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Bail and the courts



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Purpose

To explain the process and responsibilities of departmental officers when the court considers a bail application, grants a bail application, or refuses a bail application and orders that a young person is taken into custody.

1. Considering bail

Legislation: Juvenile Justice Act, ss. 48 and 52
Bail Act, ss. 11 and 16

If a young person appears in court and their matters are not finalised at that court hearing, they have a right to apply for bail. The court may:

- grant a young person bail on their own undertaking or bail with conditions
- release the young person to appear again in court at a later date
- remand the young person in custody if it requires further information to make a bail decision
- refuse bail and remand the young person into custody.

When a court grants bail, it may impose bail conditions for the young person's release, including participation in a conditional bail program. Usually the young person is released without sureties or any other form of security.

Officer attending court or caseworker responsibilities

- contacts young person's parent/s or carer to ensure they are aware of the court appearance date and have transport to attend court
- encourages the young person to obtain legal representation. This may not be possible on weekends or public holidays
- if the young person is unrepresented, informs the young person of their right to apply for bail and their potential obligations if bail is granted
- discusses bail-related matters with the young person's legal representative and the prosecution before the young person appears in court
- provides all relevant information to all parties
- indicates to the court that the young person wishes to make a bail application if their legal representative is unavailable and the young person is unsure what to do.

1.1 Discussing bail-related matters with the legal representative and the prosecution

Officer attending court or caseworker responsibilities

When discussing bail-related matters with the young person's legal representative and the prosecution before the young person appears in court, the officer attending court or caseworker:

- determines if bail is likely to be opposed or supported and if a conditional bail program is likely to be requested

- if the prosecution is opposing bail:
 - discusses the reasons with the young person’s legal representative and the prosecution
 - identifies bail conditions that may be appropriate to support bail, for example the young person may be required to report to the police during the bail period
- asks the legal representative and the prosecution to identify any concerns they may have about the relevance of the information the department intends to present to the court.

2. Granting bail with conditions

Legislation: Juvenile Justice Act, s. 48(2)

Court responsibilities

When the court grants bail, it may impose other bail conditions for the young person’s release. Any bail conditions **must not** be more onerous than the court considers necessary in all the circumstances and must be supported by the court’s written reasons.

When deciding whether to impose other bail conditions, the court considers:

- the nature and seriousness of the alleged offence
- the young person’s character, criminal history and other relevant history
- any associations, home environment, employment background
- history of any previous compliance
- the strength of the evidence relating to the offence
- public interest.

The court may impose other bail conditions on the young person including:

- reporting to the police or the department
- meeting residential and/or curfew conditions
- where, or with whom, the young person lives
- not leaving their place of residence unless they are in the company of an adult
- participating in a conditional bail program or bail support program. [Refer to chapter 13. Conditional bail program.](#)

Young person responsibilities

If the court grants bail, the young person:

- signs their own bail undertaking
- receives a copy of the bail undertaking
- is not usually required to provide any surety.

Note: A departmental officer **must not** provide any surety for a young person, or sign a release form or bail undertaking. The departmental officer must not take personal responsibility for a young person released on bail.

Officer attending court responsibilities

- completes a court outcome form on lotus notes
- completes a casenote in the arrest event indicating that bail was granted if the bail has no departmental responsibilities

3. Monitoring bail conditions

A young person must comply with their bail conditions. The police and the caseworker monitor specific conditions that relate to the young person's bail responsibilities.

3.1 Non-compliance with bail conditions

The caseworker may become aware that a young person is not complying with their bail conditions. Breach of bail conditions is not an offence.

Caseworker responsibilities

If the department **is** responsible for administering the bail conditions, for example for reporting arrangements, and the caseworker becomes aware of non-compliance, the caseworker:

- discusses the non-compliance with the young person and their parent/s or carer
- warns the young person of the possible consequences of non-compliance. ([CBP-warning proforma letters located on infonet](#))

Note: The level of intervention is dependent on the bail conditions.

If the young person's non-compliance continues after the warning, and there is sufficient evidence substantiating the non-compliance, the caseworker:

- meets with their team leader to discuss options, including preparing a notice of non-compliance to the police.

If the caseworker and team leader agree to prepare a notice of non-compliance, the caseworker:

- writes to the appropriate authority and attaches a copy of the young person's conditional bail program and the bail undertaking signed by the young person. [Refer to Chapter 13, Conditional Bail Program.](#)

Until the young person reappears in court, the caseworker:

- encourages the young person to comply with their bail conditions
- informs the young person's parent/s or carer and their legal representative of the department's efforts to re-engage the young person.

If the department **is not** responsible for administering the court-ordered bail conditions, the caseworker:

- again explains to the young person their bail conditions and their responsibilities for compliance

- advises the young person's parent/s or carer and their legal representative of the alleged non-compliance.

Note: The level of intervention is dependent on the bail conditions.

i. Bail and the lower court

Caseworker responsibilities

If a young person was granted bail with departmental conditions attached in a lower court, the caseworker:

- writes and then telephones the local police and/or the police prosecutor as soon as possible to advise of the non-compliance
- forwards a copy of the letter and a copy of the young person's bail undertaking to:
 - the young person, their parent/s or carer and their legal representative
 - the court coordinator for the young person's court file
- informs the court coordinator of the action taken
- provides the court coordinator with a copy of the letter to tender in court at the young person's next appearance.

ii. Bail and the higher court

If a young person is charged with certain serious offences, including murder or drug trafficking, their bail application must be heard by a Childrens Court judge or by the Supreme Court.

When bail has been refused, a bail application can be considered in the court that made the original decision or in a court of a higher jurisdiction.

The departmental officer attending court must be fully informed about the case before attending court.

Caseworker responsibilities

If a young person was granted bail with departmental conditions in a higher court, the caseworker:

- writes to the Office of the Director of Public Prosecutions to advise of the non-compliance and attaches the signed bail undertaking
- forwards a copies of the letter and the signed bail undertaking to:
 - the young person, their parent/s or carer and their legal representative
 - the local police
 - the court coordinator for the young person's court file.

4. Refusing bail

Legislation: Juvenile Justice Act, s. 48
Bail Act, s. 16

Reference: Memorandum of Understanding between the Queensland Police Service and Department of Communities on the Detention of Children in Watchhouses

If a young person is refused bail by the court following an arrest, the police transfer the young person to a youth detention centre. The young person may be detained in a watchhouse or Childrens Court cell while arrangements are made for their transfer to detention.

Officer attending court responsibilities

- contacts the youth detention centre admissions officer to arrange for the young person to be admitted
- if the young person has remained in the watchhouse for longer than 1 hour while awaiting transportation to a youth detention centre, opens the existing arrest event and completes the Watchhouse detention details form
- submits the watchhouse detention details form to their manager for approval
- informs the youth justice service/s with casework and case management responsibility of the court outcome
- completes the court information form
- updates the court diary.

Youth justice service manager responsibilities

- approves the watchhouse detention details form

YDC operations staff responsibilities

- completes a YDC detention details form within the same arrest event and submits this to their manager for approval

YDC shift supervisor responsibilities

It is important that the watchhouse detention details form is approved prior to approving the YDC detention details form, as sequence of approval will effect the correct recording of the young person's placements within the locations tab.

- first checks that the watchhouse detention details form has been approved
- reviews the YDC detention details form and approves the form.

YDC operations staff responsibilities

- checks the locations tab to ensure that the young person is recorded as being in detention, if not completes another YDC detention details form (replicating the same information as that contained in the first YDC detention details form created in the arrest event) and submits to their manager for approval
- following approval of all of the forms in ICMS, closes the arrest event.

4.1 Reapplying for bail

If a young person is refused bail by the court, they may reapply for bail if their circumstances change, for example if a suitable placement is negotiated or if a court

otherwise allows a fresh bail application. If a bail application is made to a higher court, the young person's circumstances do not need to have changed.

Officer attending court responsibilities

If bail is granted, the officer attending court will:

- contact the youth detention centre admissions officer to advise the young person was granted bail
- inform the youth justice service/s with casework and case management responsibility of the court outcome
- complete the court information form
- update the court diary.

YDC operations staff responsibilities

- open a new movement event and completes the Watchhouse Detention details form
- submits the watchhouse detention details form to their manager for approval
- completes a detention closure form within the same movement event and submits this to their manager for approval
- following approval of the forms in ICMS, close the movement event.

If bail is refused:

Officer attending court responsibilities

- contact the youth detention centre admissions officer to advise the young person will be returning to the centre
- complete the court information form
- inform the youth justice service/s with casework and case management responsibility of the court outcome
- update the court diary

YDC operations staff responsibilities

- open a new movement event and complete the watchhouse detention details form
- submits the watchhouse detention details form to their manager for approval
- complete a YDC detention details form within the same movement event and submit this to their manager for approval
- following approval of the forms in ICMS, close the movement event.

Youth detention centre shift supervisor responsibilities

It is important that the watchhouse detention details form is approved prior to approving the YDC detention details form as the sequence of approval will effect the correct recording of the young person's placements within the locations tab.

- first reviews the watchhouse detention details form and approves the form
- reviews the YDC detention details form and approves the form.

5. Reviewing and varying bail conditions

If a young person's bail conditions require review or variation, for example because of a change of address or residential conditions, the young person or their parent/s or carer should raise the matter with their legal representative who is responsible for taking action.

5.1 Higher court review of bail or conditions

Legislation: Juvenile Justice Act, s. 59
Bail Act, ss. 8(5) and 13

If a young person is refused bail or the bail conditions are inappropriate, their legal representative may apply for a review of the bail decision to a court with a higher jurisdiction.

If the young person's legal representative is unavailable or unwilling to apply for a bail review, the young person or the court coordinator may engage Youth Legal Aid to make a bail application in the Childrens Court of Queensland or the Supreme Court.

6. Failing to appear in court

Court responsibilities

If a young person fails to appear in court, the court may:

- set a subsequent court date for the young person to appear
 - order that the young person's bail undertaking be forfeited (if bail was granted) and issue a warrant for the young person's arrest
 - order that the warrant lies on the court file for a specified time before it is released
- or
- release the warrant for the young person's arrest.

Caseworker responsibilities

- attempt to contact the young person
- arrange to bring them to court, if required
- create a warrant alert. [Refer to Chapter 5, Recording alerts.](#)

If the young person appears in court before the warrant is released, the court will usually order that the warrant is withdrawn.

If the young person fails to appear in court by the subsequent court date, the court may then release the warrant for arrest of the young person.