

Bail (Conditional Release)

The police may arrest someone during an investigation and then release the person, with or without conditions, to attend court on a later date. This is known as “bail.” If the police do not release the suspect, he or she must be brought before a judge or justice for a bail hearing.¹ “Judicial interim release” occurs when a judge or justice releases an accused conditionally into the community after a charge has been laid and pending trial.² This is also known as “bail.”

In British Columbia, Crown Counsel approve criminal and regulatory charges and prepare Informations for swearing by police. An exception to this practice occurs where the police have arrested an accused (usually on an evening or weekend), and Crown Counsel is not available to review the Report to Crown Counsel (RCC), or the police need more time to complete the RCC.

Where the police wish to hold the accused in custody for court, or where the police seek release conditions that are unavailable except through a Judicial Justice, an Information prepared by the police is sworn through the Justice Centre. The accused would then be brought before a Judicial Justice and either remanded in custody for a bail hearing at a later time, or a bail hearing would be conducted and the accused would be either detained or released on conditions.

The police-laid Information and related RCC are later reviewed by Crown Counsel, who conduct a charge assessment to determine whether to proceed with the charges, proceed on different charges, or to not proceed with a prosecution and stay (or put an end to) the Information that was prepared by police.

The *Criminal Code* contains the rules that govern bail. Persons who are charged with an offence are constitutionally entitled to be released from custody unless Crown Counsel is able to justify their continued detention in accordance with the law. The position that Crown Counsel takes in relation to bail, including whether to seek the detention of the accused, includes careful consideration of the specific circumstances of the case, the background of the accused, and the risk to the public.

Legal Test for a Detention Order

Where Crown Counsel seeks to have a person detained in custody until their trial or sentencing (a “detention order”), Crown Counsel must be able to show that detention is necessary to:

- ensure the accused person attends court;

- ensure the safety or protection of the public, including any victims or witnesses; or
- maintain public confidence in the administration of justice.

In most circumstances, Crown Counsel bears the burden to show that an accused should be detained (or that a restrictive condition should be placed on the accused). However, in certain circumstances, and for some serious offences, the accused will bear the burden to show that he or she should be released.³

Types of Bail Orders

After a bail hearing, the accused can either be detained or released. A court can release the accused on either an undertaking or a recognizance. The form of release used depends on the nature of the alleged offence, the background of the accused, and the risk presented in the circumstances.

An undertaking will simply require the accused to attend court and follow the stated conditions. A recognizance comes with the added imposition of a potential financial penalty if the accused does not attend court or follow the conditions of release. The recognizance can also require the person to make a cash deposit prior to being released, and/or to have one or more sureties added to the recognizance. A surety is a person who agrees to be liable to pay a set amount of money if the accused fails to attend court or breaches a condition of the bail order.

Commonly Imposed Conditions

In ordering the release of the accused, the court may impose reasonable conditions on the accused that the court considers necessary or desirable, such as:

- report to a peace officer or a bail supervisor;
- remain within a territorial jurisdiction specified in the order;
- notify the peace officer or bail supervisor of any change in his address or his employment or occupation;
- abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with the conditions specified in the order that the justice considers necessary;
- abstain from the consumption of alcohol, non-prescription drugs and other intoxicants;
- abide by a curfew;
- deposit his or her passport; and
- not possess weapons or firearms.

Breach of Bail Condition

A person who is subject to a bail order and does not comply with the terms of the order can be charged with a breach of bail and prosecuted. Anyone who has concerns that an accused may be breaching a bail condition is encouraged to report the concerns to police for possible action, including investigation for breach of bail.

Revocation of Bail

Where a court finds that the accused has committed a new indictable offence while on bail, or has breached (or is about to breach) a condition of the bail order, the court may cancel the bail order.⁴ When this occurs the accused is entitled to a new bail hearing, but the accused will bear the onus to show cause why his or her detention is not justified.

Bail can also be revoked if a surety applies to be released from their obligation. The court may re-release the accused after a new bail hearing or upon a new surety being approved by the court.

Bail Variation or Review

The bail order can be varied at any time, with the consent of Crown Counsel.⁵ An order for release or detention can also be vacated and replaced by a new order in the following situations:

- after completion of a preliminary hearing;⁶
- by the trial judge, once the trial has commenced; or
- with the consent of Crown Counsel and the accused.⁷

Crown Counsel or the accused can seek a review of the order for detention or release. The bail review is heard by a judge of the Supreme Court of BC.

Bail Pending Appeal

The Court of Appeal may release an offender pending the determination of the offender's appeal to either the Court of Appeal or the Supreme Court of Canada. Where the appeal is from conviction, the offender must establish that the appeal is not frivolous and that his or her detention is not necessary in the public interest.

Bail for Young Persons

Generally, the above principles apply to young persons charged under the *Youth Criminal Justice Act*. However, detention on the secondary grounds (safety or protection of the public) is presumed to be unnecessary unless the young person could receive a custodial sentence on conviction.

Even where a young person would normally be detained, the court must inquire as to whether there is a responsible person willing and able to take care of and exercise control over the young person. If so, the young person will be released into the responsible person's care upon both of them providing an undertaking to the court.

¹ Except for offences listed in s. 469 of the *Criminal Code*, such as murder and treason, where the accused is automatically detained and can only be released on bail by a superior court judge (which in British Columbia is a judge of the Supreme Court of British Columbia).

² Section 515 governs judicial interim release.

³ Such as the offences listed in ss. 515(6) and 469.

⁴ Section 524(4) and (8)

⁵ Sections 515.1, 523(2).

⁶ Except for offences listed in section 469, such as murder or treason.

⁷ Section 523(2).