

ABOUT BAIL IN NEW YORK STATE

What is bail?

The term “bail” is commonly used to describe a cash amount that has been set by a judge, to make sure that a person charged with a crime, called a “defendant,” will come back to court. This amount must be paid before a person will be released from jail.¹ Generally, the defendant will be given the option of either paying cash, or paying a bail bondsman to put up the funds, called a “bond.” More on this below.

In New York State, “bail” is also used to describe all nine (9) of the options available to a judge to make sure a person comes back to court, including cash bail and unsecured bonds (see opposite page for a full list of New York’s nine bail options). *New York’s current bail statute includes multiple options that require a defendant to put up little to no money in order to make bail. But, in practice, nearly all judges set one of two bail options—cash or insurance bail bonds—that are the hardest for defendants to afford.* Despite the law’s intention to not make bail dependent on a person’s wealth, its current usage means that poor people get penalized for being poor.

Who sets bail and when?

After an arrest, a person charged with a crime is taken to a local police station, or “booking facility,” where they are fingerprinted so that the arresting officer can obtain their criminal record. In all of New York State, a person can be released directly from the station without seeing the judge. Instead, they can be given an “appearance ticket,” which tells them when they will need to go to court.²

If a person is not released from the station with an appearance ticket, they will be held at the station or jail until they can appear in front of the judge for an “arraignment,” which is when they find out the charges being pressed against them. The person could have the charges dropped at this first court date or enter a guilty plea. However, if there will be another court date in the future, the judge has the option of setting bail. If the judge does not immediately release a person whose most serious charge is a misdemeanor, then the judge must set bail on their case so that the person has a chance of getting out.³ A judge is not required to set bail or release a person whose most serious charge is a felony; the person can be held in jail until the case ends.

What factors must the judge consider about a person when setting bail?

• Character, reputation, habits & mental condition	• History of appearing for court dates
• Family ties & length of residence in community	• The criminal sentence if the person is convicted
• Past juvenile delinquency or youthful offender status	• Employment & financial resources
• Criminal record	• The weight of the evidence

What is the role of the defense attorney & prosecutor when bail is being set?

Under the law, the prosecutor (or “district attorney”) is responsible for requesting that bail be set on a case. They must demonstrate why bail is necessary to make sure a person comes back to court, based on the factors listed above.

The defense attorney is responsible for demonstrating why a person should be released on recognizance, or “RoRed,” based on the factors listed above. Sometimes the prosecutor will agree with the defense attorney that a person should be “RoRed.” However, the judge will always make the final decision.

¹Laws relating to bail can be found in the NY Criminal Procedure Law, §§ 500-540, which took effect on September 1, 1971.

²In counties outside of New York City, the desk officer at the station is permitted to set bail before they release a person.

They are only allowed to do this if the person’s most serious charge is an E felony, misdemeanor, or violation.

³When a person is released without bail being set, this is called “released on recognizance,” or being “RoRed.”

What are the nine (9) types of bail* that a judge can order in New York?

1 CASH BAIL

2 INSURANCE COMPANY BOND

3 SECURED SURETY BOND

4 SECURED APPEARANCE BOND

5 PARTIALLY SECURED SURETY BOND

6 PARTIALLY SECURED APPEARANCE BOND

7 UNSECURED SURETY BOND

8 UNSECURED APPEARANCE BOND

9 CREDIT CARD

Under current New York law, if the judge is setting bail, they are required to set at least 2 forms of bail; most often, the judge chooses “cash bail” or “insurance company bond.”

**See the “New York State Bail Chart” for an explanation of the differences between these 9 forms of bail.*

What is a bond?

A bond is a legal agreement to pay a certain amount of money if a person fails to appear in court. The person signing the bond agreement is often required to provide cash or property as “collateral.”⁴ They forfeit this collateral and are liable for the remaining bond amount if the person charged with a crime misses a court appearance and has a warrant issued.

What is an important difference between insurance company bonds and the other eight forms of bail?

When the judge orders “insurance company bond,” a person’s family or friends must find a third-party, called a “bondsman,” who agrees to pay the bond amount if the person who has been charged does not come to court. The person’s family or friends must pay a non-refundable fee to the bondsman, called a “premium,” *in addition to* giving money or property as collateral. However, the other eight forms of bail do not require a third-party or premiums; money and property are deposited directly with the court as collateral, and any legal agreements to have a person come back to court are made with the court itself.

What happens to the money or property that has been posted for bail once the case ends?

As long as a person makes it to all of their court dates, the money or property that was deposited with the court for bail will be returned at the end of the case. If a person pleads guilty or is found guilty, a 3% fee will be taken out of the bail deposit before it is returned.⁵

Can the bail amount ever be reduced while the case is still pending?

Yes. The defense attorney can ask that a person’s bail amount be reviewed by the same judge or by a judge with more authority.

The attorney must show that there has been a “change of circumstances” in order to have the same judge review the bail amount, so it is important that an individual and their family always let the defense attorney know if anything has changed that would weigh in favor of release or a lower bail amount.⁶ Positive letters from people who know the individual, such as their employer or clergyman, may help the defense attorney make a successful argument to have the bail amount reduced. *However, only the judge can make the decision to reduce or otherwise change the bail of a person who has been charged with a crime.*

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⁴Examples of bonds under New York law include insurance company bail bonds, partially secured bonds and unsecured bonds. In certain types of bonds, a person is required to pay 10 percent or less of the full bond amount to secure someone’s release.

⁵When bail is paid to a bail bondsman, even if the person makes all court appearances or the charges are dismissed, they don’t receive any of the money they paid in premiums. The bondsman is only obligated to return the collateral.

⁶An attorney can also ask a different judge, who has more authority than the arraignment judge, to reduce the amount of bail if it is “excessive.” The attorney can only make this request for a “de novo review” once, and they are not required to show a change of circumstances in order to make the request.