

SENTENCING SPOTLIGHT ON... BREACH OF BAIL

RESOURCE 1

Once a person is arrested and charged with an offence, they may apply to the police or a court for bail.

Learning outcomes

Students will:

- use legal terminology
- select current and relevant primary and secondary information and sources
- analyse legal issues around bail
- evaluate bail reform.

Focus questions

- What law is relevant to bail in Queensland?
- What criteria do the courts use when deciding whether to grant bail?
- What conditions does a defendant have to follow while on bail?

Key concepts

- Act
- bail
- custody
- defendant
- indictable offence
- prosecutor
- remand
- surety.

Curriculum links

This learning resource has been developed for students studying Legal Studies 2019 (General Senior Syllabus) in Year 11 and 12, specifically the core area of criminal law. It ties in with Unit 1: Beyond reasonable doubt, Topic 3: criminal trial process.

This resource has been designed to be used with the Council's [Sentencing Spotlight on...breach of bail](#).

Getting started

1. Ask students to draw a graphic organiser to illustrate the stages of a criminal trial once a person is arrested and charged.
2. Ask students to define the term 'bail'.

Further resources

The following websites may further enhance the learning outcomes associated with this resource:

- [Queensland Sentencing Advisory Council](#)
- [Legal Aid Queensland](#)
- [Queensland Government—applying for bail](#)
- [Queensland Legislation](#)

Bail

If a person is arrested and charged with an offence, bail may be granted by police or a court. If a person is released on bail, they remain in the community in the lead up to their final court hearing on the condition they agree to return to court and comply with any other conditions.

The *Bail Act 1980* (Qld) is the main law governing bail in Queensland. The Bail Act also applies to children, subject to additional requirements set out in the *Youth Justice Act 1992* (Qld).

Remand

If an accused person is not granted bail after being charged, they will be held in custody on remand. If the accused person is on remand they will stay in custody until their final court hearing, unless they are granted bail prior to this time.

Granting bail

There is a general presumption under Queensland law in favour of bail being granted. This is reversed in some cases where an adult defendant must 'show cause' why their detention in custody is not justified (this does not apply to children). Such cases include where an adult defendant is charged with:

- murder
- an offence against the Bail Act
- an indictable offence for which the prosecution alleges they used or threatened to use a firearm, weapon or explosive.

For an adult defendant, bail must be refused if the court or police officer making the bail decision is satisfied the person should remain in custody for their own protection, or there are one or more of four 'unacceptable risks' the defendant would, if released on bail:

- fail to appear at court
- commit an offence
- endanger the safety or welfare of the public
- interfere with witnesses or otherwise obstruct the course of justice.

Your turn

1. Locate and identify which Act governs bail in Queensland.
2. Identify the general presumption under Queensland law that underlies the granting of bail. Explain the role of a prosecutor during a bail application.
3. Describe three standard and three special conditions a court may place on a defendant when granting bail.
4. Explain what is meant by the term 'show cause'.
5. The law surrounding bail has undergone significant change in recent years. Locate a relevant primary or secondary source of information that identifies a recent amendment to the relevant Act and evaluate the reform merits.
6. List the reasons a court may give to refuse a defendant's application for bail. Locate and identify what section of the Act provides these reasons.
7. Explain what occurs to a defendant if bail is refused.
8. Should the general presumption that a defendant be granted bail be reversed in more cases? Critically analyse the economic, legal and social implications of this recommendation, before justifying your own position using legal reasons.