

Bail Bonds 101

This page is for informational purposes only. For statutes and information regarding your specific state and situation please speak to your attorney.

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- What an arraignment is not
- Sometimes people are fooled into believing that because an arraignment happens in a courtroom with a judge, prosecutor, and defense attorney that an arraignment is somehow a trial. This is not the case. Sometimes it is easier to consider what an arraignment is NOT before you try to figure out what it IS.
- An arraignment is not a trial.
 - No witnesses are called at an arraignment.
 - No evidence is heard at an arraignment.
 - The police officer need not appear for arraignment.
 - The complaining witness need not appear for arraignment.
 - The guilt or innocence of the person accused is NOT decided at arraignment.
 - The accused will usually not even be asked to speak (the lawyer speaks on his behalf).

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What is an arraignment? (initial appearance, bond hearing)

From the accused's point of view, an arraignment is really about one thing, and one thing only - whether or not the judge will set bail, and if so, how much. OK that's really two things. But the point is that although other things happen at an arraignment, the most obvious and significant thing is the decision to set or not set bail. If the judge does not set bail or the bail is set so high that the accused and his family can't make it, the accused could stay in jail for as long as it takes to work the case out or until one of the following things happens:

- The case is over.
- A new bond application is made to the trial judge for reconsideration of bond release or bond reduction / bond modification. If a bond is set, then the accused may post bail, typically either in cash or through a licensed bail bondsman. Going to a bail bond company will cost you a percentage of the total bond. This is known as the bond premium, typically 10% of the total bond amount, some states less / some more. To check on the costs of a bail bond in your state and for the lowest rates and financing options call 702-547-JAIL (5245)

- Also at the arraignment / bond hearing, the accused will be informed (through his criminal defense lawyer) of the precise charges against him. Arraignments offer the accused the opportunity to hear the truth about the charges from a source they can trust.

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An arraignment step by step

- 1. Calling of the case - the court officer or court bailiff whose job it is to organize and call the cases into the calendar will announce the case usually by calling out the case / docket number and then the name of the accused like The People against John Smith.
- 2. Once the case is called in, the court officer or court bailiff will bring the accused out from the prisoner holding area of the courtroom to the place in front of the judge where they have the defendants stand. The defense attorney will be standing next to the defendant and the prosecutor will be standing off to either the right or the left depending on the custom of the court. Everyone will be face the judge.

In some large cities the accused will stand in front of a camera and viewing monitor from inside the jail. The hearing will take place via the court closed circuit TV system. In the courtroom the judge, prosecutor, defense attorney and the public will be watching the accused from courtrooms viewing monitor.

- 3. The court may ask certain questions usually directed to either the prosecutor or the defense attorney. I.e. He may ask the defense lawyer whether he waives the reading this is a term asking the defense attorney if he waives detailed public reading of the accusations/charges in the case. Tradition is that such a public reading is dispensed with in favor of simply getting on with the arraignment hearing. A refusal to waive the reading is considered a serious breach of etiquette.

- 4. The judge will then usually take a minute or so to review the file and then ask the prosecutor for specifics of the case. This is the signal for the prosecutor to provide certain formal notices that may be required by law or procedural custom at the arraignment. These notices can take a number of different forms. The defense lawyer may return some cross notices in a seemingly confusing exchange of paperwork.

- 5. After the scurrying around with paperwork is completed, the judge will ask the prosecutor to make a statement with respect to bail. This is the prosecutor's chance to tell the judge whether or not he thinks bail should be set, how much he thinks the bail should be, and a brief (usually very brief) description of the case. Do not be alarmed if the defense lawyer doesn't jump up and object or complain during this speech. Everyone gets a chance to be

speaking uninterrupted.

- 6. After the prosecutor is finished, assuming that bail is requested, the judge will ask the defense lawyer to say something in response. This is the defense lawyer's chance to challenge statements made by the prosecutor or add in information that the prosecutor may have left out. In this argument the defense lawyer may request outright release, or if that seems unlikely, an amount of bail more likely to be made by the defendant or his family.

- 7. Finally, after hearing once from both sides, the judge will make his decision about bail and the arraignment / bond hearing is over.

- 8. If bail is set the court officer or court bailiff will escort the defendant back to the prisoner holding area of the courtroom (the pens) or jail and the defendant will remain in jail until the bail is posted. If the judge set a ROR bail release on recognizance defendant, he will then be permitted to leave the courtroom out the door. Someone who is ROR'd is released simply on his promise that he will return to court on the date set by the judge. In some states, the defendant will be returned to the jail for a short time while ROR is processed, then released.

Note: In some minor cases, the prosecutor, the defense lawyer and the judge may briefly discuss the possibility of resolving the case there and then. Drinking in public cases, for example, can often be resolved at the arraignment.

Be aware that all of the above 8 steps will usually take place in about 3 minutes or less depending on the nature of the case. Five minutes for one arraignment is a fairly long time. Fifteen minutes for an arraignment is a downright eternity. When you carefully consider what is required to be accomplished at an arraignment, as long as everyone involved is highly experienced, it is not as outrageous as it sounds.

Experienced lawyers and judges are adept at evaluating cases and presenting the most relevant persuasive arguments in an extremely tight package. There is an entire vocabulary of arraignments that is lost on those who are not experienced even if they were to read the transcript. This is why watching an arraignments / bond hearing can sometimes be a mystifying experience for the uninitiated. They are fast, filled with legal jargon, and often frustrating for family members.

Family and friends in the audience are often frustrated at the bail arguments of lawyers because they want the lawyer to try the case at this initial hearing. They want the lawyer to rant about the injustice of the arrest or the absurdity of the charges. In some cases, some rare cases, such rants might be appropriate (usually only as a venting of frustration when the lawyer senses that the judge is going to do something ill-advised regardless of what he feels or says) but most of the time such rants are totally irrelevant to the arraignment / bond hearing. Even if the lawyer who puts on a spectacular show, at the end of the performance the judge gets to do what he wants.

[Return to Contents](#) [How judges decide bail](#) Judges typically make the decision based on a few major factors listed below. No one particular factor will decide the issue. [Seriousness of the Charges](#) - The more serious the charges against a person, the more likely it is that a high bail amount will be set. For example, a person who is charged with drinking beer in public is not as likely to have bail set as someone charged with armed robbery. Some charges are so serious, in fact, that no bail at all will be set. A person who is remanded is someone who has had no bail set. Very serious felony crimes like murder, some kidnapping charges, some arson charges, and high-level drug possession and sale charges, are so serious that if an accused is actually convicted, he faces up to life in prison (or possibly the death penalty).

[Prior Criminal History](#) - A person with a criminal history is more likely to have a higher bail set than someone with no criminal history. Certainly, the number of prior criminal convictions, the seriousness of the criminal convictions, the recency of the criminal convictions, and the similarity of the criminal convictions to the current charge are all things the judge will consider. For example, the person who has a prior misdemeanor conviction from 20 years ago is in a better position than a person with a felony conviction from last month. Be aware that not having any criminal history stops meaning a great deal as the seriousness of the crime increases. A person accused of shoplifting will quite rightly have the argument for release that he has no prior convictions. A person accused of intentional murder, however, is not likely going to get an enormous amount of mileage out of the fact that he has no prior criminal history. [Prior Warrants](#) - A person who not only has prior convictions but also has had bench warrants issued on those cases is quite likely to have a higher or no bail set. Understand that the existence of a warrant or "alias capias" on the rap sheet doesn't necessarily mean that the warrant is OPEN. It may have been taken care of. The reason judges are concerned with prior warrants, however, is that the entire issue of bail is about whether or not a warrant will ever have to be issued. If a person has failed to return to court when he was supposed to in the past, judges take this to mean that high bail may be necessary to make sure the person returns. In some cases, warrants are issued in error, or for silly reasons that are resolved in court to everyone's satisfaction. Unfortunately, the rap sheet doesn't indicate silly reasons, it simply notes the warrant. If there is some legitimate explanation for a warrant having previously been issued, the accused should make a point to explain this to his lawyer at arraignment.

[Ties to the Community](#) - If an accused has significant ties to the community he is likely to get a ROR bail set for misdemeanor and less serious crimes. For felony crimes he is likely to have a smaller amount of bail set than does who have not so good ties. Ties to the community come in many forms but judges typically respond well to the

following:

- The accused owns a home or other property in the community.
 - The accused is employed full-time at a steady job.
 - The accused is a long-time residence in the same location in the community.
 - The accused has family in the community.
 - The accused is a United States citizen.
 - The accused has family and friends present in the courtroom for the arraignment.
 - An effort by the accused to hire a private lawyer is sometimes considered evidence that a defendant has a stake in sticking around and answering the charges.
 - Voluntarily surrendering at the request of the police is also considered powerful evidence of a defendant's willingness to answer the charges.
- The Court Criminal Justice Agency - The Criminal Justice Agency (Pre-trial Services) interviews each person who comes through the system and makes a recommendation with respect to release as to each defendant. Judges are not bound by these recommendations and there is considerable debate as to whether the CJA recommendation is a significant factor to judges. It certainly can't hurt to obtain the Recommended approval from CJA, but don't expect such a recommendation to be anything even close to a guarantee of bail.

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The Judge People need to realize that the judge in the arraignment / bond hearing is quite likely never going to see the individual people he arraigns ever again. From a purely practical standpoint, the judge at the arraignment is usually not terribly interested in any particular case beyond what is absolutely necessary to accomplish the arraignment. The judge is not terribly interested in getting to the bottom of the case, is not terribly interested in investigating the case or hearing evidence on the case. The judge is going to have to do between 80 - 100 arraignments in his shift and is keenly aware that it is simply impossible to become involved in them deeply - nor is it his job to become involved in them deeply. Therefore, you should not imagine that the 24 hours of hell that the accused has been through will somehow be vindicated once the judge finds out about the outrage of his arrest. Judges' unwillingness to become deeply involved in cases at arraignments is not a flaw. Rather it is simply a measure of the reality of the limited scope of his job at the arraignment. Judges trade off doing arraignments. Most of them don't particularly care for arraignments although some enjoy the fact that they are in a position to make important decisions that genuinely influence the path of a case. To many, however, it is something of a grind. They vary widely in their attitudes about bail. Whether or not bail is set and if so, how much will in many cases entirely depend on the judge who happens to be sitting in the arraignment courtroom at the moment the defendant comes through. Some judges seem to set bail on nearly everything no matter what. Others tend to release a lot of people. The reasons for these differences are as varying as people themselves. Judges are given a wide degree of discretion when setting bail. Setting bail on lots of cases is usually the hallmark of an inexperienced judge. Inexperienced judges tend to be more worried about problems that might be associated with having released a particular defendant. It is considered a safer political decision to set bail on a person than to release a person.

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The Prosecutor

Also do not imagine that the prosecutor who handles the arraignment has more than a passing familiarity or interest in any particular case. In most cases, arraignments are handled by a junior assistant (and possibly an experienced supervisor) who will never see the case again.

The Defense Lawyer

Do not underestimate the importance of having the lawyer you want at the arraignment if possible. An enormous amount can be learned about a case by doing the arraignment, and the importance of the issue of bail can not be underestimated. The arraignment may seem like a few minutes, but they can be among the most important few minutes of the entire case.

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Should I hire a lawyer for arraignments?

Yes, if you can. At the arraignment / bond hearing the judge will make a decision that may well have lasting implications in the case. It makes sense, then, to have the lawyer early who will be with the case later on, make the argument at the arraignment. Sometimes, a great deal can be learned about the case informally at the arraignment.

Hiring a lawyer and having a lawyer with you during the arrest to arraignment process can sometimes ease the stress on friends and family. Experienced criminal defense lawyers will usually be able to speak with the police and court staff in short order and be in a position to obtain reliable information about the nature of the charges, and the status of the accused in the system. The lawyer can then explain this information and its implications to the accused.

If a lawyer is retained soon enough in the process, the lawyer might even be in a position to stop the police from interrogating the accused or even participate in any line-up.

If you do not hire a private lawyer before the arraignment / bond hearing the accused will be represented by an appointed lawyer staffing the arraignment courtroom. The appointed lawyers in arraignments / bond hearings, however, will not be in a position to monitor individual cases as they make their way through the arrest to

arraignment process.

The appointed lawyers will receive word of any given case only at the last minute once the accused has been fully processed by the police and court staff and the court papers have been formally generated.

The appointed lawyers staffing the arraignment courtrooms are often quite knowledgeable and helpful to those in the audience who have questions about relatives or friends who are making their way through the system, but the appointed lawyers are often quite busy interviewing other people who are court ready. They will generally not be in a position to provide detailed, specific assistance to family and friends of anyone who is not court ready.

One of the key advantages to having a private criminal defense lawyer for the arraignment,/ bond hearing is from the perspective of friends and family who can have the process explained and monitored for them by the experienced lawyer. Having an experienced advocate available to interact with the police and court staff can be extremely soothing for the accused, friends and family. People who are unfamiliar with the process especially can have exaggerated ideas about what is going to happen to their loved ones and can benefit greatly from calm, rational explanations of the reality of the process.

To the extent that the lawyer is able to communicate with the accused during the arraignment process, the accused can also be provided accurate, reliable information about his situation.

Finally, most experienced criminal defense lawyers realize that the earlier they become involved in any given case, the more they can do to protect their clients. In many cases, the police are able to obtain damaging statements from defendants long before the arraignment. If the attorney is involved soon enough, he can make it difficult if not impossible for the police legally to question the defendant.

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