section 1057. [PL 2013, c. 211, §1 (NEW).]

The court shall apply any bail collected pursuant to this subsection first to restitution.
[PL 2013, c. 211, §1 (NEW).]

4. Enforcement orders. If the court determines that bail owned by a defendant or 3rd party should be ordered set off as authorized by this section, the court may issue any appropriate orders considered necessary to enforce the setoff. The orders may include, but are not limited to:

A. A direction to the clerk of courts to pay cash bail directly to a specified person, organization or government; [PL 1987, c. 758, §20 (NEW).]

B. An order directed to a public official or the defendant requiring that other property or real estate be sold and the proceeds paid to a specified person, organization or government; and [PL 1987, c. 758, §20 (NEW).]

C. An order requiring the defendant to convey clear and marketable title or other evidence of ownership of interest in real estate or other property to a specified person, organization or government. [PL 1987, c. 758, §20 (NEW).]

[PL 2013, c. 211, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1997, c. 543, §20 (AMD). PL 2003, c. 87, §1 (AMD). PL 2003, c. 673, §P1 (AMD). PL 2013, c. 211, §1 (AMD). PL 2017, c. 284, Pt. UUUU, §15 (AMD).

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