

**THE BAIL PROJECT**

# **Glossary of Bail-Related Terms**

July 2024

## About The Bail Project

The Bail Project is a national nonprofit that provides free bail assistance and pretrial support to thousands of low-income people every year while advancing policy change at the local, state, and national levels. It is on a mission to combat mass incarceration by eliminating reliance on cash bail and demonstrating that a more humane, equitable, and effective pretrial system is possible. Through our Community Release with Support model, we provide our clients with return-to-court services including court notifications, free transportation assistance, and referrals to voluntary services. These interventions have helped nearly 30,000 people return to court over 91% of the time with none of their own money on the line, preserving the presumption of innocence and demonstrating the efficacy of needs-based pretrial support. Learn more about The Bail Project at [bailproject.org](https://bailproject.org).

## Acknowledgments

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*The following is a glossary of terms and language commonly used in conversations around bail and pretrial justice. The terms included may have specific meanings outside of the criminal justice context and in certain states or jurisdictions. Though some are legal terms, this is not legal advice. Instead, this glossary and its definitions provide a way to develop a shared understanding about the criminal justice system and key stakeholders.*

# A

**Affidavit:** a written, signed, and sworn statement of evidence or facts made before a notary or officer of the court. It can be used as evidence in court.

**Arraignment:** a hearing in a criminal case wherein the defendant is brought in front of the court to hear the charges against them and their rights (including the right to a lawyer, whom the court can appoint), and enter a plea. In some jurisdictions, arraignments occur as part of a person's first appearance in court. (see *first appearance*). Arraignments typically take place within a short period of time after an individual is detained by law enforcement, though specific timing varies depending on jurisdiction and the severity of the crime charged. For example, in New York City, arraignment is supposed to occur within 48 hours. See also *indictment*.

# B

**Bail:** money or property that will be forfeited to the court if an accused individual fails to appear for trial. It refers to when a person charged with a crime or their family uses their own money to secure release (in contrast to *bond*); an agreement between the court and a defendant. Bail types and amounts can differ across jurisdictions. Some jurisdictions use a bail schedule, while others do not (see *bail/bond schedule*). A judge makes the ultimate determination as to whether an individual can be released on bail.

**Bail bond agent:** an individual or entity that posts a surety bond in order to secure a defendant's release in exchange for a fee, which is kept as profit. A bail bond agent (sometimes referred to as *commercial bail bond agent* or a *bail bondsman*) will require an individual to provide a form of collateral (see *collateral*) to secure the surety bond. They typically charge a non-refundable fee of 10% of the total bond amount. They recoup the full bond they posted once the person charged with a crime returns to court.

**Bail enforcement agent:** see *bounty hunter*.

**Bail fund:** a charitable, voluntary, or community-based organization that pools money used to post bail for defendants in need. Unlike a bail bond agent or commercial bail bonds agency, bail funds do not profit from posting bail. Some operate on a revolving basis: once the money is returned when the defendant returns to court, it returns to the collective fund to be used for future bail. Some states have sought to regulate "charitable bail funds" or "charitable bail organizations." Those definitions and laws vary by jurisdiction.

**Bail schedule (also, *bond schedule*):** a list of predetermined bail amounts for different charges that judicial officers (i.e., judges, magistrates) or law enforcement use in setting bail for a defendant.

**Bench warrant:** a written order issued by a judge authorizing the arrest of a person currently at liberty who was previously charged with a crime. In many jurisdictions, a judge issues a bench warrant when a defendant fails to appear in court, permitting law enforcement personnel to make an arrest.

**Bond:** an agreement between the court and a defendant that secures the release of the latter before trial, and includes several types, such as: secured bonds, unsecured bonds, partially-secured bonds, percentage bonds, and surety bonds. In contrast to *bail*, it is when a person charged with a crime posts a portion of their bail, uses a bail bond company, or posts non-monetary collateral to secure their release. Bond types and amounts can differ across jurisdictions. Some jurisdictions use a bail/bond schedule, while others do not (see *bail/bond schedule*). A judge makes the ultimate determination as to whether an individual can be released on bail.

**Bond schedule:** see *bail schedule*.

**Bounty hunter (also, bail enforcement agent):** a private agent employed by a bail bond agent to locate and apprehend a defendant who has used the services of a bail bond agent but has not appeared at court, breaching the bail-bond agreement. They are typically paid on commission, often 10-20% of the bail amount.



**Criminal case:** a criminal case is initiated when an individual is accused of committing one or more crimes (i.e., a prosecutor files criminal charges against an individual). A person can be accused of or charged with multiple counts within a single case. Generally, criminal justice systems track data at the case-level rather than the charge or individual/person level.

**Cash bail:** a sum of money paid as a guarantee that a defendant will return for a trial or hearing. The money is typically returned after the defendant makes all

necessary court appearances; otherwise, the bail is forfeited to the government.

**Charge-based distinctions:** an approach that permits the application of cash bail for specific types of charges. While charge-based distinctions can reduce the use of cash bail assignments, they can reinforce the mistaken perception that charges are more akin to convictions than they are to mere accusations, or that the severity of crime is predictive of a person's likelihood of returning to court or being accused of a new criminal arrest if released.

**Citation (also, summons):** a written order issued by law enforcement, typically used for low-level violations or misdemeanor crimes, that releases a person on a promise to appear in court or pay a fine. Citations are used as an alternative to booking and jail. This concept is called a "summons" in some jurisdictions.

**Collateral:** an asset that is given by a defendant to a bail agent or court either in place of or in addition to cash bail to secure release. The collateral is returned when the defendant appears in court; if they fail to do so, it's forfeited. Examples include the title to a car or the deed of a home.

**Collateral consequences:** refers to the additional penalties imposed on a person as a result of their criminal conviction. These penalties are not part of the direct consequence of a conviction, such as fines or fees. Rather, they are civil actions that limit or prohibit people with certain criminal backgrounds from accessing resources or services. Some examples include loss of governmental benefits; restrictions on obtaining housing or securing employment in certain industries; or, loss of the right to own a gun or drive. Some people also no longer qualify for financial aid.

**Commercial bail bond:** typically a surety bond that requires a non-refundable fee of 10% of the total bond amount, paid to the bail bonds agent.

**Community Release with Support:** a needs-based model established and operationalized by The Bail Project that provides court notifications and free transportation to court, as well as assistance navigating voluntary supportive services, such as clinical services to address addiction and mental health issues, housing support, and employment assistance. It emphasizes a comprehensive support system to address the needs and challenges faced by its clients, enabling them to effectively return to court and to address the root causes that lead to justice-system involvement in the first place.

**Conditions of release:** requirements imposed on a defendant to avoid pretrial incarceration and assure their appearance in court and the meeting of rules, such as maintaining employment; undergoing medical or psychiatric treatment; or, limiting personal associations, living arrangements and travel.

**Constitutional rights of defendants:** the Bill of Rights – specifically the Fourth, Fifth, Sixth, and Eighth Amendments – guarantees defendants in criminal proceedings certain basic protections and rights. The Fourth Amendment protects everyone from unreasonable searches and seizures; the Fifth Amendment provides defendants with the right to due process and to remain silent, among other protections (see *due process*); the Sixth Amendment includes the right to counsel, a speedy trial, and a trial by jury; and the Eighth Amendment prohibits the imposition of excessive bail (see *excessive bail*).



**Defendant:** in criminal cases, a person or entity accused of and charged with a crime. Defendants in criminal cases are legally innocent until proven guilty at trial and have the right to an attorney, among other constitutional protections.

**Due process:** a standard for fair treatment required of federal, state, and local governments. Due process rights come from the Fifth and Fourteenth Amendments of the U.S. Constitution, guaranteeing that the government follows fair procedures before taking individuals' basic rights to "life, liberty, or property." The presumption of innocence is a fundamental due process right in criminal proceedings (see *presumption of innocence*).



**Electronic monitoring:** a form of digital surveillance most commonly used as a condition of pretrial release or post-conviction supervision, often in the form of a wrist bracelet or ankle device that monitors the location of a defendant, and sometimes also their blood alcohol level. In some cases, defendants are responsible for the fees associated with the monitor. Although electronic monitoring does not fully curtail someone's ability to move through society in the same way that jail does, it has incapacitating and dehumanizing effects – from the hard plastic creating sores against an ankle, to the psychological distress that comes with constant surveillance. It requires an individual to plug themselves into an outlet for hours at a time. Read more [here](#).

**Excessive bail:** a concept that flows from the Eighth Amendment, prohibiting the imposition of excessive bail as a fundamental safeguard of individual rights. Generally, “excessive bail” is a bail amount set by a court for a defendant that is unreasonably high, and thus exceeds a person’s ability to pay, or that is disproportionate to the alleged offense. It’s often the constitutional violation cited in lawsuits against the use of bail: the United States Supreme Court has repeatedly found that bail is unconstitutionally excessive when it is higher than the amount deemed necessary to protect a “government interest” such as guaranteeing return to court or protecting community safety.



**Failure to Appear (FTA):** an incident in which a defendant fails to attend a scheduled court hearing, trial, or other required proceeding, without – what the court deems – a valid reason or prior notification. FTAs can result in the issuance of a bench warrant (see *bench warrant*) for arrest and subsequent pretrial detention. In many jurisdictions, a [significant portion](#) of the jailed population is detained for FTA. Courts may also use previous FTA incidents in their bail-setting determination. Among individuals who struggle with poverty, homelessness, substance use disorder, and/or poor health, FTAs often come down to competing priorities, like arranging childcare or attending a doctor’s appointment. In this regard, FTAs differ from willful flight (see *willful flight*).

**Fees:** itemized payments for court activities, supervision, or incarceration charged to defendants. These costs might include, but are not limited to, clerk filing fees, jury fees, diversion program fees, registration or

application costs associated with obtaining a public defender, fees for electronic monitoring and other pretrial supervision, and fees for required programs like substance use treatment or anger management.

**Fines:** financial obligations imposed as a penalty after a criminal conviction or admission of guilt.

**First appearance:** a court hearing where a person charged with a crime is initially brought before a judge or magistrate, typically after they have been arrested. The person charged with a crime is made aware of the charges against them, and the judge or magistrate may assign bail, appoint an attorney, or schedule future court dates. In some jurisdictions, but not everywhere, arraignment (see *arraignment*) occurs at first appearance and defense counsel is provided.



**Grace period:** a specified amount of time for a defendant to correct a missed court appearance before the court issues a bench warrant or imposes some other measure for the failure to appear (see *failure to appear*). Grace periods may be [codified in state law](#) and applied at the discretion of a court. [Research](#) suggests that people who fail to appear in court often return, on their own accord, within a matter of days or weeks.



**Indictment:** the formal charge or accusation of a crime. An indictment does not equate to guilt or mean that someone will be convicted. Indictment differs from being charged with a crime in that a charge is a formal allegation by law enforcement that a person committed a crime; indictments occur when a prosecutor uses a grand jury to initiate a case – most commonly a felony case. In Fulton County, Georgia, people are arrested and often sit for long periods of time – sometimes months – before indictment.



**Jail churn:** a phenomenon in which an individual is repeatedly arrested, then detained and then released again, over a short period of time. Those who tend to repeatedly “churn” through jails are commonly charged with non-violent misdemeanor offenses and tend to experience a variety of unmet needs, such as extreme poverty, housing insecurity or homelessness, and behavioral health issues. Roughly 25% of individuals booked into jail will be detained again within the span of a year, according to [research](#).

**Judge:** a public official who may be elected or appointed – depending on state and local law – who presides over a criminal case. In the pretrial context, judges typically set bail, determine release conditions, or assign pretrial detention to defendants at arraignment or first appearance. Sometimes, they rely on a bail schedule to determine the bail amount for a particular case; however,

judges generally maintain wide discretion in pretrial decision-making, and bail amount assignments or conditions of release made by a judge can vary substantially.



**Magistrate:** some state court systems have judicial officers who are called magistrates, whose training, powers, and responsibilities vary. For example, Georgia has a chief magistrate who handles preliminary hearings for criminal cases. In Texas, all judges are referred to as magistrates. In some states, magistrates are not required to have any legal training. They may be elected or appointed.

**Mass incarceration:** a significant and unprecedented increase in the number of people incarcerated in U.S. prisons and jails over the past decades, beginning after the 1970s and continuing to grow until 2020. Poor and minority communities, notably Black Americans, are particularly affected by mass incarceration. Drivers of mass incarceration include: aggressive law enforcement practices; harsh sentencing laws; and the widespread use of incarceration as a response to various types of crime. Pretrial incarceration has contributed to [63%](#) of the share of jail population growth since 1983. With over 400,000 people on any given day held pretrial, it is a main driver of mass incarceration. And beneath the growth in pretrial incarceration itself is the use of unaffordable cash bail.



**Non-carceral approach:** approaches, policies, or solutions that do not involve or rely on incarceration or imprisonment as the response to addressing social issues, conflicts, or criminal behavior. Instead of relying solely on punitive measures like incarceration, the approach seeks alternative methods to achieve desired outcomes such as rehabilitation, restorative justice, diversion programs, community support, education, and various forms of intervention aimed at addressing the root causes.



**Personal bond:** *see recognizance.*

**Plea:** when a person is charged with a crime, they must answer to that charge in court during an arraignment. This formal answer is called a plea. A defendant can either admit to the charges by pleading guilty or deny the charges by pleading not guilty.

**Plea deal:** an agreement between a defendant and prosecutor wherein the defendant agrees to plead guilty to some or all of the charges against them in exchange for concessions from the prosecutors. Many people who cannot afford bail take a plea deal, regardless of their guilt, in order to avoid time behind bars. However, the resulting criminal record casts a long shadow, for instance, by making it difficult for people to find employment.

**Presumption of innocence:** a legal principle that every defendant is innocent until proven

guilty in a court of law. Cash bail, which results in the often unnecessary incarceration of legally innocent people charged with crimes before trial, is directly at odds with the presumption of innocence.

**Presumption of release:** a principle that an accused individual should be released from custody pending trial or sentencing without the imposition of bail or restrictive conditions, under the assumption of innocence until proven guilty. In some states, the presumption of release includes a requirement that judges assess the least restrictive conditions to reasonably assure return to court and/or public safety.

**Pretrial:** the period of time, court procedures, and events occurring between a person's arrest and the resolution of their case. Individuals who have been arrested but not yet convicted of a crime are said to be in the "pretrial" stage of their case. Though not all people in this stage will be detained, many are – either as a result of unaffordable cash bail or because a judge denied their release altogether.

**Pretrial algorithms:** *see pretrial risk assessments.*

**Pretrial conditional release:** the release of an accused person from custody before their trial, subject to specific conditions and requirements set by the court, such as bail, electronic monitoring, or regular check-ins, to ensure the person's appearance in court as well as public safety.

**Preventative detention (also, remand):** the incarceration of a defendant in a county jail or detention facility before their trial or resolution of their criminal case, often due to concerns about flight risk or potential danger to the community. Defendants



who are unable to afford their bail end up detained, despite their eligibility for release. Furthermore, in some states, known as “right to bail” states, judges cannot preventatively detain someone, except in rare instances (e.g., most serious offense, death-penalty eligible offenses).

**Pretrial risk assessment:** a determination made by a judge before trial of a defendant’s risk of failing to appear in court, being arrested again, or violating the conditions of their release. Often, in conducting a pretrial risk assessment, a judge relies on risk assessment tools (see *risk assessment tools*), which can perpetuate inequality and also reduce people charged with crimes to statistical probabilities.

**Pretrial supervised release:** a mechanism of pretrial release that exists in various jurisdictions across the United States, typically overseen by a governmental agency or government-funded nonprofit organization, and sometimes housed within a probation department or some other department associated with the court. In some places, such as Oakland, California and Atlanta, Georgia, supervised release is referred to as “pretrial services.” Depending on the program, it can involve local nonprofit agencies working with a person who has been released as they await trial by supporting upcoming court dates, addressing barriers to attendance, and offering connection to voluntary community-based social services.

**Prosecutor:** a lawyer who represents the government throughout the criminal justice process who decides whom to charge and the type of charge (i.e., a felony or misdemeanor). They also decide whether a plea bargain will be offered. Considered by many to be the most powerful officials in the criminal justice system, they contribute to the

problem of mass incarceration and excessive punishment.

**Public defender:** a lawyer appointed by the court to represent people charged with a crime who otherwise cannot reasonably afford to hire a lawyer themselves to defend them in a trial. Usually, a public defender is assigned at arraignment. The Sixth Amendment to the United States Constitution guarantees the right to defense counsel.



**Racial disparities:** within the pretrial system, racial disparities refer to the differences in treatment and outcomes for people of color as compared to white individuals. [Research indicates](#) that Black and Latino defendants are more likely to be charged with more serious crimes, to receive higher pretrial risk scores, to be assigned bail, to receive higher bail amounts, to be denied the benefit of more lenient plea offers, and to be detained pretrial than white people with similar criminal histories and charges.

**Recidivism:** see *rearrest*.

**Rearrest (also, recidivism):** when an individual gets arrested for a new allegation – whether that be a new crime, or failure to adhere with certain conditions of release, including terms of probation. Definitions of rearrest vary widely by jurisdiction, sometimes including some or part of the above-referenced definitions, and sometimes pertaining to different periods of time (i.e., pretrial, post-conviction, or both). Recidivism, by contrast, can include both instances of pretrial rearrest, as well as instances where someone already convicted of a crime experiences a subsequent arrest,

reincarceration or conviction at any point after they've been convicted and released from jail or prison.

**Recognizance (also, *personal bond*):**

a condition of pretrial release where a defendant guarantees their own return to court, often by providing a sworn agreement that they will return to court and comply with the conditions of their release. Those released on recognizance are commonly released without cash bail or the deposit of other forms of collateral.

**Remand:** see *preventative detention*.

**Restorative justice:** an approach to justice that focuses on mediation and rehabilitation as an alternative to a punishment-based approach. It seeks to examine and repair harm done in a community by requiring individual and community accountability, often through facilitated dialogue between those who are alleged to have caused harm and those who have been subject to harm.

**Return-to-court rate:** the rate by which a defendant, who has been released pretrial, returns to court for appointments related to their case. Bail was originally designed for the sole purpose of encouraging defendants to return to court. However, [evidence](#) shows that money is not a determining factor in the decision to return to court: at The Bail Project, our clients returned to over 91% of their court appearances with none of their own money on the line, laying waste to the idea that cash bail is a necessary incentive to ensure that one returns to court.

**Risk assessment tools (also, *pretrial algorithms*):** statistical models designed to inform release decisions by predicting both the likelihood of someone failing to appear at a future court appearance and/or a person's

likelihood of being arrested if released from jail before trial. However, they are inexact and often perpetuate racial bias. Read [more](#).



**Secured bond:** a condition of pretrial release that requires the payment of money or collateral to secure a defendant's pretrial release. The money or collateral is sometimes returned in full when the defendant appears for all of their court appearances. However, in Florida, for instance, unpaid fines and fees from either the current or prior cases are automatically removed from the bail return, and kept instead by the court.

**Summons:** see *citation*.

**Surety bond:** in a criminal case, a condition of release whereby a defendant contracts with a surety to secure their release, and the surety makes a representation to the court that they will be liable for the entirety of the bond amount in the event the bond is forfeited. The surety is typically a bail bond agent or company, though not all jurisdictions limit the posting of surety bonds to commercial bail agents. Unlike a cash bond, a surety bond typically does not require a surety to pay cash to the court. Instead, with requirements specific to each jurisdiction, sureties may provide proof of an insurance policy or proof of collateral in an amount high enough to guarantee the entire bond amount. The defendant typically pays a non-refundable fee to the bail bond agent or company, and the bail bond agent or company posts the surety bond.



**Unsecured bond:** a condition of pretrial release that takes the form of a written promise that the defendant will pay a certain amount of money if they do not follow the conditions of their release. There is no requirement to pay this sum in full or in part prior to or as a condition for release.



**Voluntary pretrial support:** supportive social services such as housing, mental health or substance-use programming that are not mandated by the court or assigned as a requirement for pretrial release.



**Willful flight:** the intentional non-appearance at required court proceedings for the purposes of deliberately evading prosecution. It differs from one-off or isolated incidents of missed court appearances in that the defendant is intentionally subverting the judicial process (compare to *failure to appear*). [It rarely occurs.](#)

To learn more visit [bailproject.org](https://bailproject.org).