

## Serious Firearm Offenders

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### Issue

Summarize the procedures for serious firearm offenders-provisions in [PA 23-53](#).

### Summary

[PA 23-53](#), §§ 36-39 & 43-44, beginning October 1, 2023, sets more stringent release conditions for serious firearm offenders. The act imposes different conditions for release for a person arrested with a serious firearm offense charge depending on whether he or she has prior convictions for certain crimes. For those without these prior convictions, the act generally follows the same release procedures as existing law, however, those with these prior convictions may only be released by posting bond.

Among other things, the act also:

1. requires certain bail to be forfeited when the defendant commits a serious firearm offense while released;
2. requires probation officers who have probable cause to believe that a serious firearm offender has violated a probation condition to seek an arrest warrant;
3. allows or requires prosecutors to petition the court for bond amounts of up to 30%, depending on prior convictions; and
4. lowers the evidentiary threshold for courts to revoke a defendant's release under certain circumstances involving serious firearm offenses and requires revocation under these circumstances.

## Serious Firearm Offenses and Offenders

Under the act, a “serious firearm offense” is:

1. illegally possessing a large capacity magazine ([CGS § 53-202w](#), as amended by the act);
2. possessing a stolen firearm or a firearm that is altered in a way that makes it unlawful;
3. altering, removing, or defacing a firearm’s identification mark, serial number, or name ([CGS § 29-36](#));
4. manufacturing, possessing, or transferring a firearm without the unique serial number or other identification mark ([CGS § 29-36a](#), as amended by the act);
5. knowingly, recklessly, or with criminal negligence, facilitating, aiding, or abetting the manufacture of a firearm (a) by someone prohibited from purchasing or possessing a firearm or (b) that a person is otherwise prohibited from purchasing or possessing ([CGS § 29-36a](#), as amended by the act); or
6. any crime of which an essential element is that the person discharged, used, or was armed with and threatened the use of a firearm.

A “serious firearm offender” is a person who has been convicted of a serious firearm offense twice or was convicted of a serious firearm offense and was previously convicted of:

1. altering, removing, or defacing a firearm’s identification mark, serial number, or name;
2. manufacturing, possessing, or transferring a firearm without an identification serial number or mark;
3. knowingly, recklessly, or with criminal negligence, facilitating, aiding, or abetting the manufacture of a firearm, as described above;
4. criminally possessing a firearm, ammunition, or electronic defense weapon or handgun due to specified disqualifying offenses; or
5. two or more additional felony offenses.

### ***Notification to Police***

Existing law allows probation officers to notify the police if they have probable cause to believe that a person on probation has violated his or her probation conditions. Under the act, the officers must notify the police if the person is a serious firearm offender or is on probation for a felony conviction and has been arrested for committing a serious firearm offense. As under existing law, this notice is sufficient warrant for the police to arrest the person and return him or her into the court’s custody.

## ***Arrest Warrant***

The act also requires a probation officer who has probable cause to believe that a serious firearm offender on probation has violated a probation condition to apply to any judge for a warrant to arrest the person for the probation condition or conditional discharge violation. The officer must also apply for an arrest warrant if he or she knows that a person on probation for a felony conviction has been arrested for committing a serious firearm offense. As under existing law, the warrant authorizes the officer to return the defendant into the court's custody or to any suitable detention facility.

## ***Hearing Deadline***

Under existing law, when someone is arrested for violating the conditions of probation or conditional discharge, the court generally must dispose of the charge or schedule a hearing within 120 days after arraignment, unless good cause is shown. The act shortens this period to 60 days after arraignment if the defendant is a serious firearm offender or is on probation for a felony conviction and has been arrested for a serious firearm offense.

## ***Revocation of Probation or Conditional Discharge***

The act requires the court to revoke the sentence of probation or conditional discharge if the violation consists of committing a serious firearm offense or the defendant is a serious firearm offender. Under existing law, in cases involving non-serious firearm offenses, the court has the discretion to revoke, continue, modify, or extend a sentence of probation or conditional discharge if any of the conditions have been violated.

## ***Bail***

Under the act, bail release provisions must apply to any serious firearm offender arrested and charged with a crime or any felony offender arrested for a serious firearm offense. However, in applying the bail release laws, the act creates a rebuttable presumption that a serious firearm offender poses a danger to the safety of others.

## ***Release Conditions for Persons Arrested for a Serious Firearm Offense Without Certain Prior Convictions***

The act imposes different conditions for release for arrested persons charged with a serious firearm offense depending on whether he or she has prior convictions for certain crimes. For those without these prior convictions, the act generally follows existing law's release procedures, except prosecutors may petition the court to deem the person a serious risk to the safety of others. If the

court grants such a petition, the person may be released only upon executing a bond of at least 30%.

***Conditions of Release.*** Under the act, when an arrested person charged with committing a serious firearm offense, other than a person with certain prior convictions (see below), is presented before the Superior Court in bailable offenses, the court must promptly order the person's release with one of four specified conditions (i.e., written promise to appear without special conditions or with non-financial conditions or bond with or without surety in no greater amount than necessary). (This is also the case under existing law for other arrests.) For an arrestee charged with a non-serious firearm offense, existing law requires the court to consider which of the conditions of release are sufficient to reasonably assure the arrested person's appearance in court. For an arrestee charged with a serious firearm offense, the act additionally requires the court to consider which conditions will ensure that the person will not endanger the safety of others.

***Petition.*** The act allows the prosecutor to (1) petition the court to deem the arrested person a serious risk to the safety of others and (2) present any information developed by federal, state, and local law enforcement agencies during a criminal investigation or enforcement action, including social media posts, pictures, or videos threatening violence, claiming responsibility for violence, or suggesting firearm possession.

***Bond Amount.*** If the court finds that the arrested person is a serious risk to the safety of others, the arrestee may only be released upon the execution of a bond and the arrested person must deposit at least 30% of any bond amount directly with the court.

***Drug Testing and Treatment.*** As under existing law, when the court has reason to believe that the arrested person is drug-dependent, and where necessary, reasonable, and appropriate, it may order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The result of the drug test is not admissible in any criminal proceeding concerning the person.

***Release Condition Factors.*** Under the act, in determining what release conditions will reasonably ensure the arrested person's appearance in court and that the safety of others will not be endangered, the court may generally consider the same factors as existing law allows for certain felony arrests. This includes the (1) number and seriousness of pending charges, (2) weight of the evidence, (3) person's history of violence, (4) person's previous convictions for similar offenses while released on bond, and (5) likelihood based on the person's expressed intentions that he or she will commit another crime while on release.

As under existing law for releases for certain felony arrests, the act requires the court, when imposing conditions of release, to state for the record any of the factors that it considered and the findings it made as to the danger, if any, that the arrested person might pose to the safety of others upon release.

***Nonfinancial Condition of Release.*** The act allows the court to impose nonfinancial conditions of release for serious firearm offenders without certain prior convictions under the same conditions as under existing law for other offenders. Specifically, the court must order the least restrictive condition or conditions needed to reasonably ensure the person's appearance in court and that the safety of others will not be endangered. The conditions may include supervision by a designated person or organization, travel or living accommodation restrictions, and electronic monitoring, among others.

As under existing law for release conditions for persons arrested for non-serious firearm offenses, the court (1) must state on the record its reasons for imposing any nonfinancial condition and (2) may require a person who is subject to electronic monitoring as a release condition to pay the cost of such monitoring.

### ***Release Conditions for Persons Arrested for a Serious Firearm Offense With Certain Prior Convictions***

The act sets more stringent release conditions for persons arrested for a serious firearm offense who have certain prior convictions. Defendants may only be released on bond in an amount needed to reasonably assure the person's appearance in court and that the safety of others will not be endangered.

The act also (1) requires a prosecutor to petition for the arrested person to deposit at least 30% of the bond amount directly with the court and (2) establishes a rebuttable presumption that the safety of others will be endangered without the granting of the petition. As under the act's provisions for serious firearm offenders without prior convictions, the court may order the person to submit to a urinalysis drug test and participate in a drug testing and treatment program under the same circumstances and procedures described above.

These release conditions apply to those who are arrested for a serious firearm offense and (1) are serious firearm offenders or (2) have two or more convictions during the five-year period immediately before the current arrest for (a) illegally manufacturing, distributing, selling, prescribing, or dispensing certain illegal substances ([CGS §§ 21a-277 & -278](#)) or (b) 1st or 2nd degree larceny ([CGS §§ 53a-122 & -123](#)).

These release conditions also apply to those with (1) two prior convictions for the violations shown in Table 1 below or (2) a prior conviction of a violation listed below and a previous conviction of carrying a handgun without a permit, carrying a firearm with intent to display, or failing to present a permit to a law enforcement officer who has reasonable suspicion of a crime ([CGS § 29-35](#), as amended by the act).

**Table 1: Prior Convictions Resulting in More Stringent Release Conditions**

<i>Statute</i>	<i>Offense</i>
<a href="#">CGS § 29-36</a>	Altering, removing, or defacing a firearm serial number
<a href="#">CGS § 29-36a</a> , as amended by the act	Manufacturing or transferring a “ghost gun” or possessing one without declaring it or applying for a serial number
<a href="#">CGS § 53-202</a>	Possessing or using a machine gun or transferring one to someone under age 16
<a href="#">CGS § 53-202b</a>	Selling or transferring an assault weapon
<a href="#">CGS § 53-202c</a>	Possessing an assault weapon
<a href="#">CGS § 53-202w</a> , as amended by the act	Possessing, purchasing, selling, or importing large capacity magazines
<a href="#">CGS § 53-202aa</a>	Trafficking firearms
<a href="#">CGS § 53-206i</a>	Manufacturing a firearm from certain plastic
<a href="#">CGS § 53a-54a</a>	Murder
<a href="#">CGS § 53a-54b</a>	Murder with special circumstances
<a href="#">CGS § 53a-54c</a>	Felony murder
<a href="#">CGS § 53a-54d</a>	Arson murder
<a href="#">CGS §§ 53a-55 &amp; -56</a>	1st and 2nd degree manslaughter
<a href="#">CGS §§ 53a-55a &amp; -56a</a>	1st and 2nd degree manslaughter with a firearm
<a href="#">CGS §§ 53a-59 &amp; -60</a>	1st and 2nd degree assault
<a href="#">CGS § 53a-60a</a>	2nd degree assault with a firearm
<a href="#">CGS § 53a-134</a>	1st degree robbery
<a href="#">CGS § 53a-212</a>	Stealing a firearm
<a href="#">CGS § 53a-216</a>	Criminal use of a firearm or electronic defense weapon
<a href="#">CGS § 53a-217</a> , as amended by the act	Criminal possession of a firearm, ammunition, or electronic defense weapon
<a href="#">CGS § 53a-217b</a>	Possessing a weapon on school grounds
<a href="#">CGS § 53a-217c</a> , as amended by the act	Criminal possession of a handgun

***Not Released.*** As under existing law, if an arrested person is not released, the court must order the person committed to DOC custody until he or she is released or discharged under the law.

### ***Revocation of Release***

The act (1) lowers the evidentiary threshold for courts to revoke a defendant's release if he or she is a serious firearm offender or released under the offenses listed in the table above and (2) makes the revocation mandatory upon certain findings after an evidentiary hearing.

By law, with certain exceptions, the court may impose new or additional conditions on a defendant's release if it finds by clear and convincing evidence that he or she violated the release conditions. For offenses where a prison term of 10 or more years may be imposed, existing law allows the court to revoke the defendant's release if it finds by clear and convincing evidence that the safety of others is endangered by his or her release and there is probable cause to believe he or she committed a federal, state, or local crime while on release. There is a rebuttable presumption that these defendants' release should be revoked. The act extends these provisions to defendants who are serious firearm offenders or on release for a serious firearm offense charge, except as described below.

If the defendant is (1) a serious firearm offender and is on release for any offense or (2) on release for one of the offenses listed in Table 1 above, the court must revoke the release if it finds by the preponderance of the evidence that there is probable cause to believe that the defendant has committed a serious firearm offense while on release. As under existing release revocation law, the court must first hold an evidentiary hearing where hearsay or secondary evidence is admissible. As under existing law, the revocation of a defendant's release causes any bond posted in a criminal proceeding to be automatically terminated and the surety to be released.

### ***Bond Forfeiture***

Under the act, the bond posted in the criminal proceeding for any offense for which the defendant was on pretrial release is forfeited if the defendant:

1. commits a serious firearm offense while on release, and
2. is subsequently convicted of any offense for which he or she was released and for the serious firearm offense committed while on release.

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