

An Overview of the Bail Process in Ontario



When a person gets charged with a crime, one of these things will happen:



The officer may let the person go with an order to appear in court. They may also require the person sign an undertaking to follow certain conditions as part of their release.



The officer may hold the person for a bail hearing



A bail hearing is a court process wherein a judge or a justice of the peace decides whether an accused person will remain detained or whether they will be released while they await their trial or resolution of their case. If someone is being held for a bail hearing, they will be detained at the police station or at a detention facility ahead of the hearing.

Under the *Criminal Code*, this person has the right to a bail hearing within 24 hours of their arrest, if a judge is available, and if one isn't, it must happen as soon as possible. All accused persons are given the opportunity to speak with a lawyer for their bail hearing, either one they have hired or if they cannot afford one, they can speak with duty counsel.



When deciding whether to continue detaining the accused, the court will consider whether one or more of three grounds for detention are met:

1

Primary ground: detention is required to ensure that the accused will attend court as required.

2

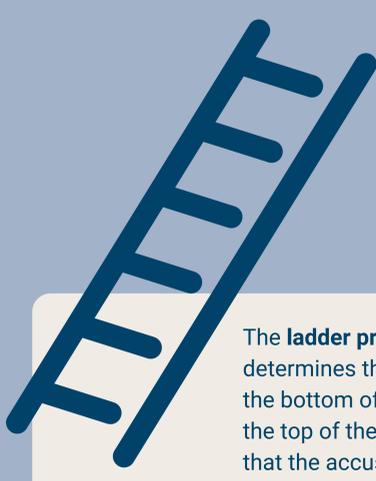
Secondary ground: detention is required for the protection of the public.

3

Tertiary ground: detention is required to maintain the public's confidence in the justice system.



At the bail hearing, the Crown has the responsibility to establish why the accused should not be released on bail and may provide evidence to that effect. According to the *Charter*, there is a presumption of release, meaning the default position should be that the accused is released, unless the Crown can show cause as to why that should not be the case. The accused is given an opportunity to provide a plan for their release, to mitigate any concerns the court may have about public safety or their upcoming attendance at court.



The **ladder principle** is a principle that applies to all bail hearings and determines the appropriate form of release in the circumstances, with the bottom of the ladder representing the least restrictive measures, and the top of the ladder representing the most. The ladder principle requires that the accused be released on the least restrictive form of bail, unless the Crown can establish why the court should decide otherwise. An undertaking without conditions is the lowest rung of the ladder, followed by an undertaking with conditions, own recognizance, then bail program recognizance or surety recognizance. House arrest is at the top of the ladder as the most restrictive form of release.

Surety recognizance involves a person promising the court that they will supervise the accused and make sure they follow their bail conditions. The supervising individual pledges an amount of money to the court that they will lose if the accused fails to follow their bail conditions and they do not report them. Surety releases are common in Ontario, but the higher courts have provided guidance to the courts to ensure that less restrictive forms of release are considered and rejected, as appropriate, before resorting to a surety recognizance.



Bail programs, like the bail verification and supervision program (BVSP), involve a caseworker assigned to the accused that monitors compliance with bail conditions. BVSP provides community supervision to eligible individuals without the financial or social supports required to meet bail requirements.

If the court decides to grant the accused bail, they may get released with conditions they have to follow. If these conditions are broken, the accused can be charged with additional criminal offences and may be denied bail in the future. Conditions must be imposed with restraint and linked to the risks established in the three grounds for detention.

Typical conditions may include:



No contact orders, preventing the accused from communicating with the victim or a co-accused



Location bans where the accused is restricted from certain locations



Requirements to live at a specific address



Curfews where the accused is required to stay home during specific hours, usually overnight

If the accused is not granted bail, they must remain in a detention facility until their trial. There is an automatic review of pre-trial detention orders after 30 days for summary offences and after 90 days for indictable offences.

An accused may also be eligible for a bail review if:

- There has been a significant change of circumstances (e.g., an improved release plan)
- The presiding justice made a legal error in their reasoning for denying bail



To learn more about the bail process:

Steps to Justice
<https://stepstojustice.ca/legal-topic/criminal-law/bail/>

jhs