



Bail

When the police arrest a person during an investigation, they can release the person, with or without conditions, and require the person to attend court at a later date.

If the police choose not to release the person, the person must be brought before a judge for a bail hearing. The judge can release the person, with or without conditions, or detain them in custody until trial.

Constitutional Right to Reasonable Bail

Under Canadian law, all persons accused of crimes - even serious crimes - have the right to be presumed innocent until proven guilty and the right not to be denied reasonable bail without just cause. These are fundamental rights guaranteed under the *Canadian Charter of Rights and Freedoms*.

The rules for deciding when an accused should be detained in custody or released until trial, and on what terms, are in the federal *Criminal Code*. Before an accused can be detained in custody or released on conditions, Crown Counsel must convince the court that the detention, or any condition placed on the accused person's freedom, is necessary to:

- ensure the accused attends court
- ensure the safety or protection of the public, including any victims or witnesses
- maintain public confidence in the administration of justice

The *Criminal Code* requires police and judges to exercise a "principle of restraint" and give primary consideration to releasing the accused at the earliest opportunity, on the least onerous conditions with which they can reasonably comply. The Supreme Court of Canada has emphasized the importance of this principle of restraint, stating that "the release of accused persons is the cardinal rule and detention, the exception".¹

The *Criminal Code* also requires police and judges to give particular attention to the circumstances of accused who are Indigenous and those accused who belong to a vulnerable population that is over-represented in the criminal justice system and disadvantaged in obtaining release.

Crown Counsel's Position on Bail

In deciding when to seek detention or conditions on the release of an accused until trial, Crown Counsel must consider and apply the “principle of restraint” in all bail matters.

Crown Counsel sometimes need to make difficult judgment calls about bail. This is a quote from the BCPS *Bail – Adults* (BAI 1) policy:

The decision whether to oppose or consent to bail, and on what terms, requires Crown Counsel to consider and weigh the competing interests of the accused, the public, and victims. Crown Counsel cannot predict the future actions of the accused with certainty, and thus cannot eliminate all risks. This is inevitable in a justice system based on the presumption of innocence, in which every accused person has a fundamental right to reasonable bail.

Bail Hearing

When an accused is not released by the police and is brought before a judge, their lawyer and Crown Counsel will provide the judge with details about the accused and the crime they are accused of committing. The accused's lawyer and Crown Counsel can explain to the judge why the accused should or should not be detained in custody or released on conditions until trial. The judge decides based on the legal principles and the facts of the case.

The judge can impose reasonable conditions on the accused's release, such as:

- reporting to a peace officer or bail supervisor
- not communicating with a victim or witness
- not going to a place or area
- not possessing weapons or firearms

Sometimes, the court can require the accused to make a cash deposit or require someone in the community (a “surety”) to be responsible for ensuring the accused person behaves as they should while they are free on bail.

Revocation of Bail

If an accused person commits a new offence while on bail, or does not follow a condition of their release, the court can cancel the bail order and issue a warrant to arrest them. When the accused is arrested, the accused must explain why they should not be detained in custody until trial.

It is a criminal offence for an accused not to follow the conditions of release on bail. Anyone who has reasons to believe an accused is not following their bail conditions bail should report this to police.

Bail Variation or Review

A bail order can be changed at any time if Crown Counsel agrees and a judge approves. A judge can also review an earlier bail decision once the trial has commenced or after a preliminary hearing ends. Crown Counsel or the accused can appeal a judge's bail decision.

Bail Pending Appeal

Offenders can appeal to an appeal court, which can release them on bail until the court decides their case. To get bail, the offender must convince the appeal court that there is a legal basis for their appeal and that their detention is not necessary to protect the public.

Bail for Young Persons

The bail rules that apply to young persons accused of crime are in the *Youth Criminal Justice Act* ("YCJA"). Some of the same rules for bail as apply to adults also apply to young persons, except that a judge can only detain a young person in custody before trial if there is no acceptable alternative to detention.

The YCJA prohibits police and judges from using bail conditions or detention as a substitute for child protection, mental health, or other social measures. The YCJA also allows a judge to place a young person in the care of a responsible adult instead of detaining them in custody until trial.

¹ *R v St-Cloud*, 2015 SCC 27 at para 70