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dant's detention, the defendant's risk of flight is so great that no alternative, less restrictive financial or nonfinancial conditions will suffice to [en]sure his or her presence at future court proceedings." (Footnote omitted.) *Id.*, 707; see *Juvenile v. Commonwealth*, 480 Mass. 1012, 1013–15, 103 N.E.3d 742 (2018) (fact that juvenile fled from custody of child welfare department for three months and was "a 'runaway'" at time of arrest supported trial court's finding under *Brangan* that there was no reasonable alternative to unaffordable bail). The court in *Brangan* also emphasized that, in bail review or modification proceedings, the trial court must consider the length of the detention and "the equities of the case" at that point in the proceedings. *Brangan v. Commonwealth*, *supra*, 710.

Subsequently, in *Walsh v. Commonwealth*, 485 Mass. 567, 582, 15 N.E.3d 840 (2020), the Massachusetts Supreme Judicial Court elaborated on the nature of the hearing and the quantum of proof required under its holding in *Brangan*, which had been codified in Massachusetts' bail statutes. In *Walsh*, the court recognized the need to balance the serious consequences of detaining a defendant before trial, including the negative effects on that person's employment and ability to assist with his or her defense; see *id.*, 579; against the fact that "bail decisions often involve difficult judgment calls made under challenging circumstances," including relatively "limited information" from the representations of counsel and police and probation reports. *Id.*, 580. Observing that the Massachusetts bail statute imposes a presumption in favor of release on personal recognizance, the court explained that the commonwealth could rebut that presumption by demonstrating, by a preponderance of the evidence, "a history of prior court defaults or [by presenting] evidence that the defendant poses a flight risk, or [by reference to] the other factors listed

NOTE: These pages (345 Conn. 949 and 950) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 29 November 2022.

in the [Massachusetts] bail statutes”²² (Footnote omitted.) *Id.*, 584. *Walsh* also requires the trial court to consider whether nonfinancial conditions of release will ensure the defendant’s presence in court. If the trial court determines that the presumption in favor of release on personal recognizance has been overcome and that nonfinancial conditions of release are “inadequate,” it must set bail by “try[ing] to determine what amount the defendant can reasonably afford to post,” and “then determine the amount of bail that is necessary to [en]sure the defendant’s appearance,” which “may be more than what the defendant can reasonably afford.” *Id.*, 586–87. The Massachusetts Supreme Judicial Court concluded that, if bail is set in an amount beyond which the defendant can afford, the judge must provide a statement of reasons—in writing or on the record—“the particular circumstances and factors that have led the judge to conclude that the presumption of release on personal recognizance has been rebutted, that nonfinancial conditions and a lesser bail amount would be inadequate, and that the [c]ommonwealth’s interest in this bail amount outweighs the potential

²² In Massachusetts, these factors include “the nature and circumstances of the offense charged, the potential penalty the person faces, the person’s family ties, financial resources and financial ability to give bail, employment record and history of mental illness, his [or her] reputation and the length of residence in the community, his [or her] record of convictions, if any, any illegal drug distribution or present drug dependency, any flight to avoid prosecution or fraudulent use of an alias or false identification, any failure to appear at any court proceeding to answer to an offense, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse . . . whether the person has any history of [abuse prevention] orders issued against him [or her] . . . whether he [or she] is on probation, parole, or other release pending completion of sentence for any conviction, and whether he [or she] is on release pending sentence or appeal for any conviction.” (Internal quotation marks omitted.) *Walsh v. Commonwealth*, *supra*, 485 Mass. 584–85, quoting Mass. Gen. Laws ch. 276, § 58.