

# INFORMATION FOR ACCUSED

*BAIL ACT 1982 Section 8(1)(a)*

## Form 1

**NOTE: If an accused has difficulty reading English he may require that this form be translated for him.**

<b>1. Summary</b>	This form contains a summary of the main provisions of the <i>Bail Act 1982</i> relating to your bail rights. Only the general effect of those provisions is stated.
<b>2. Bail information form</b>	<p>You must be given a form (Information Given by Accused) which can be filled in by you to let the officer or court have sufficient information to make a decision on bail. In straight forward cases where bail is likely to be granted and sufficient information is held, the court or officer may advise you that you need not fill in the form.</p> <p>You do not have to complete any form or supply any information to an officer or court that is considering bail. However, if you do not do so, the decision may be delayed.</p> <p>Information supplied cannot be used against you at your trial.</p>
<b>3. At time of arrest</b>	<p>Upon your arrest, unless you are to be detained in custody for some other offence or reason, bail must be considered as soon as is reasonably practicable whether or not you apply for bail. If you are not released on bail, you must be taken before a court as soon as is reasonably practicable.</p> <p>Certain police officers, and for children only, certain community services officers, may deal with bail at this stage, except –</p> <ul style="list-style-type: none"><li>(a) for the offence of murder;</li><li>(b) where the arrest is made under a warrant;</li><li>(c) where the arrest is made in an urban area (as defined) for a serious offence (as defined) alleged to have been committed while you were -<ul style="list-style-type: none"><li>(i) on bail for another serious offence; or</li><li>(ii) at liberty under an early release order in respect of another serious offence;</li></ul></li></ul> <p>or</p> <ul style="list-style-type: none"><li>(d) for an offence that involves breach of a violence restraining order.</li></ul> <p>A justice may also deal with bail at this stage except -</p> <ul style="list-style-type: none"><li>(a) for the offence of murder;</li><li>(b) where the arrest is made in an urban area (as defined) for a serious offence (as defined) alleged to have been committed while you were -<ul style="list-style-type: none"><li>(i) on bail for another serious offence; or</li><li>(ii) at liberty under an early release order in respect of another serious offence; or</li></ul></li><li>(c) for an offence that involves breach of a violence restraining order.</li></ul>
<b>4. On appearance in court</b>	<p>For every later appearance in court unless you are to be detained in custody for some other offence or reason, bail must be considered afresh whether or not you apply for bail. However, this does not apply if you are charged with murder and have been refused bail by a judge of the Supreme Court unless –</p> <ul style="list-style-type: none"><li>(a) there has been a change of circumstances; or</li><li>(b) you did not present your case properly at the time when bail was refused.</li></ul> <p>If you are in custody during a trial that extends beyond one day, a judicial officer need not consider your case for bail, however, you may apply for bail.</p>
<b>5. Warrant cases</b>	If you have been arrested under a warrant you must as soon as is practicable be taken either before a justice to consider bail or before the court which issued the warrant.
<b>6. Where charge is murder</b>	<p>If you are an adult charged with murder, an application for bail may be made by you or on your behalf to a judge of the Supreme Court.</p> <p>If you are a child charged with murder, you are to be taken before a judge of the Children's Court as soon as is practicable for consideration of bail, whether or not an application for bail is made by you or on your behalf.</p>
<b>7. Decision may be delayed</b>	A decision on bail may be delayed for up to 30 days if information has to be obtained or checked, but, on arrest, you must still be taken before the court as soon as is practicable.

<p><b>8. How decision to be made – adult</b></p>	<p>Bail for an adult accused, before conviction, is at the discretion of the court or officer who must take into account the points set out in clause 9(a) and (b) below.</p> <p>However, bail must be refused if the case comes within clause 8B below.</p>
<p><b>8A. How decision to be made – child</b></p>	<p>A child cannot be released on bail unless a responsible person gives a written undertaking to see that the child does what is required by the bail undertaking. The only exception to this is where the child is over 17 and is able to live independently without supervision.</p> <p>A child, before conviction, has a right to bail unless –</p> <p>(a) no such undertaking is entered into by a responsible person;</p> <p>or</p> <p>(b) the points in clause 9(a) and (b) below disclose a reason why bail should be refused; or</p> <p>(c) the case comes within clause 8B below.</p>
<p><b>8B. Where serious offence committed while on bail for another serious offence</b></p>	<p>In Schedule 2 to the <i>Bail Act 1982</i> there is a list of serious offences. You cannot be granted bail for one of these offences if it is alleged to have been committed while you were on bail for another serious offence, unless there are exceptional reasons why you should not be kept in custody.</p>
<p><b>9. Points to be considered</b></p>	<p>The main points to be taken into account in the bail decision are –</p> <p>(a) Before trial</p> <p>(i) Whether you might fail to appear in court, or whether you might commit an offence, or endanger persons or property or interfere with witnesses.</p> <p>(ii) Whether you need to be kept in custody for your own protection.</p> <p>(iii) In the case of an adult, whether the prosecutor has put forward reasons for refusing bail.</p> <p>In considering the points in (i) above the main factors to be taken into account are the seriousness of the offence, the strength of the prosecution case, your personal background and circumstances and whether you have failed to answer bail in the past.</p> <p>(b) During trial</p> <p>Whether, in addition to the above, there is reason to believe that the trial may be adversely affected if you are not kept in custody.</p> <p>(c) After conviction</p> <p>If you have been imprisoned, bail may be granted for an appeal from a decision of the Magistrates Court or the Children’s Court or, in exceptional circumstances, from a decision of a superior court.</p> <p>If you are awaiting sentence, bail may be granted at the discretion of an appropriate judicial officer.</p> <p>In either case the criteria in (a) above must be considered.</p>
<p><b>10. Conditions</b></p>	<p>Bail conditions must be fair and reasonable in the circumstances of each case. The most common conditions are that there be an approved surety or sureties, and that the accused and any surety pay an amount of money to the State if the accused does not answer bail.</p> <p>In the case of a child, it is always a condition of bail that a responsible person give a written undertaking to see that the child does what is required by the bail undertaking. The only exception is where the child is over 17 and is able to live independently without supervision.</p>
<p><b>11. Accused to receive copy of bail decision form or court record</b></p>	<p>If your case for bail has been considered by a justice, a police officer, or a community services officer and –</p> <p>(a) you have been refused bail; or</p> <p>(b) you have been granted bail after having previously been refused;</p> <p>(ca) you have been granted bail for a serious offence while on bail for another serious offence; or</p> <p>(c) you notify the decision-maker that you are dissatisfied with any condition that has been imposed;</p> <p>a bail record form will be completed and you must, upon request, be given a copy of the form as soon as is reasonably practicable.</p> <p>If your case for bail has been considered by a magistrate or a judge you must, upon request, be given a copy of the court record showing the decision made and the reasons.</p>

<p><b>12. Bail undertaking</b></p>	<p>Before you are released on bail you must sign an undertaking to appear in court at the required time and to comply with other conditions which may be imposed; and, where applicable, must agree to pay the amount fixed by the authorised officer, justice or court if you do not appear.</p> <p>You must be given a copy of your bail undertaking and a form setting out your obligations and the consequences of a failure to comply with them. You may require that those documents be read or translated to you.</p>
<p><b>13. Release from custody</b></p>	<p>As soon as all papers have been completed and pre release conditions complied with, you must be released, but this can be delayed, if necessary, for such things as the taking of fingerprints, photographs or DNA profile.</p>
<p><b>14. Reconsideration of decision</b></p>	<p>If after arrest, a police officer (or, in the case of a child, a community service officer) refuses bail, you can ask a justice to reconsider bail. However, if a justice refuses bail before your initial appearance in court, another justice cannot grant bail.</p> <p>If on or after your initial appearance in court bail is refused, you may re-apply for bail only if you think that new facts have arisen, circumstances have changed or you did not present your case adequately.</p>
<p><b>15. Application to judge</b></p>	<p>If dissatisfied with a decision of an authorised officer, justice or magistrate, you may make an application to a judge to exercise the power to grant bail. However once you have made such an application you cannot make another unless –</p> <p>(a) new facts have been discovered or there has been a change of circumstances; or</p> <p>(b) you failed to present your case properly on the first application.</p>
<p><b>16. Sureties</b></p>	<p>There is a form which a person must complete before he can be approved as a surety.</p> <p>Each surety must also sign an undertaking which sets out his liabilities.</p>
<p><b>17. False information</b></p>	<p>If you knowingly or recklessly give false information in connection with bail, you are liable to a fine of up to \$1 000 or imprisonment for up to 12 months, or both.</p>
<p><b>18. Offence to compensate surety</b></p>	<p>It is an offence for you or any other person to compensate, or agree to compensate, a surety or a proposed surety for any liability which falls, or may fall on him, under the <i>Bail Act 1982</i>. The surety or the proposed surety and any person who is a party to the agreement also commits an offence. The penalty is a fine of up to \$1 000, or imprisonment for up to 12 months, or both.</p>