



HOW BAIL WORKS

Californians for Responsible Justice and Safety

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From Arrest to Bail Out – What Happens?

Information provided by the California Department of Insurance and the Californians for Responsible Justice and Safety.

How does bail work?

When an individual is arrested for a crime, typically that person will be taken to a local law enforcement station for booking, prior to incarceration in a station lock_up or county jail. Once arrested and booked, the defendant has several options for release pending the conclusion of his or her case. Bail is designed to guarantee the appearance of a defendant in court at the time the judge directs.

What are the release options if someone is arrested?

There are five basic release options available. The five options are:

Cash Bail - Cash bail means a person must give the court the total amount of the bail in cash. The cash will be held by the court until the defendant appears to all of his/her court cases and the case is concluded. Full cash bonds provide a powerful incentive for the defendant to appear in court. If the defendant appears for all of his/her scheduled court appearances, the cash bail should be returned in full.

Surety Bond - An alternative to cash bail is a surety bond. This process involves a contractual undertaking guaranteed by an admitted insurance company having adequate assets to satisfy the face value of the bond. The bail agent guarantees to the court that they will pay the bond forfeiture if a defendant fails to appear for their scheduled court appearances. The bail agent's guarantee is made through a surety company and/or by pledging property owned by the bail agent.

For this service, the defendant is charged a premium (typically 10% of the bail amount in Colorado). For example, if the bail amount is \$10,000.00, the premium charged is \$1,000.00. Prior to the posting of the surety bond, the defendant, friend or relative must contact a licensed bail agent. Once a bail agent is contacted, an interview or appointment will be immediately scheduled.

By involving the family and friends of a defendant, as well as through the acceptance of collateral, the bail agent can be reasonably assured that the defendant released on a surety bond will appear to all of his/her court appearances.

After this procedure is completed, the bail agent will post a bond for the full bail amount, financially guaranteeing the defendant's return to court as scheduled.

With money on the line, the bail agent has a financial interest in supervising bailees, and ensuring that they appear in court each and every time the court orders them to appear. If the defendant does not appear in court (skips), the bail agent has time and the financial incentive to find the defendant and bring him/her to court.

Property Bond - In rare cases an individual may be released by posting a property bond with the court. With a property bond, the court records a lien on the property to secure the bail amount. If the defendant fails to appear in court as scheduled, the court may foreclose on the property to obtain the forfeited bail amount.

Release on Personal (Own) Recognizance (P.R.) - Another method of release, pending trial, is through a county or law enforcement administered pre-trial release program. Usually, the employees of these programs interview defendants in custody and make recommendations to the court regarding the release of these individuals on their own recognizance (i.e., without any financial security to insure the defendant's return).

The interview process is often conducted over the telephone, usually with little inquiry into the defendant's background. The interview process attempts to determine whether the detainee is likely to appear in court. There is usually no verification of information provided by the defendant. Since no money, property or bond is posted to secure the defendant's appearance in court, he/she faces no personal economic hardship from the conscious decision not to appear in court.

Release on Citation (Cite Out) - This procedure involves the issuance of a citation by the arresting officer to the arrestee, informing the arrestee that he/she must appear in court at an appointed court date.

The "Cite Out" usually occurs immediately after an individual is arrested. As a consequence of the failure to follow complete booking procedures, the true identity and background of most individuals released on citation is never established. This results in the release of numerous arrestees who may have outstanding bench warrants pending or who may present a significant danger to society.

Accordingly, in those cases involving "Cite Outs", the arrestee may never be placed in custody. Like the Own Recognizance (O.R.) release, the defendant's appearance in court depends exclusively on the integrity of the defendant voluntarily returning to court as ordered by the court.

How soon can he/she get out of jail?

It typically takes anywhere from 15 minutes to 1 hour to be released on bail in a Municipal or City Jail. If a defendant is booked into a county jail, it usually takes anywhere from 2 to 8 hours to be released on bail.

What are bail bonds?

Someone arrested on a criminal charge may be held until trial, unless they furnish the required bail. The posting of a bail bond acquired by or on behalf of the incarcerated person is one means of meeting the required bail.

When a bond is issued, the bonding company guarantees that the defendant will appear in court at a given time and place. The Government entity (state or federal) in whose court the defendant must appear is protected by the bond.

If the defendant fails to appear, the bond amount becomes payable and is forfeited as a penalty by the surety insurer issuing the bond. Bail bonds usually require collateral (cash, a deed, or other property) to protect the surety.

Who issues bail bonds?

Bail bonds are issued by licensed "Bail Agents" who specialize in their underwriting and issuance. Bail agents act as the appointed representatives of licensed surety insurance companies. Be sure to ask if your bail bondsman is licensed by the state.

How much does a bail agent charge?

The cost to the consumer will be about 10% of the total amount of the bond, plus actual, necessary and reasonable expenses incurred in connection with the transaction. The court determines the amount of the bond.

What is the consumer agreeing to in the bail bond contract?

The consumer is agreeing to:

- Pay the premium for the bond at the established rates.
- Provide required collateral.
- Pay actual, necessary and reasonable expenses incurred by the bail agent in connection with the transaction. These may include:
 - Reimbursement for long distance phone calls.
 - Excess travel expenses
 - Posting fees
 - Bounty agent/skip tracer expenses
 - Payment of the bond amount for the defendant's failure to appear.
 - Attorney fees and court costs.
- Keep the bail agent advised of address/employment changes of the defendant or other parties to the agreement.
- Aid the bail agent/skip tracers in locating the defendant (where someone other than the defendant has secured the bond).

The consumer should read all agreements thoroughly, asking questions until all items and obligations are understood.

What Collateral is needed to make bail?

Typically, a family member or a close friend of the defendant will post bail and cosign. Collateral is not always required for a person to be bailed from jail. Often a person can be bailed from jail on the signature of a friend or family member. Cosigners typically need to be working and either own or rent a home in the same area for some time.

What is collateral?

Collateral is anything of value used to financially secure a bail bond. Examples include houses, cars, boats, jewelry, and electronic equipment (i.e., anything of financial value).

When will collateral be returned?

Collateral is usually returned when the court finishes with the defendant's case(s), exonerating the bail bond(s), and when all fees have been paid.

What does the bail agent do for the consumer?

Provides an avenue for the incarcerated person to be out of custody until his/her day in court, allowing the defendant to continue his/her day-to-day life until the criminal matter is resolved.

The bail agent will provide the following:

- Receipts and copies of all signed documents.
- Information regarding the status of the bond and changes in assigned court dates.
- The status of any costs due, as imposed by the court.
- Assistance in locating the defendant should a forfeiture occur.
- Appearance before the court regarding the bail bond when such appearances are necessary (sometimes requiring the hiring of legal counsel).
- The timely return of collateral upon exoneration of the bond.

How long is a bail bond good for, and can the amount be reduced?

The bail bond runs for the length of the case that is being bonded. However, the agreement may provide for the payment of premium at inception, and upon "renewal" on an annual basis.

Once paid, premium for a bail bond is not refundable.

How do I find a Legitimate Bail Agent?

1. Make sure you only deal with a licensed bail agent. Ask to see the bail agent's license and identification prior to any bail transaction. Or, confirm their licensure status on the Department of Insurance website at <http://www.insurance.ca.gov/license-status/>.
2. Make sure the bail agent charges legal rates. The premium charged for a bail bond is 10% of the full bail amount. Any additional charges should be itemized and explained to your satisfaction.
3. Make sure you are given itemized receipts for all charges.
4. Make sure you are given copies of all signed contracts and agreements.
5. If financing is provided, make sure you understand the terms of the financing agreement prior to signing and be sure you are given copies of anything you sign.
6. Make sure the bail agent you contract with will be available to you after the bail bond has been posted. Part of what you pay for is service. Any professional bail agent will be available for questions or concerns throughout the entire process.