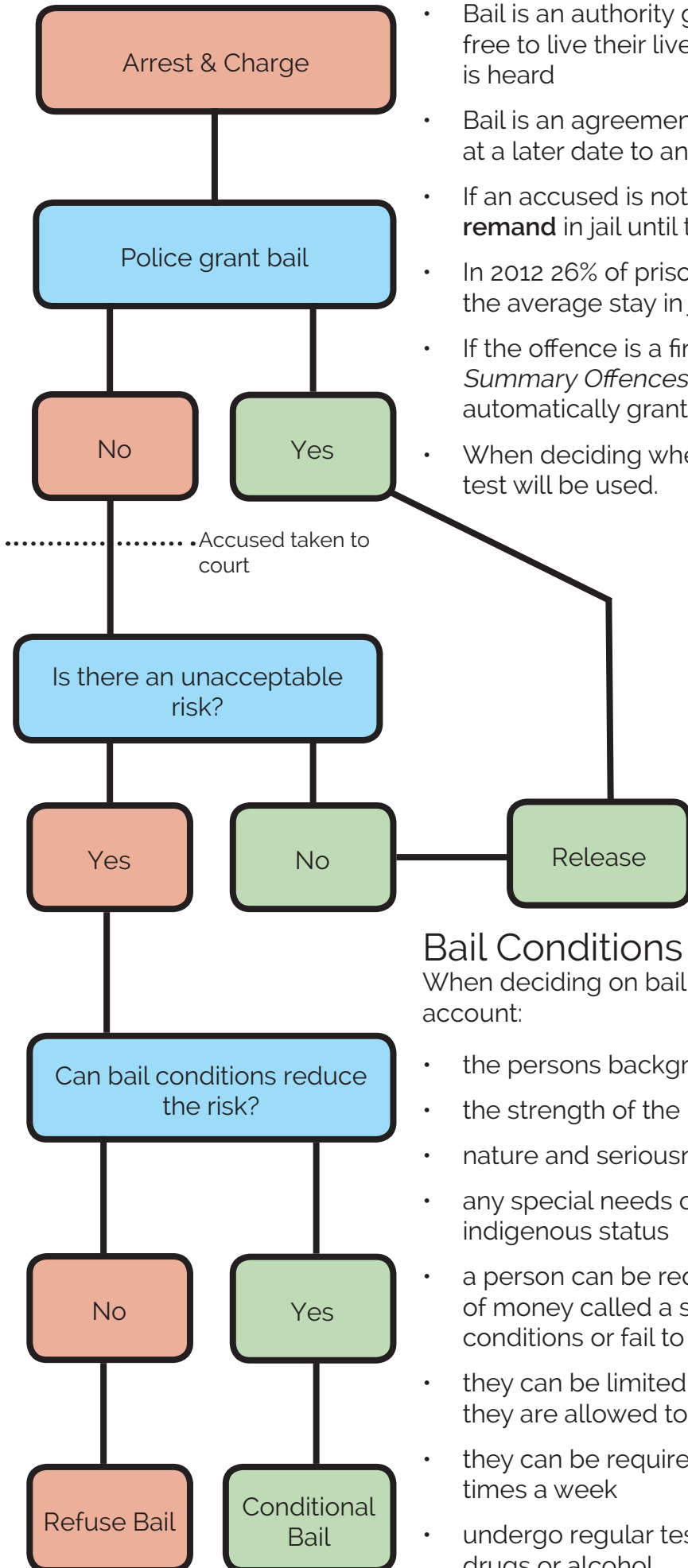


New Bail Laws in NSW

Legislation: Bail Act 2013 (NSW)

- Bail is an authority given to an **accused** allowing them to be free to live their lives in the community until their court case is heard
- Bail is an agreement by an accused person to attend court at a later date to answer a criminal charge
- If an accused is not granted bail then they are placed on **remand** in jail until their court case is heard
- In 2012 26% of prisoners in NSW jails were on remand and the average stay in jail was 5.7 months
- If the offence is a fine only offence or most offences in the *Summary Offences Act 1988 (NSW)* then bail will usually be automatically granted
- When deciding whether to grant bail the unacceptable risk test will be used.



Unacceptable Risk Test

An accused person is considered an unacceptable risk; if they may:

- fail to appear in court
- have committed a serious offence
- be a danger to victims or other members of the community
- interfere with evidence or witnesses

Bail Conditions

When deciding on bail conditions the court must take into account:

- the persons background and community links
- the strength of the prosecution's case
- nature and seriousness of the offence
- any special needs of the accused eg: youth, health, indigenous status
- a person can be required to give the court an amount of money called a security and lose it if they break bail conditions or fail to turn up to court
- they can be limited in what they are allowed to do or where they are allowed to live
- they can be required to report to police a certain number of times a week
- undergo regular testing by police for the consumption of drugs or alcohol

Law Reform: Bail Act 1978 (NSW)

What is Bail?

Bail is an accepted part of the criminal justice system. It supports the rule of law by providing a clear legal process for balancing the presumption of innocence with the safety of the community when a person is arrested and charged.

Why reform the Bail act?

The 80 Amendments to the Bail Act (NSW) since 1978 introduced presumptions for or against bail for people charged with specific offences. It became very complex and difficult to navigate for the legal profession, judiciary and police.

What are the changes?

The new Bail Act 2013 (NSW) removes all presumptions related to bail and uses an unacceptable risk test instead. This allows for the rights of an accused to the presumption of innocence to be balanced against the

possibility of them posing an unacceptable risk to the community.

The judge can use the unacceptable risk flow chart (see other page) provided in the act to consider whether or not to grant bail and add conditions if required. This is designed to better reflect the actual seriousness of the alleged crime and/or the risk that the accused poses to the community. It is hoped that it will also reduce the number of accused people on remand in NSW jails.

Under the new Act adults can only apply for bail once and juveniles twice. To allow for adjustment in training and procedures the new Act will come into force in May 2014.

The new bail laws are a positive step forward in reducing the complexity of the law and balancing the needs of the community with the rights of the accused.

Activities

1. Define bail.
2. Who are people who can decide whether to grant bail to an accused person or not?
 - Read the scenarios below and using the flow chart determine whether the accused person is an unacceptable risk.
 - A 18yr old male charged with grievous bodily harm (his 1st offence) after a fight at a friends birthday party. He has a job with a large supermarket chain and lives at home with his parents.
 - A 70yr old female who was the driver in a serious traffic accident in which a number of people were injured. She has strong links to her local community and volunteers to assist with Meals on Wheels.
 - A 34yr old male who is charged with a serious drug trafficking offence. He has had a number of convictions in the past for drug offences and is known to travel overseas regularly.
 - A 16yr old Indigenous girl who is charged with stealing money and food items from a corner store. She is currently homeless.

Legal Terminology

Accused

A person who has been arrested and charged with a criminal offence. An accused should receive the presumption of innocence until found guilty.

Bail Authority

Police and Judges who are able to grant or deny bail to an accused person.

Bail Conditions

Conditions that the court may set that require the accused person to do certain things to maintain their freedom in the community until their trial.

Remand

Placing someone in jail prior to a trial and/or conviction. People on remand have not yet been proven guilty of an offence but have been found to be an unacceptable risk by a Bail Authority.