

Understanding Bail

Helping you understand
and apply for bail.



Legal Aid 
NEW SOUTH WALES

www.legalaid.nsw.gov.au

What happens if the police allege that you have committed an offence?

- If the offence is very minor, for example some traffic offences, you may be given an infringement notice and you don't have to attend court unless you disagree about whether you committed the offence. You would then 'elect' to go to court.
- If the offence is a little more serious, you may be given a Court Attendance Notice with a court date, but also be given other documents which explain that you do not have to go to court if you admit the offence. You should read all the documents carefully before deciding whether you want to admit the offence and whether you want to go to court. If you admit the offence you can complete the 'Written Notice of Pleading' and send it to the court before the due date. The Magistrate will decide what penalty you will get without you having to go to court. You will be advised of the result in the mail. Sometimes the magistrate may want you to attend court and you will be advised of another date to attend. It is a good idea to call the court and check what happened.
- If the offence is more serious you may be given a Court Attendance Notice and be given **bail** by the police. This means that you can go home, but it also means that you **do have to attend court**.

If you do not attend court you will be committing another offence. It is likely that the court will issue a warrant for your arrest. The police will then arrest you and hold you in custody until you are taken to court.

- If the offence is even more serious or if the police think that you may not go to court or that you may hurt someone or continue to commit offences they may refuse to release you. This is called **refusing bail**. You will be taken to court and you can ask the magistrate to release you.

Will I get bail?

The *Bail Act* sets out what factors are relevant in deciding whether you should be granted bail. At court you may hear the expressions ‘presumption in favour of bail’; ‘presumption against bail’; or ‘presumption neutral’.

This is because the *Bail Act* sets out when a person accused of an offence is more likely to be granted or refused bail. These presumptions are based on various factors including the seriousness of the offence.

If the alleged offence is relatively minor the person should be granted bail.

If the alleged offence is serious there is a presumption against bail and you will have to satisfy the court why you should be granted bail. These offences include:

- certain drug offences,
- certain firearms offences,
- serious property offences if you have had a conviction in the last two years for similar offences or
- offences involving riot or participation in large-scale public disorder offences.

In really serious cases, such as murder, bail would only be granted in exceptional circumstances.

In other cases which are in between the minor category and the serious category there may be no presumption either for or against bail and the court will consider various factors when deciding whether to grant bail.

Factors considered by the court

Some of the factors which the court will consider when deciding whether to grant bail include:

- the nature and circumstances of the alleged offence including:
 - whether any weapons were used
 - the strength of the police case
 - the likely penalty, particularly if a gaol sentence is likely
- if the alleged offence is one of domestic violence, whether you have a history of violence
- whether you are already on bail, a bond or some other form of conditional liberty such as a suspended sentence, periodic detention, home detention or parole
- whether you have previously failed to attend court when required to do so
- your background and community ties, for example:
 - who you live with
 - your family situation
 - your employment
 - your criminal record
- your interests, for example:
 - the time you would spend in custody
 - your need to prepare for your court case
 - any other lawful interest
- the protection and welfare of the community including:
 - the likelihood of you committing more offences
 - the likelihood of you interfering with evidence or witnesses
- the use of weapons or violence.

**You can get legal advice at your nearest
Legal Aid NSW office or telephone advice from
LawAccess NSW on 1800 888 529.**

Will there be conditions?

Bail may be granted subject to conditions.

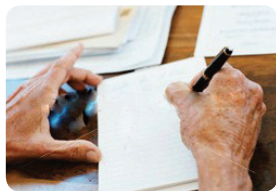
Conditions can include requirements such as:

- Living at a certain address
- Reporting to police on a regular basis
- Not contacting witnesses, particularly alleged victims
- Not driving a motor vehicle (for alleged traffic offences)
- Not drinking alcohol
- Attending drug and alcohol courses
- Attending rehabilitation or counselling courses
- Attending medical appointments
- A curfew, that requires you to be at home during certain hours
- Not going to certain places
- Not contacting certain people, for example people involved in the offence
- Surrendering your passport
- Agreeing to pay money if you do not attend court.

Can I change my bail conditions?

After you have been granted bail you may need to change your bail conditions. This may happen, for example, if you change your address or get a new job. You must attend the court and make an application to vary your bail conditions.

If you have a surety you should tell that person about your application and ask them if they agree. They should either attend court or write a letter to tell the court if they agree to the change. The letter must contain their contact details in case the police or court want to contact them and check that they have agreed.





What is a surety?

Sometimes bail will be granted with a condition that another person sign a document guaranteeing that you will attend court. That person is referred to as an 'acceptable person' or a 'surety'.

Your surety may only be required to confirm that they know you and that you are likely to comply with your bail undertaking.

More often, your surety will be required to agree to pay money if you do not comply with your bail undertaking. This may be by way of your surety signing an undertaking to pay money if you do not attend. The surety will be asked to produce proof that they have money that they may be required to forfeit (eg show a bank statement in their name). Sometimes your surety will be required to deposit money, or some other valuable asset, before you can be released from custody.

If your surety has paid, or agreed to pay, money on your behalf and you do not attend court, that person will lose his/her money.

What happens if I breach my bail conditions?

If you breach your bail conditions the police may arrest you. You may be held in custody and taken to court. The magistrate will decide whether you should be given bail again.



What if I have bail for more than one case?

If you have more than one court case you may have more than one set of bail conditions. You must make sure that they are the same, or at least not in conflict.

For example, if you have already attended one court and you have been given bail to live at a certain address and you are then arrested for another matter, you need to make sure that the new bail allows you to live at the same address.

If it is different you will need to make an application to vary the first bail. If you have two sets of bail conditions which are inconsistent you may be arrested for being in breach of bail. It is important that you keep your bail documents. It is a good idea to get advice if you are not sure about your conditions.

What if I have both bail and an AVO?

If you have been granted bail which includes conditions involving another person, for example a partner or relative, and you also have an Apprehended Violence Order (AVO) involving the same person, you should make sure that the conditions of your bail and your AVO are the same, or at least not in conflict.

If the conditions of one are changed make sure that the court knows about the other so that they can be changed as well.

For example, if you were given an AVO which stopped you from going to someone's home and that person is now happy to have you come to the home, you will need to change both your bail conditions and your AVO to allow you to do this.

How many times can I apply for bail?

The *Bail Act* has changed recently. It now says that a court is to refuse to hear another application for bail unless:

- the person was not legally represented the previous time, or
- new facts or circumstances have arisen.

The Act also prevents a lawyer from making a new application for bail unless he/she is satisfied of either of these two matters.

This may mean that it may be a good idea not to make an application for bail, or an application to vary your bail conditions, until you have as much evidence as possible to convince the court to grant your application. For example, if you want to enter a rehabilitation centre you should obtain a letter from the centre showing that it has assessed and accepted you and setting out details of its program.

It may also mean that your lawyer may not be able to make a second or further application on your behalf, even if you want him/her to do so.

What if I'm refused bail?

If you are refused bail you may be able to make another bail application in the circumstances

outlined above (i.e. you were not represented by a lawyer on your first application or new facts or circumstances have arisen which are relevant to bail). You may also apply to the Supreme Court. You should get legal advice in relation to this. See the brochure *Applying for Supreme Court Bail** for further information.



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