

Hear it From the Judge

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Why Bail?

We read stories about individuals appearing before a Judge following their arrest. You will read that the Judge determines whether bail is required. What is the origin of bail and what is the purpose of bail?

The Minnesota Constitution provides, in Article I, Section 5: “Excessive bail shall not be required, nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted.” This language is almost identical to the U.S. Constitution Amendment VIII which also discusses bail and cruel punishment.

The following provision of the Minnesota Constitution, Article I Section 7, is not in the U.S. Constitution: “All persons shall before conviction beailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.”

Although this language is newer than the U.S. Constitution bail Amendment, the origin of the language comes from English common law. Common law in pre-Revolutionary England granted discretion with judges to determine whether to impose bail and how much bail to impose. Though the U.S. Constitution simply prohibits excessive bail, many early colonies adopted the more expansive bail right as did Minnesota.

Pennsylvania, as one example, confirmed the following common law in 1862: “bail is not a matter of discretion; it is an absolute right..... The ... Declaration of Rights, provides that all prisoners shall beailable, by sufficient sureties, unless for capital offenses where the proof is evident or the presumption great.”

Because Minnesota abolished capital punishment, the Minnesota Supreme Court has ruled that even murder cases are subject to a bail right. Therefore, all criminal cases in Minnesota are subject to the right to bail.

What is the main purpose for bail? The Minnesota Supreme Court summarized the purpose as follows: “The purpose of arrest and confinement of a person charged with a crime is to assure his presence at the time fixed for his trial. The purpose of bail in cases such as this is to permit his release if appearance at trial can otherwise be guaranteed...” It is noteworthy to recognize that the only purpose of bail is whether the person will appear for trial.

Because of this constitutionally defined purpose, the Minnesota Supreme Court has adopted rules which make a presumption that whenever reasonably possible, all individuals charged with a crime are released without bail. However, the Judge has discretion to establish conditions on such release to assure the person will return for trial and to require conditions which address public safety. In those cases in which the Judge is concerned the person will not appear or public safety is a risk, the Judge may require bail be posted. The amount of bail will be based upon the level of concern the Judge has about the person's likelihood to appear for trial.

Perhaps this will help to explain the basis for decisions Judges make regarding bail.