



## INFORMATION / FACT SHEET

### BAIL & BAIL AGREEMENTS

#### WHAT IS BAIL?

*Bail* is where an accused person is granted permission by the bail authority (either the police or the courts) to be released into/remain in the community whilst charges against them are still pending.

This occurs where a criminal matter is still progressing through the criminal justice system.

#### WHO CAN APPLY FOR BAIL?

Any accused person may apply for *bail*.

An accused person can be released on *bail* (as opposed to being *remanded in custody*) after he or she has been charged with an offence.

There are other circumstances in which a person may be eligible to apply for *bail*.

In South Australia *bail* matters are regulated by the *Bail Act, 1935*.

#### ARE THERE DIFFERENT TYPES OF BAIL?

There are different types of bail that an accused person may be granted. These are:

**Police Bail** - is granted by police, and usually occurs after an arrest has been made (where the accused person is eligible for bail).

**Court Ordered Bail** - may be ordered by any court in South Australia, and involves the accused person signing an agreement to be of good behaviour whilst under the *bail agreement*. The agreement may also have other conditions attached.

*Court Ordered Bail* may include :

**A Simple Bail Agreement** - an accused person can be granted bail with the direction that they will abide by a number of conditions and attend court and the next hearing date.

**Home Detention Bail Agreement** - an accused person can be granted home detention bail with the direction that they will remain at their home and not leave without permission from their *Community Corrections Officer* to leave their place of residence for any purpose.

An accused person may be not granted or refused *bail* in some circumstances and *remanded into custody*. This is where the *presumption in favour of bail* is outweighed by a number of factors including:

- *the seriousness of the offending*
- *if he/she is likely to abscond*
- *if he / she is likely offend again*
- *if he / she is likely to interfere with witnesses*
- *if he / she is has breached of an Intervention Order*

#### WHAT IS A BAIL AGREEMENT?

A *Bail Agreement* consists of the accused signing a formal written agreement in which he / she makes an undertaking (promise) to do certain things.

In signing the agreement the person agrees:

- *to be present at court at certain times;*
- *to comply with any conditions which may be attached to the bail agreement*
- *acknowledges that they understand what will "happen if they do not comply with a condition of the bail agreement.*

The agreement is signed by the accused and a member of the Police or a Justice of the Peace or a Magistrate /Judge who grants *bail*.

#### WHAT HAPPENS IF BAIL IS REFUSED?

If an accused person is refused *bail* then they are *remanded into custody*.

**Remanded in Custody (RIC)** - an accused is not granted bail and remains in prison (*generally the Adelaide Remand Centre for adults, and the Adelaide Youth Training Centre for youths*). until the next court hearing.

This means that they are to be held in a correctional services facility.

An accused person will remain in custody until such time as

- *they are granted bail;*
- *their matter is finalised and they are released on a Good Behaviour Bond or Community Service Order;*
- *their matter is finalised and they have been granted release on parole after serving their sentence;*
- *the accused is acquitted;*  
*or*
- *the charges are withdrawn or dismissed*

There are other factors which may influence a court against granting an accused person *bail*.

### **WHEN CAN AN ACCUSED PERSON APPLY FOR BAIL?**

An accused person may apply for *bail* at any stage during criminal proceedings.

### **HOW MANY TIMES CAN A PERSON APPLY FOR BAIL?**

There is no restriction on the number of times or the frequency with which a person may apply for *bail*.

### **I HAVE HEARD THE TERM 'PRESUMPTION OF BAIL'. WHAT DOES THIS MEAN?**

When someone has not yet been convicted of an offence, and makes an application for *bail*, the *Bail Act, 1985* provides a *presumption in favour of bail* being granted.

This is because the accused person has not yet been convicted of any offence (i.e. they are considered innocent until proven guilty)

### **WHAT TYPES OF CONDITIONS CAN BE ATTACHED TO A BAIL AGREEMENT?**

Conditions attached to a *bail agreement* can vary, and may include:

- *the person residing at a particular address*
- *the person living at a particular address, with or without electronic monitoring, and not leaving that place without prior permission ("home detention" bail).*
- *restrictions on the person contacting certain people, generally victims and witnesses*
- *reporting regularly to a police station*

- *surrendering a passport*
- *a promise to pay money to the Court if in breach of a bail condition*
- *not consuming alcohol or drugs*
- *submitting to random tests for drugs and/or alcohol*
- *providing suitable guarantors (people who will guarantee the person's attendance at court and that they will comply with the terms of their bail agreement)*
- *lodging money at court to ensure compliance with bail conditions (surety)*
- *supervision by a Community Corrections Officer / Home Detention Officer*

### **WHAT IS 'HOME DETENTION BAIL' AND WHAT DOES THIS INVOLVE?**

*Home Detention Bail* is stricter than simple bail.

It can involve the accused wearing an electronic bracelet / anklet to GPS monitor their movements, and requires the accused to seek permission from their *Community Corrections Officer* to leave their place of residence for any purpose.

The *Department of Correctional Services (DCS)* officers undertake "spot checks" on people on *home detention bail*, to check that they are complying with the conditions of the *bail agreement*.

In very limited circumstances (e.g. emergency visit to the doctor) people on *home detention bail* may have a valid reason for being absent without permission from the *DCS*.

### **DO I GET TO HAVE A SAY?**

Under *Part 2 (Division 2)* of the *Statutes Amendment (Victims of Crime) Act 2007* a victim may *request consideration* with regard to any bail hearing.

The legislation states that victims have a:

- Right to have perceived need for protection taken into account in bail proceedings
- If a police officer or a person representing the Crown in bail proceedings is made aware that the victim feels the need for protection from the alleged offender -  
  
*(a) the police officer or other person must ensure that the perceived need for protection is brought to the attention of the bail authority, and*  
  
*(b) reasonable effort must be made to notify the victim of the outcome of the bail proceedings and, in particular, any condition imposed to protect the victim from the alleged offender (unless the victim indicates that he or she does not wish to be informed).*

## **WHAT IF I DO NOT AGREE WITH OR HAVE CONCERNS ABOUT AN ACCUSED PERSON BEING GRANTED BAIL?**

Where there is a victim of the offending the *bail authority* (the person or court considering the *bail application*) must give priority to the victim's need for physical protection from the accused. This may override the *presumption in favour of bail* mentioned earlier.

If you are a victim and have concerns about your need for protection from the accused you should advise the *Investigation Officer* or *Prosecutor* at the *Office of the Director of Public Prosecutions* who is handling the matter.

## **HOW CAN I FIND OUT ABOUT THE DETAILS OF ANY BAIL CONDITIONS SET?**

If you are the victim of an offence being prosecuted by the *DPP* then you can contact the *DPP Prosecutor*, *Witness Assistance Officer* (if one has been allocated to you), or *Investigating Officer* (SAPOL).

If the offence is being prosecuted by the police then you can contact either the *Investigating Officer* (SAPOL) or the relevant *Police Prosecutions Branch*.

## **WHAT IF THERE IS A CONDITION THAT THE ACCUSED NOT CONTACT ME?**

You need to be aware that this is a condition attached to a formal *bail agreement* made under the *Bail Act, 1935*.

There are serious consequences for an accused this condition is breached.

You should not do anything which could be interpreted as assisting or cause a person to breach the bail agreement.

Conditions attached to *bail agreements* can be altered or varied (see *What is a Bail Variation?*). You should contact the Police or the *DPP* if you are of the view that a condition should be altered or varied (e.g. if you want to be able to contact the accused).

## **CAN I STILL CONTACT THE ACCUSED?**

If there are terms attached to the agreement which prevent the accused from contacting you, or from coming within a certain distance of a particular place, you need to be particularly careful that you do not do anything which encourages a breach of the *bail agreement*.

You place yourself at risk of committing an offence if you are deemed to be "*aiding and abetting*" an accused person to breach their *bail agreement*. For

example, it is important that you do not contact the accused if there is a condition to not contact you.

## **WHAT IS A BAIL GUARANTOR?**

A *Bail Guarantor* is someone who gives a guarantee or a surety (payment).

In the case of *bail agreements*, a *guarantor* is someone who undertakes to produce the accused to the court at a later date, or forfeits the security (money) deposited as a condition of release.

## **HOW DO I FIND OUT IF AN APPLICATION FOR BAIL HAS BEEN GRANTED OR REFUSED?**

There are various ways in which you might establish if *bail* has been granted to an accused.

If you have an allocated *Witness Assistance Officer* it is likely that they will be in touch with you after the *bail hearing* (if you have indicated that you wish to be kept informed of bail hearing updates).

Alternatively, you could ask the *Investigating Officer* or inquire about the *bail hearing* at the relevant court registry.

## **ARE THERE OTHER ORDERS AFFECTING ACCUSED?**

Sometimes *Intervention Orders* are made under the *Summary Procedure Act, 1921 (SA)* or the *Domestic Violence Act, 1994 (SA)* which contain conditions restricting the accused from contacting certain individuals.

(A *Magistrates Court of South Australia* information sheet entitled "*Information for Persons Granted a Restraining Order*" provides detailed information on this topic)

Breaches of such orders also have serious consequences for an accused person.

## **WHAT IS A 'BREACH OF BAIL'?**

A *breach of bail* occurs when an accused does not comply with one or more conditions of their *bail agreement*.

## **WHAT SHOULD I DO IF I BECOME AWARE THAT AN ACCUSED IS BREACHING THEIR BAIL CONDITIONS?**

You should contact the Police (SAPOL) who will make a decision about what will happen in relation to the breach,

It is important that each breach is still reported to police.

Even if the breach results in no consequence for the accused, the court will still have a fuller picture of the accused's behaviour and conduct whilst criminal proceedings are/were in progress.

If you are of the view that your security is at risk because of the breach of bail condition/s you should indicate the urgency of the situation to police at the time you report it.

## WHAT ARE THE IMPLICATIONS OF SOMEONE BREACHING THEIR BAIL CONDITIONS?

The consequences are serious because the accused is breaching a formal agreement he/she made under the *Bail Act, 1935 (SA)*.

If a person does not comply with a condition of their bail agreement (e.g. does not appear at court when required or fails a test for drugs or alcohol) the following may happen:

- they may be convicted of an offence under the *Bail Act, 1935 (SA)*. There is a maximum penalty of \$10,000 or imprisonment for 2 years.
- they may be arrested with or without a warrant by a member of the Police and taken into custody.
- they may have to pay the money that they agreed to forfeit to the Crown, if they breached the agreement.

As previously stated, if you are responsible for assisting the accused to *breach their bail* then you may also face criminal charges (see *Can I still contact the accused?*).

## WHAT IS A BAIL VARIATION AND WHAT MIGHT THIS INVOLVE?

A *bail variation* is where an accused applies to the court to have one or more of the conditions of their bail altered in some way or deleted. Some examples of bail variation requests can include:

- removal of a curfew,
- change of address
- change of guarantor
- request to travel interstate for a period of time.

## WHAT IF I REQUIRE FURTHER INFORMATION OR SUPPORT TO UNDERSTAND THE BAIL PROCESS?

If you require further information to understand the *bail* process, you can:

- Speak to the *DPP Prosecutor*
- Speak to the allocated *Investigating Officer*
- Speak to a *Witness Assistance Officer* (if one has been allocated to you)

Any of the above people should be in a position to assist you with your further questions and enquiries.