

Guide to:

# Bail in Youth Criminal Court

See also related guide: Youth Criminal Court Process



**If you are charged with a crime, the police can do one of three things:**

- 1. Arrest you, charge you and give you release papers.** You will be allowed to leave from where ever they stopped you. The police will give you papers that tell you when you must go to the police station for photos and fingerprints, and will tell you the date and time when you must go to court.
- 2. Arrest you, charge you, take you to the police station and then release you.** The police may ask you questions – you always have the right to talk to a lawyer. The police will charge you, take your photos and fingerprints, and then give you release papers that will tell you the date and time when you must go to court. You will be allowed to leave from the police station.
- 3. Arrest you, charge you, take you to the police station and keep you there to wait for a bail hearing.** You might stay in the police station or jail overnight. The next day they will take you to court. Either that day or soon after, a Justice will decide whether you have to stay in jail (or “custody”) until your trial. This is called a bail hearing (also called a “show cause” hearing). The bail hearing usually happens the day after you are arrested, but it sometimes takes more time to arrange the plan for your release. Usually it is your lawyer who helps organize the plan.

## What is bail?

Bail is when you do not have to stay in custody (also called “detention”) while you wait for your trial. If you are not released on bail, you will have to stay in custody until your next court date or your trial. You might hear people call bail a “recognizance of bail”.

A Justice (usually a Justice of the Peace) will decide whether or not you will be released on bail. If you are released on bail, the Justice can make a list of conditions or rules that you must agree to follow while you are on bail. You will be asked to sign a bail form with this list; when you sign this form, you are promising to follow the conditions and rules set out by the Justice. If you don't follow the conditions and rules, you could be arrested and a Justice might send you back to custody to wait for your next court date or your trial.

### **What is a surety?**

In almost every case involving a young person, the Justice will want you to have a "surety" before they release you on bail. A surety is a person who makes a promise to the court to watch out for you while you are on bail. The surety must promise to supervise you, to make sure you go to court on the right days, and to make sure you obey the bail conditions or rules.

### **What happens at a bail hearing?**

At a bail hearing the Justice will decide whether or not you should be released from custody while you wait for your case to finish. The bail hearing is not a trial. You cannot be found guilty at a bail hearing. The Justice will only decide whether or not you should stay in custody until your case ends. If the Crown Attorney (the prosecutor) wants the Justice to order that you stay in custody, the Crown Attorney must convince the Justice that you should be kept in custody.

If you have a lawyer, your lawyer will tell the Justice why you should not be kept in custody. If you do not have your own lawyer, a free emergency lawyer called 'Duty Counsel' will be there in the courtroom to help you.

The Justice will want to know what your plan is to stay out of trouble while you are on bail. You should talk to your lawyer or to Duty Counsel about what your plan will be. Only the Justice can decide whether or not you should be kept in custody. A good plan will help convince the Justice to give you bail. People in court sometimes use the expression "release on bail" or "release on recognizance".

### **Does my surety have to pay any money for bail?**

The surety usually has to promise a certain amount of money for your bail. But, the surety does not have to pay that money to the court unless you break the conditions or rules of your bail. If you break the conditions or rules, the surety may have to pay the full

amount of money that was promised. If you don't break the conditions or rules of your bail, then the surety will not have to pay anything.

A surety should come to the bail hearing with proof that they have enough money to pay the amount of money they promised. The amount of money your surety needs to have will be different in each case. The Justice will usually consider how much money the surety can afford.

### **Who can be my surety?**

A surety must be at least 18 years old. In youth court the surety usually needs to convince the Justice that they have some authority over you, that you will pay attention to them and cooperate with them. Usually it is a parent, guardian, or another responsible adult.

Justices usually prefer a surety that has no criminal record and who is a Canadian citizen.

If you are not following the conditions or rules of your bail, your surety is supposed to call the police and you can be arrested on a new charge of "failing to comply" with the conditions or rules of your bail.

If you change your mind and don't want this person to be your surety anymore, you can ask the Justice to cancel the bail. You will likely need a new surety.

The surety can also change their mind and ask the Justice to cancel the bail. If the surety thinks you are not following your bail conditions, or the surety is not able to supervise you, then the surety could cancel the bail. If the bail is cancelled, you will need to find a new surety and have a new bail hearing.

If you cannot find a new surety, you may have a couple of options (see next page), or you might have to wait in custody until your case ends.

### **What if I can't find a surety?**

There may be a few different reasons why you can not find a surety. If you are a crown ward, or a society ward with a children's aid society, or if you are living on your own, it may be hard or impossible to find a surety.

Sometimes a Justice will agree to "release you on your own recognizance". This means that you will not have a surety, but you must still follow the conditions and rules that the Justice puts on your bail.

In some parts of Ontario there are “bail programs” that offer assistance to people who do not have a surety. The bail program people will interview you to see if they are willing to supervise you. You will have to agree to be “supervised” by the bail program, and you will have to agree to follow the conditions and rules of the program. This option is generally only available when the charges are not too serious, but can sometimes be available for serious charges if you can give the Justice and the bail program a good reason to let you be supervised by the bail program. If you can’t find a surety, you should ask your lawyer or Duty Counsel for information on bail programs in your area.

### **What kind of rules or conditions will I have to follow?**

If the Justice says you can be released on bail, you will have to promise to follow certain rules that the Justice will explain to you. The conditions and rules you have to follow will depend on what the Justice thinks is appropriate in your case.

Here are *some examples* of the rules you might have to follow:

- Telling you where you have to live – often with your parent, guardian, or another responsible adult,
- Banning you from contacting or communicating with certain people,
- Banning you from going to certain places, and/or
- Requiring you to go to school or a program.

In some areas, there are special community programs that can give you support while you are on bail. If the Justice thinks you need extra support, the Justice may order you to attend one of these programs.

Other times, a Justice may say that you have to go to school or find a program that will help you with special issues that you may be dealing with, like a mental health issue.

### **Why would a Justice not give me bail?**

If you are not given bail, this is known as being kept “in custody” or “in detention”. The Justice **can** keep you in custody for any of these reasons:

- To make sure you come to court in the future when you have to,
- To protect the public, including preventing a “substantial” chance that you would commit another “serious offence”, or
- To give the public confidence that the courts are working properly.

A Justice **cannot** put you in custody for any of these reasons:

- Your own protection,
- You have a mental health issue,
- You need a place to live, or
- You need social or child welfare services.

If the Justice thinks that there are legal reasons to keep you in custody, the Justice must first think about any plan that you and your lawyer suggest. The best plan will be one that convinces the Justice that you will come to court, and that there is no need to worry about you getting into trouble again.

### **When can a Justice not give me bail?**

You cannot be kept in custody unless you have committed a serious offence or you have a pattern of other charges against you.

“Serious offence” has a specific meaning in the law – it only includes offences where an adult could get a maximum sentence of more than five years if the adult committed the same crime. For example, “serious offences” includes robbery and could include possession of cocaine, but it does not include a simple theft or possession of marijuana.

### **If the Justice does not want to give me bail, do I have any other options?**

If a Justice is considering keeping you in custody, the Justice must first consider whether there is a responsible adult who can supervise you instead of keeping you in custody. The responsible adult will have to be able to supervise you closely. Both you and the responsible adult must agree to the arrangement. If you both agree, then the Justice may release you into the care of the responsible adult. Both you and the responsible adult will have to sign an agreement for the court.

If a Justice does not give you bail, you can ask a Judge to reconsider your bail. A Judge can look at your case again and make a new decision.

### **Can I change my bail conditions?**

You can always try to change your bail conditions, but the Justice will have to agree.

There are two ways to get your bail conditions changed. The first way is usually the easier way: you ask the Crown Attorney to agree to change your conditions. The Crown Attorney may agree to change your conditions if you have a good reason. For example if you have a condition that says you have to be home by 9:00 pm, but your job doesn't

end until 9:30 pm, the Crown Attorney might agree to change your bail to allow you to get home later. If the Crown Attorney agrees, the Justice will usually also agree.

If the Crown Attorney will not agree, the second way to change your bail conditions is to ask a Judge. You will have a new bail hearing to determine if you could be given different conditions and rules. If you would like to change your bail conditions and rules, you should speak to your lawyer or Duty Counsel. Or you can contact Justice for Children and Youth for advice.

### **FOR HELP FINDING A LAWYER:**

Justice for Children and Youth - [www.jfcy.org](http://www.jfcy.org), 416-920-1633 or 1-866-999-5329

Lawyer Referral Service - [www.lsuc.on.ca](http://www.lsuc.on.ca), receive up to 30 min free advice

Legal Aid Ontario - [www.legalaid.on.ca](http://www.legalaid.on.ca), 1-800-668-8258

### **OTHER SERVICES:**

Kids Help Phone - [www.kidshelpphone.ca](http://www.kidshelpphone.ca), 1-800-668-6868, phone and online support

211 Ontario - [www.211Ontario.ca](http://www.211Ontario.ca), dial 211 from any phone

*Organizations should feel free to add local resources:*

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This pamphlet gives general information only.  
Speak to a lawyer about your situation. March 2017.



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