

# The BASICS of BAIL

## What is bail?

Bail is a “security deposit” made on behalf of somebody charged with a crime to guarantee that person appears in court. A person can be held in jail while facing criminal charges unless they put up that deposit, or “post bail.” Depending on the crime charged and the circumstances, a person may be released “O.R.” (Own Recognizance) meaning that the person was released merely on the *promise* that they would appear in court, but without having to secure it with a cash security. Under most circumstances, individuals use a “Bail Bond Company” also known as a “Bail Bond Agent” or “Bondsman” to obtain a “Bail Bond” rather than putting up the actual cash.

## How does a Bail Bond differ from putting up cash?

When a person deposits cash with the court, the entire amount is returned at the conclusion of the case *whether or not the person is convicted*. In other words, the Bail is *not* money used to pay fines, restitution or other case-related costs. But, since bail amounts are usually big (\$10,000 and up) most people do *not* deposit cash, but instead they obtain a Bail Bond. A Bail Bond is a guarantee by the issuer of the bond (usually large insurance companies) that if the person fails to come to court, they will pay over the amount of the bail to the court. Bail Bonds generally cost between 8-10% of the amount of the bail that is secured. In other words, if the bail is set at \$50,000, the Bail Bond will probably cost you \$5,000. BUT: please be aware, the 8-10% you pay for the Bail Bond is a **fee**, not a deposit. It is *not* refundable but is kept by the company that issued the bond. In addition to paying the fee for the Bail Bond, the bond issuers may require security in the form of property to ensure that if the defendant fails to appear and they have to pay the court the face amount of the Bail Bond, that they can recover their loss.

## Is there any other way besides cash or a bail bond?

There is a third way to post bail— through the use of real property. In order to do this, the property must have a **net** value (equity) of 1½ times the amount of the bail amount. For example, if you own a home worth \$550,000 with a total mortgage of \$400,000, the *net* value of your home is \$150,000. Because you are required to put up 1½ times the bail amount, you would be able to use the property to post bail in the amount of \$100,000. Like cash bail, property bail is returned at the conclusion of the case. If the person whose release is secured fails to appear, the court will begin foreclosure proceedings unless you put up the full amount of the bail in cash. The procedure for putting up property is complex and varies from county to county. See the local court rules to find out the specific requirements.

### **Can I combine different methods of posting bail?**

The simple answer is yes, you can. But the practical answer is that you may encounter difficulties doing so. Bail Bond companies might be reluctant to agree to “stacking” because the same cash and property you directly deposit with the court is likely to be the same cash and/or property the bail bond company would go after in the event of a default. If that cash and/or property is already pledged to the court, the bail bond company has nothing to secure itself with. There may be situations, however, where the different methods can be combined.

### **Can anybody bail out if they can afford it?**

No. Not everyone can be bailed out. There are a variety of reasons that a person may not be able to be released on bail:

- Capital offenses are not subject to bail
- Offenses which carry a life sentence are not subject to bail in some counties
- Felony probation violations are not subject to bail at the court’s discretion
- Convicted persons awaiting sentencing and/or appeal are not subject to bail at the court’s discretion
- Federal or other “holds” (for immigration or other reasons) result in a person who posts bail simply being released to the custody of the agency with the hold
- If a judge decides a person poses a specific danger to public safety, bail may be denied
- If a judge decides a person is very likely to run away if released, bail may be denied
- If a person who was released on bail with additional conditions violates a condition, bail may be revoked
- If a person cannot satisfy the court that the source of the funds used to both pay the fee for the bail and to secure the bail come from a legitimate (legal) source, bail may be denied

### **How is the amount of bail determined?**

The severity of the offense and a person’s criminal history are the prime factors, with secondary consideration given to the person’s personal background and ties to the community. Each county in California is required to have a “Bail Schedule” which sets the “presumptive” bail for any given offense charged in that county which includes presumptive bail “adders” for a person’s prior criminal history. Presumptive bail is the amount of bail that will be set absent any other considerations, either positive or negative. Bail may vary from the presumptive

amount. A “nice person” with no prior history, who has lived and worked in the area for 20 years charged with a petty theft will likely be released on his/her Own Recognizance (OR). A transient who is a repeat offender with a drug problem will likely have to post a large bail, very likely in excess of the presumptive bail.

Any deviation from the Presumptive Bail requires a judge’s intervention. Bail may be “reviewed” whenever *legal* circumstances change, upon two days notice to the prosecution that a review is being sought. Once the bail is reviewed by a judge, it remains unless changed by the court (generally, only if a change in legal circumstances occurs or a person violates a condition of bail). A person may not seek a re-review of the bail when there has been *no* change in legal circumstances. A change in legal circumstances would be something that changes a person’s legal liability in a case. Most often this is due to a charge being added or dropped.

### **Can I figure out the presumptive bail on a case?**

Yes. Here’s what you do for a felony:

1. Click on the Bail Computation Worksheet icon at the bottom. Print it out.
2. Identify the county in which the offense is charged. Click on the bail schedule for that county. Los Angeles has separate schedules for misdemeanors and felonies. The other counties in Southern California have combined schedules. In the combined schedules, the misdemeanors are *generally* found towards the bottom.
3. Fill in the fields on the Bail Computation Worksheet using the information from the appropriate county schedule.
4. Add up the amounts of the bail on the offense(s) and enhancement(s). That is the presumptive bail for the case.

For misdemeanor cases, you may use the same method but do not include the enhancements.