

SHOW COMPELLING REASONS

If You Have You Been Charged and You Want to Make a Bail Application, Contact Us - We are Leading Criminal Lawyers in Victoria

The relevant procedures, legislation and surrounding factors that must be considered and followed when a bail application is presented before a Court is complex, confusing and technical. It is therefore important you seek proper legal advice from us as soon as possible to ensure you understand this important condition and how it operates in relation to the offence/s you have been charged with. A bail application is very important to a defendant, as well as their family and friends.

MK Law has a team of expert criminal defence bail application lawyers across our 4 offices (Melbourne, New South Wales, South Australia and Western Australia) who have represented thousands of parties with bail applications and procedures. We appear in Court daily to run strong bail applications, so we have expertise understanding bail procedures in criminal law. This means we are well equipped in navigating this complex environment of the law to work through the particular legal processes, procedures and factors that guide the Court.

During our confidential consultations, we:

- Carefully listen to our clients' unique instructions to gauge a complete picture of your circumstances, consider all relevant factors and guide you through the bail procedures in criminal law
- Use professionalism and confidentiality to liaise and negotiate with a range of law enforcement (police officers, DPP and Courts)
- Weigh up all factors of your case that may help you to establish "compelling reasons"

Our Lawyers regularly attend professional development training to ensure we are up to date with the latest law in the area.

Contact our experienced team of criminal defence bail application lawyers for free legal advice 24/7 on 1800 130 120 or marcus.mklawfirm.com.au.

The Presumption of Bail - "Show Compelling Reasons"

Where a defendant has been charged with a Schedule 2 criminal offence, the bail decision maker must refuse to grant bail. However, there is an exception to this rule - if the defendant can satisfy the bail decision maker they can "show compelling reasons" that justify why remanding them in custody is not required.

NB: If the defendant can "show compelling reasons" for why they should be granted bail, the bail decision maker can use discretion to refuse bail because they pose an "unacceptable risk" to public safety (s 4E *Bail Act 1997* (Vic) (BA)).

Following amendments to the BA in 2018, bail is now much more difficult to achieve for a defendant who has been accused of committing another offence/s whilst they are on bail.

Who Has the Onus?

“Show compelling reasons” can be contrasted with refusing bail if the defendant poses an “unacceptable risk” (s 4E BA; *Re Asmar [2005] VSC 29 November 2005* per Maxwell J) - the reverse onus test applies.

This means the defendant (not the prosecution) has the onus of proving to the Court “compelling reasons” exist as to why bail should not be refused.

What Does it Mean to “Show Compelling Reasons”?

“Show compelling reasons” is a phrase that has been introduced into the BA in 2018 (compare this with “exceptional circumstances” which has existed for a long time and has the highest threshold that must be satisfied to be granted bail). “Show compelling reasons” is not defined in legislation, which means case law is used to help define its meaning. A large number of factors and case law (matters that have previously been decided and are now binding authority) is available on what amounts to “show compelling reasons” - powerful circumstances (*DPP v Hughes [2016]*) that are forceful and convincing (*Re Ceylan [2018] VSC 361*). These can be relied on and argued by the defendant.

1 or more of the following factors amounts to “showing compelling reasons”:

- Stable accommodation and employment
- Surety
 - A surety is a person who accepts responsibility and promises the Court they are accountable for ensuring the defendant complies with their bail conditions
 - A surety can make an application to remove themselves at any time
- Court supported bail programs (CISP & CREDIT)
- Other treatment programs (like psychological and psychiatric treatment, residential rehabilitation and drug and alcohol counselling)
- Family supervision
- Prior or clean history
- Strength of the police/prosecution case
- Vulnerabilities suffered by the defendant
- Victim’s perspective
- Possible sentence that will be given to the defendant

“Surrounding circumstances” (s 3 BA) are also looked at to help the defendant satisfy the bail decision maker “compelling reasons” exist (s 4AAA BA). Examples include:

- Strict bail conditions
- Compliance with previous bail conditions
- The nature and seriousness of the defendant’s offending
 - Was the defendant charged with a serious offence?
- Whether the prosecution has a strong case against the defendant?
- Whether the defendant has a criminal record, and if so, are they similar/the same offences?
- Has the defendant previously been granted bail, and if so, what is their history for complying with conditions?

- Whether the defendant was on a community corrections order (CCO), bail, parole, summons for another offence or waiting for another trial when they committed the offence?
- Whether the defendant has any current family violence orders against them?
- The home environment, relationships, personal circumstances and behavioural history of the defendant
- Whether the defendant has any special vulnerabilities (like being a child or Aboriginal person), having a medical illness or disease, mental impairment or intellectual disability? (ss 3A; 3B BA)
- The victim's perspective towards whether the defendant should/should not be granted bail
- The approximate time the defendant will spend in custody if bail is refused
- The possible sentence/penalty for the defendant if they are found guilty of the offence
- If the offence relates to a terrorist act - the amount of public, organisation or resource support

Categories of Offences that Place Defendants in the "Show Compelling Reasons" Category

- Committing a Schedule 2 offence in the BA
 - Committing an indictable (serious) offence whilst on bail for another indictable (serious) offence
 - Serving a sentence for another indictable (serious) offence
 - Being subject to a summons to answer a charge for another indictable (serious) offence
 - Waiting trial for another indictable (serious) offence
 - During a community correction order (CCO), supervision order or interim supervision order for another indictable (serious) offence
 - Being released under a parole order
- Committing an indictable offence that involved the use or threatened use of a firearm, offensive weapon or explosive (s 77 CA)
- Committing an indictable (serious) offence whilst on bail
- Committing a violent offence
 - Manslaughter
 - Child homicide
 - Causing serious injury intentionally/recklessly in circumstances of gross violence (ss 15A; 15B(1) *Crimes Act 1958* (Vic) (CA))
 - Causing serious injury intentionally (s 16 CA)
 - Threats to kill relating to family violence (s 20 CA)
 - Stalking (s 21A(1) CA)
 - Guilty of an offence that involved use/threatened violence against another person (in the last 10 years)
 - Bail decision maker is satisfied on another occasion you used/threatened violence against another person (regardless of whether you have been charged, found guilty or convicted)
 - Kidnapping (s 63A CA)
 - Armed robbery (s 75A(1) CA)
 - Aggravated burglary (s 77 CA)
 - Home invasion (s 77A CA)
 - Carjacking (s 79 CA)
 - Arson causing death (s 197A CA)

- Committing a sexual-related offence
 - Rape (s 38(1) CA)
 - Rape by compelling sexual penetration (s 39(1) CA)
 - Assault with intent to commit a sexual offence (s 42(1) CA)
 - Abduction/detention for a sexual purpose (s 47(1) CA)
 - Sexual penetration of a child under the age of 12, 16, lineal descendent, step child, parent, lineal ancestor or step parent or sibling or half sibling (ss 49A(1); 49B(1); 50C(1); 50D(1); 50E(1); 50F(1) CA)
 - Persistent sexual abuse of a child under the age of 16 (s 49J(1) CA)
 - Abduction or detention of a child under the age of 16 for a sexual purpose (s 49P(1) CA)
 - Incest (in circumstances other than where the people are over the age of 18)
- Committing an intervention order offence
 - Being found guilty of using or threatened violence in the previous 10 years (ss 37; 37A; 123; 123A *Family Violence Protection Act* (2008) (FVPA))
 - The bail decision maker satisfies themselves you used or threatened to use violence against a person who is subject to an order/notice, regardless of whether you are found guilty/not guilty
 - Persistently contravening notices and orders (s 125A(1) FWPA)
 - Used or threatened violence (s 100 *Personal Safety Intervention Order Act* (PSIOA))
- Committing emergency worker offences
 - (Aggravated offence) or intentionally/recklessly exposing an emergency worker, custodial officer or youth justice custodial worker to risk by driving (ss 317AC; 317AD; 317AE; 317AF)
 - Damaging an emergency service vehicle (s 317AG)
- Driving offences
 - Culpable driving causing death (s 318(1))
 - Dangerous driving causing death or serious injury (s 319(1) or (1A))
 - Dangerous or negligent driving while pursued by police (s 319AA(1))
- Drug offences
 - Trafficking in a drug/drugs of dependence (to a child) (ss 71AB; 71AC; 72(1) *Drugs, Poisons and Controlled Substances Act 1981* (DPCSA))
 - Cultivation of narcotic plants (s 72B DPCSA)
 - Conspiracy to commit, incitement to commit or attempting to commit an offence (ss 79(1); 72(1) DPCSA)
- Commonwealth offences

“Unacceptable Risk”

If the bail decision maker is satisfied the defendant has “shown compelling reasons” for why they should not be remanded for their Schedule 2 offence, they must apply the “unacceptable test” (s 4E BA).

The test requires the prosecution to satisfy the bail decision maker that the defendant, if released on bail, poses an “unacceptable risk”. This must link to the likelihood of risk that endangers the safety or welfare of members of the community; committing an offence whilst on bail; interfering with a witness or obstructing the course of justice in any matter; or failing to surrender into custody in line

with their bail conditions. When the bail decision maker weighs up whether the risk posed by the defendant is “unacceptable”, they must consider: the surrounding circumstances (s 3 BA) to the defendant’s offending; other matters (if the defendant is a child or Aboriginal person) (ss 3A-B BA); and whether any conditions of bail might be imposed to prevent an “unacceptable risk”. If they determine the defendant poses an “unacceptable risk”, they must refuse bail (s 4E BA).