

BAIL - FREQUENTLY ASKED QUESTIONS (F.A.Q.)

1. What is a surety?

A surety is someone, that the defendant knows, that volunteers to pledge two things- money and supervision. A surety supervises the defendant in the community, makes sure they follow the conditions of their bail and is prepared to call the police if there are any breaches of bail.

2. Can more than one person be a surety?

Yes, depending on the circumstances

3. Does the surety have to provide the money right away?

A cash bail may be ordered if the defendant lives over 200 km from the area/courthouse where they get bail, or if the charges are very serious. Usually, the surety pledges the money, understanding this money is at risk if they do not enforce the bail conditions.

4. Is it automatic for the surety to lose their money if the defendant breaches?

Only if the Crown Attorney notes the bail for estreatment,

5. What is estreatment?

This is a hearing at the Superior Court of Justice, where the surety testifies how they supervised the defendant.

6. Can I be a surety if I have a criminal record?

That depends. If the proposed surety is still on probation or a peace bond it might not be possible. If the record is old, over 5 years, that is possible.

7. Can I be a surety for more than one person?

Usually, no as being a surety is a big responsibility.

8. What are the minimum requirements of a surety?

At least 18 years old, a Canadian citizen or permanent resident, not a surety for anyone else and have assets (savings, RRSP, house, car(in some jurisdictions)).

9. The defendant is not following his bail conditions, what are my options?

You can contact the police, attend at the court where you signed the bail and ask to be removed as a surety. You will be responsible for the defendant until s/he gets rearrested.

10. If I am removed as a surety, can I be a surety again for the same person?

It depends, if you turned them in and then change your mind, it may be possible.

11. What are some conditions that could be imposed on a defendant?

Some frequent conditions, to not have contact with the complainant/witness, no weapons, and not to attend at a specific address.

12. Can I suggest some conditions?

Yes. Your conditions could also be the house rules if the defendant lives with you.

13. Does the defendant have to live with me?

It depends, it may be easier to supervise the defendant if they are closer.

14. How long could someone be on bail?

A person is on bail until their charges are dealt with either by a plea, trial or withdrawal.

15. What is a recognizance?

It is a listing of the defendant's charges and conditions of their bail. A copy is given to the surety.

16. When should I carry the recognizance?

All the time, if you are required to attend court on the weekend, bring a copy of bail.

17. My family member has been arrested Friday night. Do we have to wait until Monday to attend court?

There is a court opened 365 days a year in each jurisdiction: Brampton, Toronto (Old City Hall), Newmarket, Hamilton, Oshawa.

18. My child has breached his bail, can I sign again?

Often the courts allow a parent to sign multiple bails for a young person, who is between 12-17 years of age.

19. The defendant/surety want to change conditions on the bail, how is that done?

If the defendant has a lawyer, the lawyer can contact the assigned Crown Attorney and ask to vary the bail conditions. If the defendant does not have a lawyer they may get assistance at the duty counsel's office, who can have a meeting with the Crown and request changes to the bail.

20. How long does it take to vary the bail conditions?

Depends on how quickly the Crown Attorney can contact the officer in charge (OIC) of the file and receive an answer and whether the defendant has proof of why the change

needs to happen.

21. What proof is needed to vary the bail conditions?

A job letter, job/school schedule, lease showing a new address.

22. Can the bail be changed if the Crown Attorney does not agree?

Depends, counsel for the defendant will have to bring a bail review application before the Superior Court of Justice to argue the bail variation.

23. What is required for a bail review?

The transcript of the bail hearing, affidavits from the defendant and surety requesting the change to the bail.

24. How will I know if and when the bail is changed?

A bail variation form will have to be signed by the defendant, surety, Crown Attorney and justice before the bail is varied.

25. I am going on a holiday without the defendant, can someone else be a surety while I am gone?

No, a person can not substitute a surety on their own.

26. How many chances does someone have for bail?

An initial bail hearing, if detained, counsel can bring a bail review before the Superior Court of Justice (see #23). A bail hearing can occur after a preliminary hearing. If the

defendant is a young person, a bail de novo can occur on another date.

27. The defendant was released, now the Crown Attorney is trying to get the defendant detained, can they do this?

Yes.

28. Can someone give me money to be surety for someone?

No, you should have your own assets.

29. What is bail program?

This is a government program that provides a person with supervision if there are no persons in the community that can or want to assist.

The material in this FA.Q is not intended as legal advice. It merely conveys general information on legal issues commonly encountered by persons facing criminal charges in Canada. If you are charged with an offence, you should contact a criminal lawyer - immediately. Prince Law Office 416-469-3443