



## Bail conditions

A defendant who is not bailable as of right must be released by a court on reasonable terms and conditions unless there is just cause for continued detention, as stated in s 7(5) of the Bail Act.

Bail conditions are made in order to satisfy lawful concerns that the police or court hold, such as the safety of members of the public, without having to resort to a remand in custody. However, they too must be made for a good reason. Conditions should not be laid simply because the prosecution asks for them, even if the defendant raises no objection at the time.

If the lawyer for the defendant formally consents to a condition, the situation is a little different and you might more readily impose that particular condition. Often the lawyer and prosecutor have talked before the hearing and have agreed to conditions which they give to you. However you must still apply your mind to the conditions - not just 'rubber stamp' the agreed conditions. An order imposing conditions is an invasion of the defendant's right to liberty, which is affirmed in the NZ Bill of Rights Act 1990, and therefore must be made only on lawful, reasonable grounds. With that in mind, any conditions set must be relevant to the charges as laid and to the circumstances of the defendant. If the defendant has a job that finishes at 8pm every night of the week, there is no point imposing a curfew from 7pm. The rights of the victim must also be considered.

When granting bail, a date must always be set for a remand. Justices may not remand defendants or adjourn matters without giving a specific date (which is known as adjourning matters sine die, pronounced sigh-knee-die). The Registrar or court taker will give you a date to announce.

The record of hearing should show, for example:

*Remanded on bail to 15 June 20XX \_\_\_\_\_ District Court \_\_\_\_\_ (time)*

When that day comes, either the bail may be continued or the case heard. If bail is to be continued, the record will then be endorsed (amended/extended), for example:

*Further remanded to 20 June 20XX. Bail to continue.*

## Examples of conditions

Residential condition:

*To reside at.....(usually above address)*

Reporting condition:

*To report to the Timaru Police Station every Tuesday and Saturday between 2 and 7p.m. Commencing 3/7/20XX.*

A curfew – substitute the reporting clause with:

*To be at 37 Hill Street, Herne Bay from 8 p.m. until 8 a.m. the following day.*

Always add a 'present at door' clause to a curfew condition (On occasion a 24-hour curfew has been imposed – on a younger offender where responsible family members are in court, for example – as an alternative to a remand in custody.)

*To present yourself at the door when the Police call between those hours.*

A geographic restraint:

*Not to enter the Auckland CBD unless to attend court/ consult with counsel/attend counselling. or Not to go near Ocean Road, Paraparaumu.*

A non-association clause - often used where defendants are jointly charged:

*Not to associate with .....(named persons).*

A non-contact clause - often used where there is a victim – in a domestic assault, for example. In such a case it pays to spell out from the Bench that non-contact includes emails and text messages. This clause can be quite wide – to include relatives and witnesses.

*Not to contact directly or indirectly by any method..... (named person).*

A restriction on drinking/drugs or access to alcohol clause:

*Not to drink alcohol or take non-prescribed drugs.*

*Not to enter licensed premises (except supermarkets).*

Where existing bail is to be continued and that bail has specific conditions, always state on the record of hearing:

*Bail to continue with conditions.*

## **Variation of conditions**

Sometimes when the defendant is remanded to a further date and bail is to be continued, there may be a request for a variation of conditions. Section 33 of the Bail Act 2000 provides that a justice may: vary, revoke, substitute, or impose any other condition in respect of any existing condition of bail.

## **Comments from the bench**

The NZ Bill of Rights Act 1990 makes it clear that what happens to the accused before they are convicted will be different from what happens to them after they are convicted. This is the 'innocent until proven guilty' principle.

Therefore statements like 'It will keep her out of the way during the investigation' or 'It will be a salutary lesson' or 'He might get into trouble again' are inappropriate.