

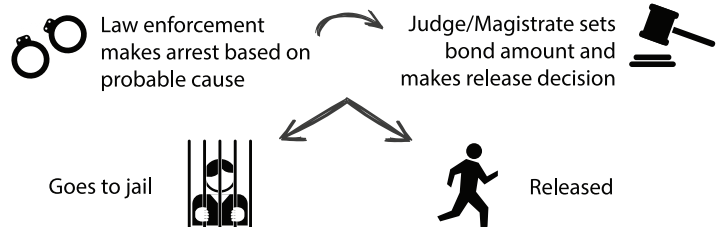
# Understanding How Bail Works Frequently Asked Questions

## How does the pretrial release process work?

When someone is arrested (in states that operate with commercial bail), a determination is made as to the type of pretrial release that will be considered based on the severity of the charge. For low level offenses, defendants are often cited and released or released on their own recognizance.

For more serious charges, a bail amount is often set by an officer of the court using a bail schedule (a predetermined range of bail amounts by charge category) maintained by that jurisdiction. Once a bail amount has been set, the defendant can now exercise his right to post bail. Initial bond settings are often reviewed within a few days if the defendant has not posted bail. Typically, the defendant enlists the help of family and friends to work with a 3rd party

commercial bail agent to post their bond for a small fee (premium). This additional layer of accountability ensures that the defendant will appear at all court proceedings and adhere to any other conditions set by the court. Once the defendant appears at all court proceedings and the case has been adjudicated, the bond is then discharged by the court releasing the financial responsibility of the bail agency based on the completion of the case.



## What are the different types of pretrial release mechanisms available to the defendant?

While pretrial processes differ slightly from state to state, there are generally five main types of pretrial release options:

**Own Recognizance Release (OR)** - if a defendant is not deemed a risk to the community or a flight risk, a judge may release that person on their own recognizance. This type of release typically occurs with low level non-violent, first time offenders. It means that they do not have to put up any money, but must simply promise to appear for all court appearances.

**Pretrial Services Release** - if a defendant is not deemed a serious risk to the community or a flight risk, but there may be other circumstances (substance abuse, mental health, etc.), a judge may release that person to a pretrial service agency. This taxpayer-funded agency is then responsible for ensuring that the defendant shows up for all court appearances. Additionally, these agencies may also be responsible for ensuring that the defendant attend substance abuse classes or seek mental health assistance, etc. In recent years, the expansion of state funded pretrial services often include onerous and restrictive "conditions" set by the court mirroring that of probationary conditions - all before any conviction at all.

**Full Cash Release** - if a defendant is deemed a risk to the community or a flight risk, and a judge/magistrate has set a bond using a bail schedule, the defendant can secure his release by paying the full amount of the bond to the court. This payment is a deposit to the court and will be refunded (less court costs and fees imposed by the judge) if the defendant appears for all court proceedings until final adjudication of the case and once the bond has been exonerated by the court. Most jurisdictions require an official filing by the party who made the deposit for release of the funds.

**10% Bond Release** - if a defendant is deemed a risk to the community or a flight risk, and a judge/magistrate has set a bond using a bail

schedule, the defendant can secure his release by paying 10% of the amount of the bond amount directly to the court. This payment is a deposit to the court and will be refunded (less court costs and fees imposed by the judge) if the defendant appears for all court proceedings until final adjudication of the case, and once the bond has been exonerated by the court. Should the defendant fail to appear for a required court appearance, the court will forfeit the balance of the amount of the bond, issue a warrant for the defendant's arrest, and enter a default judgement against the defendant for the amount of the bond.

**Bail Bond Release** - if a defendant is deemed a risk to the community or a flight risk, and a judge/magistrate has set a bond using a bail schedule, the defendant can secure his release by paying the full amount of the bond to the court. If the defendant does not have the full amount of the bond, they can use a third-party entity, in this case a state licensed and regulated bail bond agent, to post the bond for them. This is typically done for a small fee or premium determined by the state, usually 10% or less of the bond amount (i.e., \$1,000 bond would cost a defendant \$100).

The premium paid to the bail bond agent is much like a premium fee paid on any insurance policy. It is non-refundable and fully earned upon payment. The bail agent, for the premium paid, plays an essential role to both the defendant and court by guaranteeing that the defendant shows up for court. If the defendant fails to appear, the bail agent is responsible for either retrieving the defendant and bringing them back to court or paying the full amount of the bond to the court.

## What happens when the defendant fails to appear for court?

If a defendant fails to appear for court, the bond goes into forfeiture status and a warrant for arrest is issued for the defendant. Each jurisdiction utilizes different timeframes before the court issues a default to demand payment, but typically, the defendant has a certain amount of time to get back to court (i.e. 30/60/180 days) prior to the default. However, in every case, a warrant is issued for the defendant after failing to appear as required.

**Own Recognizance Release (OR), Pretrial Services Release** - If a defendant is on an OR release or Pretrial Services release, a warrant is simply entered into the states system for the defendant. In these cases, there is rarely any proactive searching by authorities for the defendant. The defendant will only be returned to court, and the warrant served, should they be arrested for committing another crime or during the course of regular police activity, such as during a routine traffic stop. It is not uncommon for jurisdictions to have thousands of outstanding warrants for these types of releases due to the lack of resources by law enforcement to effectively handle the large caseloads.

**Full Cash Release** - If a defendant is on a full cash bond and fails to appear, the process is very similar to that above, except that the money that they put on deposit is now forfeited and paid to the court. Once again, a warrant is issued, and the defendant typically isn't apprehended until they are caught committing another crime or during the course of routine police activity.

**10% Bond Release** - If a defendant is on a 10% bond release and fails to appear, a warrant is issued for their arrest and the full amount of the bond is forfeited. If payment is not received in full soon thereafter, a default judgement is issued against the defendant for the full amount of the bond. Again, these types of forfeitures are rarely on the priority list for authorities to proactively search for the defendant.

**Bail Bond Release** - If a defendant is released on a financially secured bail bond and fails to appear, the process is much different. Because a licensed bail bond agent (surety) is involved and accountable for the full amount of the bond, there will be a substantial effort put forth by the bail bond agent to find and retrieve the defendant into custody. If the defendant is returned to custody within the allocated time period, the bail bond agent can be released off the bond (minus any court determined fees). If the defendant is not returned to court within the allocated time period, the bail agent pays the full amount to the court. Licensed bail bond agents are state regulated and follow strict guidelines with respect to apprehension methods and operate within the scope of the law in returning defendants to court. Unlike other forms of release, agents incur 100% of the expense and effort to return defendants to court – even returning defendants who have fled the state to avoid prosecution.

## Which method of pretrial release is the most effective?

As one might expect, financial conditions of release (even small bonds) far outperform those of OR and pretrial releases. Judicial discretion is paramount in deciding release and most releases occur without any financial condition or additional court related burden at all. However, one size does not fit all and additional layers of accountability are necessary to ensure that both defendants and victims have their day in court. Bail decisions are routinely reviewed after the initial bail setting to foster balance and fairness within the system.

There have been several studies looking to answer the question of effectiveness, but the most comprehensive has been conducted by the Department of Justice, Bureau of Justice Statistics between 1990-2004. The study, *"Pretrial Release of Felony Defendants in State Courts,"* examined the pretrial practices of the 75 largest counties across the country and assessed which method of release was the most effective at ensuring defendants show up for court. The surprising thing about this study is that each of the 15 years the study was conducted, the results were the same. The most effective form of release in terms of ensuring appearance at court were releases on a financially secured bail bond with an 18% Failure to Appear (FTA) rate. The two least effective forms of release were OR releases with a 26% FTA rate and unsecured release through a pretrial services agency with a 30% FTA rate. Additionally, the release through a financially secured bail bond surpassed all other forms of release in the area of fugitive recovery rates. After one year, only 3% of people released on a bail bond were still at large compared to 8% for OR bonds and 10% for those released through a pretrial program.

These statistics have been used by several other researchers in conducting additional studies on the topic of pretrial release. One of the most widely known of these studies, was conducted by Eric Helland and Alex Tabarrok. Their study, *"The Fugitive: Evidence On Public Versus Private Law Enforcement From Bail Jumping"* was published in the University of Chicago Journal of Law and Economics. It found that, "defendants released on a bail bond were 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time."

**Defendants released on a bail bond were 28% less likely to fail to appear than similar defendants released on their own recognizance...**



www.MAPBBA.org  
MAPBBA@outlook.com  
(417) 674-1600