

Bail: Getting Out of Jail After an Arrest

What you need to know about bail -- what it is, how it's set and how to pay it.

Many people, especially those arrested for minor misdemeanors, are given citations at the scene of an arrest telling them when to appear in court, and are immediately released. Others, however, are put in jail. Often, a person's first thought upon landing in jail is how to get out -- and fast. The usual way to do this is "post bail." Bail is cash or a cash equivalent that an arrested person gives to a court to ensure that he will appear in court when ordered to do so. If the defendant appears in court at the proper time, the court refunds the bail. But if the defendant doesn't show up, the court keeps the bail and issues a warrant for the defendant's arrest.

Bail can take any of the following forms:

- cash or check for the full amount of the bail
- property worth the full amount of the bail
- a bond (that is, a guaranteed payment of the full bail amount), or
- a waiver of payment on the condition that the defendant appears in court at the required time (commonly called "release on one's own recognizance").

How Bail Is Set

Judges are responsible for setting bail. Because many people want to get out of jail immediately (depending on when you are arrested, it can take up to five days to see a judge) most jails have standard bail schedules which specify bail amounts for common crimes. An arrested person can get out of jail quickly by paying the amount set forth in the bail schedule.

The Eighth Amendment to the U. S. Constitution requires that bail not be excessive. This means that bail should not be used to raise money for the government or to punish a person for being suspected of committing a crime. Remember: The purpose of bail is to give an arrested person her freedom until she is convicted of a crime, and the amount of bail must be no more than is reasonably necessary to keep her from fleeing before a case is over.

So much for theory. In fact, many judges set an impossibly high bail in particular types of cases (such as those involving drug sales or rape) to keep a suspect in jail until the trial is over. Although bail set for this purpose -- called preventative detention -- is thought by many to violate the Constitution, courts have uniformly rejected this argument (the issue has never been decided by the U.S. Supreme Court, the ultimate arbiter of what is and is not constitutional).

If a person can't afford the amount of bail on the bail schedule, he or she can ask a judge to lower it. Depending on the state, this request must be made either in a special bail setting hearing or when the person appears in court for the first time (usually called the arraignment).

Paying Bail

There are two ways to pay bail:

- pay the full amount of the bail or
- buy a bail bond.

A bail bond is like a check held in reserve: it represents the person's promise that he or she will appear in court when required to. The bail bond is purchased by payment of a non-refundable premium (usually about 10% of the face amount of the bond).

A bail bond may sound like a good deal, but buying a bond may cost more in the long run. If the full amount of the bail is paid, it will be refunded (less a small administrative fee) when the case is over and all required appearances have been made. On the other hand, the 10% premium is nonrefundable. In addition, the bond seller may require "collateral." This means that the person who pays for the bail bond must also give the bond seller a financial interest in some of the person's valuable property. The bond seller can cash in on this interest if the suspect fails to appear in court.

Getting Out of Jail Free

Sometimes people are released "on their own recognizance," or "O.R." A defendant released O.R. must simply sign a promise to show up in court. He doesn't have to post bail. A defendant commonly requests release on his own recognizance at his first court appearance. If the judge denies the request, he then asks for low bail.

In general, defendants who are released O.R. have strong ties to a community, making them unlikely to flee. Factors that may convince a judge to grant an O.R. release include the following:

- The defendant has other family members (most likely parents, a spouse or children) living in the community.
- The defendant has resided in the community for many years.
- The defendant has a job.
- The defendant has little or no past criminal record, or any previous criminal problems were minor and occurred many years earlier.
- The defendant has been charged with previous crimes and has always appeared as required.