

## Fact sheet - Conditions of bail

### 1. What is bail?

Bail is the temporary release of a person from custody, based on a written commitment or promise by the person that they will appear in court on the next occasion when their case comes before the court.

This commitment may also be required from a surety or sureties for the person. A surety is a third party who agrees in writing to pay a specific amount of money if the person fails to comply with their bail undertaking to appear in court.

To be granted bail, a person may be required to agree to specified conditions for their release on bail.

### 2. What is a condition of bail?

A condition of bail is a commitment or promise agreed to by the person.

Section 11 of the *Bail Act 1980* (the Bail Act) provides for the court or the police officer granting bail to impose special conditions on the person's release on bail if deemed necessary.

Special conditions of bail may include:

- reporting to a specified police station on a regular basis
- living at a specified address
- having someone act as a surety for the person.

### 3. What are the provisions for conditions of bail that direct a person to undergo a medical examination?

Section 11(6) of the Bail Act provides for a court to grant bail subject to conditions that require the person to undergo an examination of the person's physical or mental condition by a doctor at a specified institution or place (e.g. a mental health service) other than a high security unit under the *Mental Health Act 2000* or by a specified doctor.

If the condition requires a medical examination, the court must arrange for a statement that includes the reasons for the investigation and the information before the court about the person's physical or mental condition to be given to the institution, place or doctor.

Once the examination has been completed and the health service or doctor is satisfied the person can be discharged, the person should then be released as soon as practicable to the surety or the agreed residential address.

Additionally, a Magistrates Court may impose a condition that the person participates in rehabilitation, treatment or other intervention program or course.

### 4. Who can conditions of bail be applied to?

Conditions of bail are applied to the person charged with the offence. A third party is not legally bound by a person's condition of bail unless they have given a commitment as a surety.

Other than providing surety, there are no provisions in the Bail Act for bail conditions to be undertaken by a third party on behalf of a person.

Nonetheless, a court may impose bail conditions which implicate a third party e.g. a clinician or mental health service. These conditions may include:

- the person being released on bail to a specified hospital or mental health service
- the person being required to provide specific reports prepared by a stated hospital or mental health service
- a clinician being required to report on the person's compliance with their bail conditions.

A clinician and/or a mental health service impacted by a condition of bail imposed on another person is not under any legal obligation to comply with the condition.

Bail conditions that involve the cooperation of a clinician and/or mental health service, should be assessed for appropriateness and availability of the clinician and/or mental health service when being considered by the courts.

## **5. If a clinician or a health service is impacted by a condition of bail and doesn't believe they can support the person to undertake their condition of bail, what should they do?**

A clinician or a health service may become aware that they are impacted by a bail condition either before or after the bail condition has been imposed. If the clinician or a health service is concerned about their ability to support the person's compliance with their bail conditions or the clinical appropriateness of their bail conditions, they should alert the person's legal representative or the relevant prosecuting authority, namely, the Office of the Director of Public Prosecutions (DPP), or the relevant police prosecution office or their local Hospital and Health Service legal service as soon as practicable.

The DPP can be contacted by calling 3239 6840 or 1800 673 428.

The police prosecution office to contact will depend on the location of the court that granted bail. Contact details for the relevant police prosecution office can be found in the Prosecution Corps Contact List at:

<https://www.police.qld.gov.au/corporatedocs/prosecution.htm> .

The Hospital and Health Service legal service can be found on the legal services contact list

<http://qheps.health.qld.gov.au/legal/contact/home.htm> .

## **6. Further information**

### **Mental Health Act Liaison Officer**

Telephone: 07 3328 9899

## **7. Related resources**

Legal Aid Queensland - Bail Information

<http://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Criminal-court-process/Bail>

*Bail Act 1980*

*Mental Health Act 2000* Resource Guide

<https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/default.asp>

*Mental Health Act 2000*

*Police Powers and Responsibilities Act 2000*

*State Penalties Enforcement Act 1999*

*Youth Justice Act 1992*