

# [Bail not authorised to give bail on](https://assignbuster.com/bail-not-authorised-to-give-bail-on/)

[](https://assignbuster.com/)[Sociology](https://assignbuster.com/essay-subjects/sociology/), [Human Rights](https://assignbuster.com/essay-subjects/sociology/human-rights/)

Bail is the freedom from custodygranted to a defendant whilst awaiting the next stage in the legal procedure. Defendantsare able to be granted bail due to the presumption that everyone is innocentuntil proven guilty, as stated in Section 4 of the Bail Act 1976. Under Article5 of the European Convention of Human Rights, everyone has the right toliberty, and as stated in Section 4 of the Bail Act 1976, everybody has astatutory right to bail.

Bailcan be granted by either the police or by the courts. There is no right topolice bail, but the police can release a defendant on bail before chargingthem, i. e.

‘ pre-charge bail’. The suspect will be released from police custodyon the condition that they return to the police station on a certain date. Thisis stated in Section 37 Police and Criminal Evidence Act 1984 (aka P. A. C.

E.) Ina police station, the decision is made by the Custody Officer, who must be atleast a Police Sergeant. This is outlined in Section 38 of the P. A.

C. E. Act 1984.

If bail is granted, then the suspect is released from custody until the nextdate they attend the police station/court. The police are not authorised togive bail on a charge of murder, as is stated in Section 114 Coroners &Justice Act 2009 – Section 115 of the same act states that only the Crown Courtcan do this. Thereare two main types of bail: conditional and unconditional. Under the CriminalJustice and Public Order Act 1994, the police and the court can attachconditions to the bail, which is known as conditional bail. Conditional bail iswhere conditions and requirements are imposed upon the defendant to ensure thathe attends court and that he does not commit offences or interfere withwitnesses whilst on bail. Any requirement that is deemed necessary andappropriate can be attached as a bail condition, but the most common are asfollows: surrendering of passport; reporting to police station; curfews; residence restrictions; electronic tagging; sureties or bail hostels.

Thedefendant’s passport may be surrendered if he has connections in othercountries, or if his crime had an international element. Not having a passportwill prevent the defendant from absconding abroad and continuing the crimeinternationally.             Thedefendant may be required to report to the police station every day. Thisallows the police to “ keep an eye” on them and to ensure that the suspectdoesn’t abscond.             Inorder to make conditions easier to enforce, the suspect may be electronicallytagged. They will have an electric tag around their ankle which tracks theirlocation and is not able to be taken off by the suspect. This device makes iteasier to track the suspect and so helps with: checking that the defendant isat home during their curfew hours; tracking their location and ensuring thatthey are not breaching any restraining conditions, such as staying away from awitness or victim’s house; and they also help the police find the defendant ifthey should abscond. Curfewsmay be imposed on a defendant to prevent the repeating of crimes such as drunkand disorderly or anti-social behaviour.

The usual curfew conditions are thatthe suspect must be at home between 7pm and 7am. This prevents the defendanthanging around in gangs in the dark, or drinking alcohol outside of the home lateinto the night. Anothercondition that may be attached to bail is that the defendant stay at a bailhostel. This is not limited to homeless people, but can be very helpful because homeless people do not have an address. Theymay be made to reside in a bail hostel so that they can be found and contactedat a later date. This condition can only be issued by the Courts.

Section4 of the Criminal Justice Act 2003 has introduced ‘ Street Bail’ which allowsthe police to grant bail on the street at their own discretion. It is used forvery minor offences and is helpful in that the police officers are able to stayon the streets as opposed to having to take the suspect back to the policestation. This statute means that the police are able to maintain more of apresence on the street. Conditionsare imposed to ensure that the defendant surrenders to custody. They alsostrive to ensure that the defendant will not commit further offences and thatthey do not interfere with witnesses or obstruct the course of justice.

Unconditionalbail is when the suspect is released without any conditions attached to theirbail. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, suspectsmust be granted bail if there is no realistic prospect of them receiving acustodial sentence. If the police or the courts decide that the suspect isunlikely to commit any further offences while on bail, they will return tocourt and that they will not obstruct the course of justice; then they will begranted unconditional bail. Unconditional bail is usually granted for minoroffences whereas more serious crimes will warrant the use of conditional bail. However, in both conditional and unconditional bail, under Section 6 The BailAct 1976, the police have the right to arrest them if they do not surrender topolice custody.            Anotherpossible outcome may be that the defendant is remanded in custody. This isessentially the refusal of bail but a suspect may also be remanded in custodyfor their own protection. If, after having been released on bail, the suspectrefuses to surrender to police custody on a specified date, then the policehave the right to arrest them under Section 6 of Bail Act 1976.

Bail may berefused for many reasons, such as not being able to discern the suspect’s nameand address. This may be the case if the suspect can’t speak English, isintoxicated, or is homeless and so does not have an address. Bail will also berefused if the police doubt that the details provided are genuine.            Whenthe court is deciding whether to grant bail, they will also consider whetherthe suspect will fail to surrender to police custody, i. e.

abscond. They willrefuse bail if there are substantial grounds to believe that the defendant willcommit an offence whilst on bail, or if the defendant will interfere withwitnesses or otherwise obstruct the course of justice. If the suspect would bein danger, or would pose a threat to the public, they will not be granted bail.

UnderSchedule 1, paragraph 9 of The Bail Act 1976, the police and the courts musttake the following into consideration when deciding whether to grant bail: nature and serious of the offence – if the crime is very minor, then the defendantis unlikely to be prosecuted and so must be granted bail. The defendant’scharacter, antecedents, associations and community ties also must be consideredbecause these factors can be helpful in predicting the defendant’s behaviourwhilst released on bail. If it exists, the defendant’s previous bail recordmust be considered because it will indicate how the defendant has behaved whengranted bail in the past.

Moreover, the strength of the evidence must beconsidered because the defendant must be released on bail if they are notlikely to receive a custodial sentence as ruled in the Legal Aid, Sentencingand Punishment of Offenders Act 2012. The Custody Officer or the courts willalso consider any other relevant factor that may affect their decision inwhether to grant bail.             Someuseful techniques to ensure a defendant’s attendance in court are sureties andsecurities. They are used for serious offences and are financial assurancespaid to the court by a third party – usually a member of the defendant’sfamily.

Securities are when the third party pays money into court to allow thedefendant to be allowed out on bail. Sureties are payments promised to thecourt and are only paid to the court if the defendant absconds. In conclusion, the decision to grantbail can either be made by the Custody Officer at the police station, or in thecourts. They will need to consider any factors that will predict thedefendant’s behaviour whilst released. In order to ensure that a defendantsurrenders to custody and does not commit further offences, they may imposeconditions upon the suspect. If the defendant should not be released either fortheir own safety or because they are not satisfied that they will not surrenderto custody or will commit further offences, then they will be remanded incustody.