

## Bail in Minnesota

Bail systems balance individual liberty interests, the protection of public safety, the need to assure that defendants appear for court hearings, and concerns about equal treatment within the judicial system. This publication describes the current system of bail in Minnesota and identifies the constitutional limits and requirements related to bail.

### *How does bail work in Minnesota?*

Following an arrest, a defendant may post bail in order to obtain a release from custody. For some offenses, a bail schedule establishes the amount of bail for all individuals accused of committing that offense and the defendant can post bail without being seen by a judge. In most cases, the defendant appears before a judge and the judge determines the amount of bail. The defendant can then post the total amount of bail, a third person can post the bail on the person's behalf, or the defendant can contract with a bail bonds company to post a bond for the defendant.

### *Do all jurisdictions follow the same rules for bail?*

Not all states and Washington, D.C., follow the same rules for bail. Some locations use a general bail schedule for most offenses. Others have laws or policies that restrict the use of bail and promote release with more intensive supervision. Some states, such as Wisconsin, require that bail be posted in cash while other states permit the use of bonds.

### *How does using a bail bonds company differ from posting bail?*

Bail can be refunded to a defendant. Bail bonds companies charge a premium in exchange for posting a bond on behalf of the defendant. (Minnesota allows a charge of up to 10 percent of the bail amount.) The premium is not refundable.

### *What are the constitutional limits on bail?*

The federal and state constitutions prohibit excessive bail. Minnesota's Bill of Rights also guarantees the right to bail. Article I, section 7 says: "**All persons before conviction shall beailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.**" Minnesota no longer has the death penalty, so all defendants have a right to have bail set.

### *Who controls the rules that govern bail in Minnesota?*

The state constitution prohibits holding a defendant in custody without setting bail. The legislature can establish or amend substantive rights and regulations including maximum or minimum bail amounts for certain offenses or notification requirements for alleged victims. The judicial branch determines procedural rules including when bail hearings are held and what factors individual judges must consider in setting bail. Individual counties may also be given the ability to test new assessment tools or methods of pretrial supervision.

### *How is bail set?*

A person arrested without a warrant and held in custody must have a hearing within 48 hours of the arrest. At that hearing, a judge determines the conditions of release. Conditions, including bail, are generally intended to assure a person's appearance at future court hearings. Court rules direct judges to release individuals

without specific conditions unless a judge determines that such a release “will endanger the public safety or will not reasonably assure the defendant’s appearance.”

***What options does a Minnesota court have in setting bail?***

A judge can (1) order a defendant’s release without any conditions, (2) set an amount of bail that the defendant must post to be released, or (3) authorize release with specific conditions including supervision or other restrictions on the person’s actions. If the judge authorizes release with conditions, the state constitution requires the judge to also set a bail-only amount as an alternative option.

When establishing conditions, relevant court rules say that a judge may:

1. place the person under supervision of a person or organization;
2. restrict travel, association, or residence;
3. require an appearance bond, cash deposit, or other security; or
4. impose other conditions the judge finds necessary to assure the person’s appearance.

***Can a court set bail at any amount?***

For most misdemeanors and gross misdemeanors, [Minnesota Statutes, section 629.471](#), limits the maximum bail that can be set to twice the highest fine for the offense. The statute includes several exceptions, allowing a judge to set bail at four, six, or ten times the maximum fine for some offenses including certain DWI offenses and domestic assaults. A judge must set the maximum bail for a person arrested for a DWI under certain circumstances.

***Does a court consider the defendant’s ability to pay before setting the amount of bail?***

While a court must consider a person’s ability to pay, there is nothing that requires judges to set bail at an amount detainees can actually pay. That practice contrasts with the federal rule under which a judge “may not impose a financial condition that results in the pretrial detention of the person.” However, the federal system has a procedure for detention in which a person can be held without bail under certain circumstances. Because the Minnesota Constitution requires judges to set bail, detention would be unconstitutional in Minnesota.

***What other factors must a court consider before setting bail?***

Judges consider 13 specific factors when choosing conditions of release. Those conditions include the nature of the crime charged, the person’s ties to the community, the person’s financial resources, and the safety of others. Statutes require a pretrial bail evaluation for a defendant accused of a felony crime of violence and several specific gross misdemeanors and misdemeanors. The evaluation tool originated in Hennepin County and underwent a detailed review in 2006. Statutes also require training for judges on how to keep bail evaluations and decisions racially and culturally neutral. Decisions must be based on each defendant’s unique situation.

***How long can a defendant who cannot post bail be held in jail?***

It depends. If a person charged with a misdemeanor demands a speedy trial, the trial must take place within ten days or else the defendant must be released on nonmonetary conditions. Unless there are exigent circumstances, a person charged with a gross misdemeanor or felony must be released on nonmonetary conditions if trial does not begin within 120 days after the person enters a plea other than guilty.

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