

How Bail Works

Most people have only a vague understanding of the concept of [bail](#) in criminal law. For example, some people assume that it allows a person to buy their way out of a criminal charge, and walk away scot-free. This is most definitely not the case.

What is Bail?

Bail is a bond that a criminal defendant posts with a court before trial. It allows the defendant to go free while awaiting trial. If the defendant shows up to trial, the bail they posted is returned to them. If they fail to appear, the court keeps the bail.

This procedure exists to save the judicial system the expense of housing a criminal defendant in jail while they await trial, while providing some assurance that the defendant will show up to court when their trial begins.

How Do I Post Bail?

If you have the cash on hand to pay the amount of bail required, you can simply pay it, and be on your way. Alternatively, a friend or family member can pay your bail for you. If you don't have enough money to post bail, you can put up a piece of property (a house, car, piece of jewelry, etc.) that's at least as valuable as the bail amount.

In most cases, however, bail is set at an amount so high that the defendant is unable to pay it by himself. In cases like that, bail bondsmen can help.

A bail bondsman is essentially a moneylender. You pay the bondsmen a small percentage of your bail (usually around 10%) as a non-refundable fee. The bondsman then puts up the rest of the bail amount for you, agreeing with the court that they will pay the balance due, if you fail to appear in court. If you appear in court as agreed, the bail they put up is refunded, and they have made a profit, while the defendant was able to go free before trial without paying the full bail amount.

What Happens if Someone Skips Bail?

When a criminal defendant fails to appear in court, the judge can issue what's known as a "bench warrant" – a type of arrest warrant – for the defendant.

This gives the police authority to arrest the defendant and force them to appear. However, if the defendant contracted with a bail bondsman, the bondsman is likely to send a [bounty hunter](#) after them. Bounty hunters are people who pursue and attempt to capture individuals who have skipped bail, and then bring them back to court, so the bail bondsman can recover the bail he paid. If successful, the bounty hunter typically receives a percentage of the returned bail as compensation.

Bounty hunters are not police officers, and do not have any official law-enforcement authority. They only have the legal authority to pursue the defendant who they've been contracted to pursue. In that context, however, they have extremely broad discretion. Bounty hunters are not bound by many of the legal and constitutional limitations that apply to police officers. For example, they can enter a defendant's home without a warrant, in search of the defendant. They can subdue the defendant, and transfer them across state lines.

They have this authority because the defendant, in order to work with a bail bondsman, must consent to it. In every bail bond contract is a clause stating that the bail bondsman can, and will, send a bounty hunter after the defendant if they flee, and a long list of actions the bounty hunter may perform in pursuing the defendant, to which the defendant must consent.

Are There Limits on What Bounty Hunters Can Do?

Yes, there are some.

A few states have banned their use altogether. Likewise, so have most foreign countries, including Mexico and Canada. So, if a suspect flees to either of these countries, and the bounty hunter pursues them and brings them back to the U.S., they would likely be guilty of kidnapping, under the laws of the foreign country.

If that country requests extradition, it's possible that the bounty hunter will be arrested in the U.S., and sent to the foreign country to face trial for breaking their laws.

Furthermore, in many states, bounty hunters are not allowed to carry firearms. And although they can enter the suspect's residence in pursuit of the suspect, they generally can't enter the residence of a third party. This makes sense, because the suspect legally consented to the bounty hunter entering his residence when he agreed to the terms of the bail bond, but there is no such agreement between the third party and the bail bondsman. So, as far as the third party is concerned, the bounty hunter would be nothing more than a trespasser.

And, obviously, a bounty hunter can't use more force than is necessary to capture the suspect. If they do, they could face criminal charges, and a civil lawsuit from the suspect to compensate for injuries they received.

How High Will My Bail Be Set?

The Eighth Amendment to the constitution prohibits courts from setting "excessive bail." This has been read by the Supreme Court, and lower federal courts, to mean that bail can be set up to the minimum amount that can be reasonably expected to ensure the defendant's return to court. In making this determination, the court will consider the financial resources of the defendant, the severity of the crime of which he's accused, the

severity of possible punishment for the crime, the defendant's past criminal history, and their past record of showing up to court appearances, among others.

This basically means that bail can only be used for its intended purpose – giving defendants an incentive to voluntarily appear in court – and not as a punishment.

However, you should note that, although courts are prohibited from imposing *excessive* bail, they don't have to give the defendant an opportunity to bail himself out at all. If the defendant is deemed particularly dangerous, or is seen as a flight risk, a court may refuse to set bail altogether, forcing the defendant to stay in jail during their trial.

For example, a billionaire who is accused of a crime which carries a possible death penalty would be a huge flight risk: no matter how high the bail is set, this person can probably afford to pay it, and given the possible sentence he faces, would likely be willing to part with it, if that means escaping prosecution. Such a person would probably not be allowed to post bail.

How Can a Lawyer Help?

If you are charged with a crime, it's highly advisable that you hire a good [criminal defense attorney](#), or accept the services of a public defender. These lawyers can make it far more likely that your bail will be set at an amount that you can reasonably afford, or if the court is considering refusing to set bail, they might be able to convince it otherwise.

Likewise, if the court sets excessive bail, your lawyer can immediately appeal that decision. If you succeed on appeal, the appeals court will order the criminal court to reduce the bail amount.