

Bail and Pretrial Detention

How does bail or bond work in federal court?

Upon your first appearance in court, a federal magistrate judge will decide if you should be released, with or without bail, or held in jail. There may be a hearing to determine whether you should be released and, if so, what the conditions of your release will be. This hearing may take place at your initial appearance, or within 5 court days after that if your attorney needs more time to prepare.

There is no fixed bail amount in federal court. A magistrate judge releases you on conditions sufficient to ensure your continued appearance in court. The conditions of your bail vary depending on the seriousness of the charges against you, your criminal history, your ties to the community, and your financial circumstances. Bail is rarely granted for persons who are not legal residents or citizens of the United States.

Bail in federal court is very different from bail in the state system. Bail bondsmen are rarely used in federal court, and for indigent defendants, there is rarely a cash component to a federal bail. Instead, the judge will set your bond amount with conditions that may include co-signers to ensure your return to court. A bond is basically a contract between you, your co-signers, and the government. This contract requires that you show up to your court dates and comply with the conditions of the bond. If you do not, the government can collect up to the full amount of the bond from you and each of your co-signers. Failure to comply with all of the release conditions can result in the forfeiture of bond and the revocation of release conditions (return to custody).

How is my bail decided?

Prior to your first hearing, a member of the court's Pretrial Services Office will speak to you and as many of your family members as possible. This person works for the court. The officer will gather information about your background and personal circumstances and file a report with the judge, prosecutor, and defense counsel with recommendations about whether the judge should release you and under what conditions.

Remember that the Pretrial Services Officer works for the court, not for your lawyer. It is your choice whether to be interviewed, but you should discuss this decision with your lawyer first. Pretrial services will not ask you details about your case and you should not discuss your guilt or innocence with anyone except for your assigned lawyer.

If a Pretrial Services Officer asks to talk to you before you have seen your lawyer, tell the Officer that you want to speak to your lawyer before you decide what to do. If you agree to an interview, be honest. You can refuse to answer any question, but any answer you do give must be the truth. Lying to a Pretrial Services Officer can be used

against you at sentencing if you are later convicted, and is also a separate crime. Your lawyer will help you decide whether to be interviewed and what to discuss.

After the interview, the pretrial officer will prepare a report and make a recommendation to the judge regarding your bail. However, the judge is not required to follow this recommendation. The judge in your case is the ultimate decider of whether or not you will be released and what the conditions of your release should be.

What types of pretrial conditions can the court impose?

Each case differs, but here is a list of conditions that the Judge may impose for your bond:

Pretrial supervision, drug testing, mental health treatment, travel restricted to the state of Arizona, the surrender of all travel documents, electronic monitoring, curfew, etc. These conditions are enforced to ensure your appearance in court.

Who can be a co-signer on my bond?

Technically anyone lawfully residing in the country can be a co-signer on your bond. It is better if the cosigners are close family members or friends. It is also better if the co-signers have either some income or assets. However, in some cases, a co-signer without any income will be permitted to sign for “moral suasion.” You should discuss who you think could be a potential co-signer with your attorney.

How does a co-signer sign my bond?

Your co-signer will be contacted by a lawyer or paralegal from your attorney’s office and the conditions of the bond will be explained to him/her. The co-signer will then need to contact pretrial services. Your co-signer will need to bring the following documents to the interview:

- valid photo ID
- Social Security card
- two most recent paystubs
- most recent w-2 form
- most recent bank account statement

Pretrial Services may need to see these documents in order to verify that your co-signer is employed and a financially responsible person. The information on these documents is not shared with anyone.

If your co-signer is approved by Pretrial Service Court, he/she will need to sign the bond at the local federal court house.

Where will I be released?

You may be released to the custody of Pretrial Services, located on the 2nd floor of the federal courthouse in Tucson or from the Marshal's cellblock on the 2nd floor of the federal courthouse in Tucson. In Phoenix, Pretrial Services is located on the US Marshal's cellblock.

Will transportation be arranged for me after my release?

You will need to arrange for your own transportation home. You may come to your federal defender's office to use the phone to call your family.

What happens if I am accused of violating one or more of my pretrial release conditions?

If you are accused of violating your pretrial release conditions, the court will hold a hearing regarding the alleged violation and may either place you in custody, modify the conditions of your release, or take no action at all.

The judge must find probable cause that you committed a new crime or clear and convincing evidence that you violated a condition of your release before revoking bail. Either the court on its own motion or the prosecutor may move to forfeit your bond.