



A guide to
bail

Legal Aid 
NEW SOUTH WALES

What is bail?

If you are charged with an offence, police may or may not arrest you. If police do arrest you, they will take you back to a police station for charging. After you have been charged, police have to decide whether to let you go or not.

If police decide to let you go, they can either just release you and tell you when you must attend court or they can release you on 'bail'. Bail means being allowed to go free in relation to the offence you are charged with. It is always a requirement of bail that you attend court on your next court date. Other bail conditions may be imposed too. When you get bail you have to sign a form acknowledging your bail and its conditions before you will be released.

If the police don't want to let you go or give you bail, then you will be brought before a court where you can ask the court to give you bail. Depending on the time of day, you may be kept in custody overnight before court opens the next day. Before you are brought into court you can get free legal advice and, sometimes, representation from a Legal Aid NSW duty lawyer. Otherwise you can arrange a private lawyer or you can represent yourself.

Will I get bail?

When deciding whether to give you bail, there are two factors the court has to consider:

Whether you need to 'show cause'

To get bail, you may or may not have to 'show cause'. Showing cause means you have to explain to the court why locking you up is not justified. When making its decision, the court can take a lot of different things into account. If you have to show cause it means it will be harder to get bail.

Whether you will have to show cause depends on the offence you have been charged with and whether you were already on bail or parole when you were charged. With many serious offences, especially ones involving sex, violence or firearms, you will have to show cause. In the same way, if you are already on bail or parole and you are charged with a fresh offence, you will have to show cause. If you can't show cause you will be refused bail.

Bail concerns

After deciding whether you have to show cause, the court has to consider four things, also known as bail concerns. They are:

- will you attend court when you have to?
- will you commit serious offences?
- will you endanger any person or the community?
- will you interfere with witnesses or evidence?

If the court is not concerned about any of these issues, or if the court thinks the concerns can be addressed by imposing conditions on your bail, then the court must give you bail.

If the court gives you bail, the court must decide what conditions to impose, if any. The conditions imposed on your bail must be only the minimum necessary to address the concerns the court has. The conditions must also be workable and proportionate and appropriate to the offence that you have been charged with and to the concerns the court has.

What are the different types of bail conditions?

There are different types of conditions that can be imposed on bail.

Conduct requirements

Some bail conditions are about things you must do or must not do. This type of bail condition is called a 'conduct requirement'. Some examples of conduct requirements are:

- report to police every day
- live at a specific address
- surrender your passport
- not associate with specific people (this means not go near or talk to those people)
- not go within a certain distance of a specific place (e.g. within 500 metres of the shopping centre)
- obey a curfew.

Other types of bail conditions are generally only imposed if conduct requirements are not enough.

Security requirements

A 'security requirement' is a bail condition requiring you or another person to give 'security'. Giving security normally means agreeing to pay money if you don't attend court when you are told.

Sometimes the money must be deposited with the court before you will be released from custody. Sometimes the security can be property instead of money.

Character acknowledgments

'Character acknowledgments' are another type of bail condition – they require a person of good character to sign a form saying they believe you are a responsible person who will obey your bail conditions.

Enforcement conditions

Another type of condition that can be made is called an 'enforcement condition'. These are bail conditions to make sure you comply with one of your other bail conditions. Examples include a condition that you must answer the door so that police can check you are complying with your curfew or a condition to submit to breath tests when asked to check that you are complying with a condition not to drink alcohol.

How long does bail continue?

Bail continues until the bail is changed by the court or your court case finishes.

What if the court refuses me bail?

If the court refuses you bail, you can apply to the Supreme Court to give you bail. See the Legal Aid NSW brochure *Applying for Supreme Court Bail* for more information.

Can I apply for bail more than once?

If you have been refused bail, you can only ask for bail again if:

- you were not represented by a lawyer the first time you asked for bail
- you have new information to tell the court about why you should get bail
- there has been a change of circumstances
- you are under 18 years of age and the last bail application was made on your first appearance for the offence.

What happens if I breach my bail?

If you breach your bail (which means if you fail to attend court or disobey your bail conditions) then you may be arrested and brought back to the court. If a police officer thinks you have breached your bail but thinks your breach is not serious (for example, you are a few minutes late to report to police), they can instead decide just to warn you and not arrest you. The decision is up to the police officer. If you are taken back to court, you may or may not be given bail again.

What if I have bail for more than one offence?

If you have different bail conditions for different offences, it is a good idea to ask the court to make the conditions match with your other bail(s). For example, all bails should specify that you live at the same address and they should not make you report to different police stations at the same time. It is up to you to tell the court about bail conditions you have for other offences.

How can my bail be changed?

You, the prosecution (in the Local Court that is the police) and, in domestic violence cases, the victim of the alleged violence, can all ask the court to change your bail conditions. The victim cannot ask for your bail to be entirely taken away unless they have the support of the prosecution.

The victim or prosecution would normally only ask for your bail to be changed if something happens that causes a problem or alarm. If you have been complying with your bail and there have been no problems, the court is unlikely to change the bail to make it stricter.

You may wish to change your bail to reduce your reporting to police if you have been reporting reliably and punctually since the last court date. Or you could ask for permission to go away for a couple of days to attend a far-off funeral. Another example is asking the court for permission to change where you live.

This publication is intended as a general guide to the law in NSW. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.

At the time of printing, the information shown is correct but may be subject to change.

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