
Systems of pretrial release, including bail, seek to balance individual liberty interests, the protection of public safety, the need to ensure that defendants appear for court hearings, and concerns about equal treatment within the judicial system.

Courts must establish conditions of release for jailed defendants

A person arrested and held in custody must be given a hearing. At that hearing, a judge determines the conditions of release. Conditions, including bail, are generally intended to make sure that a person returns for future court hearings. Court rules direct judges to release individuals without specific conditions unless a judge determines that such a release “will endanger the public safety or will not reasonably assure the defendant’s appearance.”

Courts have three main options in establishing conditions of release

A judge can (1) order a defendant’s release without any conditions (generally referred to as an “OR,” for release on the person’s own recognizance, or “PR,” for a release on personal recognizance), (2) set an amount of bail that the defendant must post to be released, or (3) authorize release with specific conditions (usually called a “CR,” or conditional release). Conditions can include things like prohibiting contact with a victim, requiring drug tests, and placing the person under the supervision of a person or organization. If the judge authorizes release with conditions, the state constitution requires the judge to also set a bail-only amount as an alternative option.

Courts must consider certain things before setting the conditions of release

Judges consider 13 specific factors when choosing conditions of release. Those conditions include the nature of the crime charged, the person’s ties to the community, the person’s financial resources, and the safety of others. Statutes require a pretrial bail evaluation for a defendant accused of a felony crime of violence and several specific gross misdemeanors and misdemeanors. Statutes also require training for judges on how to keep bail evaluations and decisions racially and culturally neutral. Decisions must be based on each defendant’s unique situation.

Bail takes the place of other conditions of release for a person facing a charge

Following an arrest, a defendant may post bail in order to obtain a release from custody without being required to follow other conditions. For some offenses, a bail schedule establishes the amount of bail for all individuals accused of committing that offense and the defendant can post bail without being seen by a judge. In most cases, a judge sets the amount of bail at a hearing.

Bail bonds companies and others can post bail on behalf of a person

Nothing requires defendants to use their own money to post bail. Friends and family members often post bail for a defendant. More recently, nonprofit organizations have been created with the goal of collecting donations to create a fund to post bail on behalf of defendants. Some companies promise to pay bail on behalf of a defendant. That promise is called a bond and bail bonds companies must be approved by the judicial branch and registered with the Department of Commerce. Cash bail posted for a defendant is deposited with the court and can be refunded to a defendant. Bail bonds companies

charge a premium in exchange for posting a bond on behalf of the defendant. (Minnesota allows a charge of up to 10 percent of the bail amount.) The premium is not refundable.

Different states have different rules that apply to bail

The federal government, states, and Washington, D.C., all establish their own rules for bail. Some locations use a general bail schedule for most offenses. Others have laws or policies that restrict the use of bail and promote release with more intensive supervision. Some states, such as Wisconsin, require that bail be posted in cash while other states permit the use of bonds.

There are constitutional limits on bail in Minnesota

The federal and state constitutions prohibit excessive bail. Minnesota's Bill of Rights also guarantees the right to bail. Article I, section 7 says: **"All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great."** Minnesota no longer has the death penalty, so all defendants have a right to have bail set.

Several entities play roles in the regulation of bail

The legislature can create or amend substantive rights and regulations that do not conflict with the constitution. That includes establishing maximum or minimum bail amounts for certain offenses or notification requirements for alleged victims. The judicial branch determines procedural rules including when bail hearings are held and what factors individual judges must consider in setting bail. Bail bonds companies must register with the Department of Commerce and judicial branch, and must follow rules established by both entities. Individual counties may also be given the ability to test new assessment tools or methods of pretrial supervision.

There are some limits on how much bail can be required

For most misdemeanors and gross misdemeanors, [Minnesota Statutes, section 629.471](#), limits the maximum bail that can be set to twice the highest fine for the offense. The statute includes several exceptions, allowing a judge to set bail at four, six, or ten times the maximum fine for some offenses including certain DWI offenses and domestic assaults. A judge *must* set the maximum bail for a person arrested for a DWI under certain circumstances.

Courts do not have to set bail at an amount someone can actually pay

While a court must consider a person's ability to pay, there is nothing that requires judges to set bail at an amount detainees can actually pay. That practice contrasts with the federal rule under which a judge "may not impose a financial condition that results in the pretrial detention of the person." Unlike Minnesota, the federal system has a procedure for detention in which a person can be held without bail under certain circumstances.

There are some limits on how long a person who cannot post bail can be held in jail without being convicted of a crime

If a person charged with a misdemeanor demands a speedy trial, the trial must take place within ten days or else the defendant must be released on nonmonetary conditions. Unless there are exigent circumstances, a person charged with a gross misdemeanor or felony must be released on nonmonetary conditions if trial does not begin within 120 days after the person enters a plea other than guilty and demands a speedy trial.



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