

BAIL ENFORCEMENT/FUGITIVE RECOVERY© TRAINING COURSES

Overview of Surety Bail

The Bail Enforcement/Fugitive Recovery Training Series is comprised of four courses, which will build upon each other.

The overview of surety bail course includes a history of surety bail, how to obtain a license, how some states distinguish between a licensed bail agent and a licensed fugitive recovery agent and how surety bail works in the criminal justice system.

Course objectives will touch on the following areas:

- Bail concepts
- Regulations in the bail industry and professionalism
- Working in the bail industry
- Licensing
- History of bail
- Bail bond and its purpose
- How bail works
- Types of bail
- Non-bail forms of release
- Responsibilities and duties
- Managing general agent
- The surety
- Contracts
- Premium and charges
- States that do not recognize surety bail
- Worldview on surety bail

Bail Concepts:

Bail is a judicial concept and system that governs the status of individuals charged with committing a crime. Once a defendant is charged with a crime the judge may set or require a monetary sum to release the defendant. This is to ensure the defendant returns to each and every hearing held on their behalf.

In general, an individual accused of a crime must be held in the custody of the court until his or her guilt or innocence is determined. However, the court has the option of releasing the individual before that determination is made, and this option is called bail. The judge usually sets bail during the defendant's first appearance. Many states follow what is known as a bail schedule. This schedule has been determined based on the severity of the alleged crime. In most instances judges or magistrates have determined the jurisdictional bail schedule in advance and bail can be set prior to a first appearance. This can vary from state-to-state and county-to-county.

Once bail is set, the defendant can post the required amount with the court, which may be refunded after adjudication and less any fines owed. Another option is to seek the help of a bail bondsman, who becomes financially responsible for ensuring the defendant appears at all required court hearings. The bail bondsman may require an indemnitor on the bail contract, who promises that the defendant will appear. The indemnitor must post something of value, such as real estate or a vehicle, as collateral to further guarantee the bond. Failure of the defendant to appear means the indemnitor may forfeit such collateral in order to pay the bond back to the court.

A judge can also release a defendant upon her or his own recognizance (O.R.), which is the defendant's written, unsecured promise to appear for all court proceedings. The O.R. release is usually reserved for individuals with less serious charges, who have steady employment, ties to the community and family to help support them. Violation of any release condition is considered an additional crime.

Other conditions may also be set regarding the release of the defendant. The Bail Reform Act of 1984 provided for many additional conditions that do not rely upon finances and that reflected current trends to move away from financial requirements for freedom. These conditions came about, in part, over concerns regarding the discriminatory nature of bail toward the poor. The Bail Reform Act allows for conditional releases dependent upon such circumstances as maintaining employment, meeting curfews, and receiving medical or psychiatric treatment.

Several states have revamped their laws regarding release. It is important to note that the Bail Reform Act of 1984 is a FEDERAL Statute. The act of 1984 replaced the Bail Reform Act of 1966.

Regulations in the Bail Industry and Professionalism

The surety bail profession as a whole has evolved over several hundred years. While today it may not resemble what surety was a few hundred years ago, the concept remains the same. Today there are many state and local regulations that govern the bail profession. Most states require licensing of bail agents and/or fugitive recovery agents, and each state has individual methods and procedures of utilizing surety bail. It is the bail agent's and fugitive recovery agent's responsibility to abide by all laws surrounding their actions in each state. Mistakes can be costly and result in license suspension, revocation, civil penalties, lawsuits, or criminal proceedings.

As a bail enforcement professional, fugitive recovery agents are a vital part of surety bail and provide necessary services. Continuing the education process is a critical component to any success. Technology is constantly changing, as is the landscape of bail, bail enforcement, laws, regulations and the entire criminal justice system. It will always serve one well to constantly update their skills. Maintaining professionalism with the courts, other bail agents, clients and defendants is critically important to advance the profession in the criminal justice system.

Working in the Bail Industry

Old stereotypes do not die easily. Many view bail agents based upon the wild and colorful characters seen on TV, in the movies, or as portrayed in books. Of course we know that there are colorful characters in every profession and the bail industry is no exception. However, bail agents are the same as those in any other profession. They are your next-door neighbors. They stand in line next to you in the grocery store. Like everyone else, bail agents and bail recovery agents are trying to make a living. There are both good and bad aspects of being a bail agent or fugitive recovery agent. You own and operate a business, have flexible hours, pass on a family business and help others in the criminal justice system. On the other hand, one must be available 24/7 to bond defendants, find defendants who have failed to appear, have liability and risk to mitigate, face negative legislation and increased competition for non-monetary release.

Licensing

It is critical to research the licensing requirements for bail agents and fugitive recovery agents in each state and to know what is allowed and expected (*see the NCIC list of licensing bodies for each state*). It cannot be stressed enough to research the laws within various states to abide by state laws and procedures.

Once the licensing requirements has been determined (by your domicile state) to operate as a fugitive recovery agent, the required forms can be submitted for approval. Licensing usually requires minimum qualifications such as a minimum age, training and other requirements. Some states have no requirements whatsoever; don't assume that there is no liability with lack of licensing.

Chances are there are laws on the books. It is your responsibility to know what those laws are and work within those parameters.

The purpose of licensing has many facets. One major facet is consumer protection. Aside from providing an appearance of a profession, most occupational licenses are for the consumer. Another important component to licensing is to provide an avenue of legal action. A licensing body has the ability to oversee the licensees within that specific profession.

The licensing body (usually the State's Department of Insurance) can and does seek enforcement of violations of laws. Because the fugitive recovery agent profession crosses many genres of law, there may be more than the licensing authority that can initiate actions. In addition, there are criminal and civil redress should anything go awry.

History of Bail

The first modern bail bonds business in the U.S. was established by [Peter P. McDonough](#) in [San Francisco](#) in 1898. However, clay tablets from ca. 2750 BC describe surety bail bond agreements made in the Akkadian city of [Eshnunna](#) in what is today modern Iraq. Citizens were released from jail by having an indemnitor pay a sum in currency and to pledge the defendant will show up to court backed by the indemnitor's property, such as his livestock.

An *undertaking* is a written promise offered as security for the performance of a particular act required in a legal action. An undertaking of bail is a written promise (contract) that secures the release of the accused from custody pending trial, guarantees that he/she will appear at trial, and that if he does not, the insurance company will pay to the court the full amount of the bail.

Bail Bond and its Purpose

A bail bond is money or security given to ensure the appearance of a defendant at court. The purpose of the bail is to relieve the accused of being in custody in jail pending trial, to relieve the county of the taxpayer burden of keeping someone in jail pending trial, while at the same time guaranteeing the appearance of the accused at trial.

How Bail Works

When a person is arrested for a crime, they are taken to a jail for booking. Once booked, the arrestee may have several options for release pending the outcome of the charges for which he/she has been arrested. One of the options for release is BAIL.

When the bail is delivered to the jail or the court, the arrestee will be released from custody upon the bail. The bail is a guarantee that the arrestee will then appear in court to answer the charges that have been filed against him/her.

If the defendant does show up for all of his court appearances until the conclusion of his case, then the bail will be ordered exonerated or “released.” Once the bail has been exonerated, the bail no longer guarantees anything. The individual who posted the bail will be completely “off the hook.”

If the defendant fails to appear in court, the bail is ordered forfeited by the judge. This begins a specific allowed time period for curing the forfeiture. Generally speaking, if the defendant does not return to court within the allowed time, and/or if the forfeiture remains at the end of the allowed time, the court will keep or collect the full amount of the bail. But if the defendant does return to court within the allowed time, or if the forfeiture is cured by other means, then the forfeiture will be set aside or “erased” and the bail will usually be exonerated.

In conclusion, bail secures the release of the defendant from custody. It guarantees that the defendant will appear in court, and that if he/she does not, that the bail will be paid in full to the court.

Types of Bail

- Cash bail – Cash is placed with the court in an effort to release the defendant from custody.
- Undertaking of bail – A bail bond that sits with the court and is “cashed” if the defendant fails to appear.
- Property bond – Posting of a property bond, which means the value of real property is pledged to the court to guarantee the defendant will appear in court. If the defendant does not come to court when he/she is supposed to, the court will take the posted property as if it were cash bail.

Non-Bail Forms of Release

- Taxpayer pretrial release programs
- Own recognizance (O.R.)
- Citation and release

Responsibilities and Duties

The bail agent and fugitive recovery agent is responsible to the following parties. There is a duty of care that is expected and should be shown to the client, co-signers, agency, agent, surety, court and the general public.

Managing General Agent

Some insurance companies will use the services of another business, or a middleman, called a “managing general agent” (MGA) or “general agent” to manage their bail business. Typically, the MGA will have a particular geographic territory. This is a specific area of the state that the insurance company will turn over to the MGA. General agencies essentially stand in the shoes of the insurance company and may manage underwriting, claims handling, recruiting, audits and much more on behalf of the insurance company issuing the bail.

The MGA is responsible for being properly licensed to do business in a particular state or states. The MGA may be responsible for arranging appointments for bail agent licenses, for identifying prohibited persons, for paying claims (forfeitures), for monitoring agents, for protecting the consumer and for complying with a myriad of laws. The full extent of the responsibilities of the MGA will depend on the terms of the contract that they have with the insurance company.

The Surety

The surety is the “obligor” in a three-party agreement. For a bail bond, the three parties are the obligor (surety), the obligee (the court) and the principal (the defendant). The surety is the entity that is essentially guaranteeing payment to the court should the defendant fail to appear.

Contracts

Contracts are legally binding agreements between two or more parties. The parties that enter into a contract can be individual businesses, organizations or agencies or individuals. A contract outlines what must or what must not take place between the two parties that enter into the agreement in exchange for something of value.

There are many benefits of having a contract. A contract can assure that you get what you were promised. A contract also clearly outlines the terms of the agreement so that there is no confusion or miscommunication to what the responsibilities of each party are. A written contract provides evidence in the case that a contract is breached. A written contract proves that an agreement was indeed entered into.

A contract outlines the specific information, like who, what, when, where and how the parties have agreed on. When one party does not live up to its side of the agreement or breaks its promise, the contract is breached. When a contract is breached, legal action can be taken that can force the parties to keep their promises. Having a contract assures you are getting what you agreed to in the time and fashion you agreed to get it.

For a contract to be legally binding it must have a few key ingredients:

- Both parties must be able to enter into a contract.
- A contract must include “consideration” or what one party has agreed to give in order to get.
- There must be a meeting of the minds. Both parties must be clear to what they are agreeing to.
- A contract must be accepted.
- In many states agreements that last more than a year **MUST** be in writing.

One must possess the mental capacity to enter into a contract and the contract should be fully understood in the individual’s primary language. Married couples are usually jointly liable for a signed agreement. This means that both are equally liable for full amount of costs, fees, or damages. All indemnitors are liable as well that are parties to a contract. Bail agents and fugitive recovery agents should provide clients with copies of signed contracts, statement of charges, premium receipts and information pertaining to court date, time and location.

Premium and Charges

Most states govern the amount of premium charged. Each surety company files what are called “rates.” Bail agents must adhere to the rates filed within the state and not deviate from those rates.

Charges are additional to the premium. These too are usually regulated by the state. In most states additional charges must be disclosed during the contract signing. Additionally, charges must be reasonable and justifiable.