

The ABCs of Criminal Law: Bail and Bond FAQs

What happens after I have been arrested and booked?

Typically, you would be taken to court for an initial appearance within 24 hours. If you were arrested on a weekend, however, you might have to wait until Monday morning when court opens. At this bail hearing, the judge will decide whether to charge bail and how much. The judge sets the bail amount based on the type of crime committed and the likelihood that you will flee before trial if released (called a flight risk).

Am I required to speak to the police?

No. If you are held in custody and subject to interrogation (questioning) by the police, the police should read you your *Miranda* warning/rights. The *Miranda* warning is named after a U.S. Supreme Court case from 1966.

The *Miranda* warning/rights are based upon the Fifth Amendment of the U.S. Constitution. They can be said in any number of ways, but this is what you will typically hear:

You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time.

Once you invoke (speak out loud and exercise) your right to an attorney, all questioning must cease. Once you invoke your right to remain silent, all questioning must cease. You must not be vague in your invocation of these rights, such as “maybe I should ask for an attorney” or “maybe I should be quiet.” You must clearly invoke these rights.

Clear ways to invoke these rights are:

- I invoke my *Miranda* right to remain silent
- I am exercising my right to remain silent
- I want to remain silent
- I only want to speak with my attorney
- I want to speak with my attorney first

However, if you start speaking after you have invoked your *Miranda* rights to remain silent and/or have an attorney present, this may be considered to be a revocation (taking back) of your *Miranda* rights.

Can someone bail me out?

Maybe. It depends on the circumstances of your case. Bail is designed to guarantee your appearance in court. The court will often require that a certain amount of money be deposited with the clerk of courts. Bail is the amount of money that a criminal defendant is required to pay in order to be released from jail. However, not every defendant has access to sufficient funds to secure his or her own release.

Sometimes the court allows the deposit of a bond or the title to a home. Usually, a member of your family must obtain the funds, deposit the money, and show the receipt in order to get you released.

In some situations, you could be released on your own recognizance. This means that you are expected to observe some condition, such as showing up at every court hearing.

You could arrange for a bail bond. A bail bondsman guarantees the court that he or she will pay your bail in full if you do not show up for trial. However, you will be required to pay a deposit to the bail bondsman up front on the full bail amount, typically 8–10% plus additional fees. Oftentimes, the defendant secures the services of a bail bond company, to deposit the entire amount of bail with the court. The bail bond company puts up the entire amount of bail with the court, in exchange for payment of at least 10% of the bail amount (bond fee) with the remainder to be secured by something of value. This bond fee is nonrefundable, meaning that the defendant does not get any of it back if charges are dropped or he or she is acquitted of the offense. Some bail bondsmen are referred to as “bounty hunters.”

What do I do if I can't afford an attorney?

You are entitled to an attorney, paid for by the government. However, you are not entitled to choose your own attorney to be paid for by the government.

At your initial appearance, tell the judge that you wish to speak to someone from the public defender's office and/or that you cannot afford an attorney on your own. Generally, the judge will postpone your case to give you time to contact a public defender. Typically, there are public defenders at the courthouse waiting to be appointed to handle your case. The public defender's office will remain your attorney for the life of the case unless a conflict arises.