

Bail Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill makes changes to the Bail Act 2000 (the **Act**) to improve public safety and ensure the overall integrity of New Zealand's bail system. The changes will make it harder for those accused of serious offences to get bail. They arise from the Government's 2008 election commitment to review aspects of the bail system, and from a public consultation process in 2011.

Defendants charged with serious violent and sexual offences

The Bill introduces a reverse burden of proof in bail decisions for defendants charged with murder. Defendants charged with murder will be required to prove that they should be released on bail and satisfy the court that they will not commit any offence involving violence while on bail. The need to protect the safety of the public and, where appropriate, the safety of particular people will be the primary considerations in such decisions.

Six new offences are added to the specified offences in section 10 of the Act. This section imposes a reverse burden of proof on defendants who have a previous conviction for a listed offence and who are charged with a further specified offence. If convicted, defendants who qualify under section 10 are also automatically remanded in custody prior to sentencing. The additional offences are sexual

conduct with a child under 12, sexual conduct with a young person under 16, abduction for the purposes of marriage or sexual connection, kidnapping, aggravated burglary, and assault with intent to rob.

Defendants charged with drug dealing offences

The Bill also introduces a reverse burden of proof in bail decisions for defendants charged with serious Class A drug dealing offences. These defendants will be required to prove that they should be released on bail, and satisfy the court that they will not commit any drug dealing offence while on bail.

Further changes are made to how courts make bail decisions in respect of defendants charged with drug dealing offences. At present, the Act defines drug dealing offences as Class A and Class B offences, including manufacture, supply and importing or exporting, as well as conspiracy to commit one of those offences or commission of one of those offences overseas. This definition is expanded to include an attempt to commit a drug dealing offence, in alignment with the definition of a serious Class A drug offence.

The Bill removes the limits on District Court Judges' jurisdiction to deal with the bail matters of defendants charged with drug dealing offences. At present, bail may only be granted to these defendants by a District Court Judge or High Court Judge (as opposed to a Registrar, Justice of the Peace, or Community Magistrate). If the defendant has a previous conviction for a drug dealing offence, bail may only be granted by a High Court Judge. Further, if the defendant is arrested for breaching his or her bail conditions, bail must be reconsidered by the High Court, regardless of where the case is being tried and which court made the initial bail decision.

Since the District Courts (Categorisation of Offences) Regulations 2008 took effect, the District Court and the High Court have both had the jurisdiction to try defendants charged with dealing Class A or Class B drugs. It is impractical to continue the current situation whereby all aspects of the case may be dealt with in a District Court, except bail matters, for which parties have to go to the High Court.

Defendants under 20 years old

The Bill strengthens the abilities of the court and Police to deal with young defendants. The strong presumption in favour of bail for de-

defendants aged 17 to 19 years old will no longer apply when the defendant has previously been sentenced to imprisonment. Statistics indicate that defendants in this age group who have previously received a sentence of imprisonment have a high rate of offending on bail.

Police are given new powers to deal with defendants under 17 years old who breach their bail conditions. The Children, Young Persons, and Their Families Act 1989 (**CYPFA**) is amended to enable Police to uplift young defendants found in breach of their bail curfew and return them to the custody of their parents or caregiver. Police will also have the ability to arrest a young defendant where it is believed on reasonable grounds that the defendant has significantly or repeatedly breached a condition of bail (whether or not the same condition). On arrest, the existing safeguards in the CYPFA will apply. That is, the defendant must either be released by Police or brought before a court as soon as possible. The defendant may also be transferred into the custody of the chief executive of the Ministry of Social Development until the defendant can be brought before the court.

It is intended that this power will allow Police to deal with the small number of young defendants who habitually or seriously disregard their bail conditions, where other options are inappropriate. Operational guidelines will be developed by New Zealand Police in consultation with other agencies to ensure that this power is exercised appropriately.

The Youth Court's powers are also extended to deal with defendants who have been arrested under this new power. If the court is satisfied that the defendant has repeatedly or significantly breached his or her bail conditions, and is likely to continue to do so, it can order that the defendant be detained.

Police bail

Many of the provisions relating to the granting of Police bail are re-drafted so that they are similar to procedures used by the District Court when granting bail. The ability of Police to impose a requirement for monetary bonds and sureties on a defendant is removed, as monetary bonds and sureties are no longer available in the District Court.

A person convicted of the offence of failure to answer Police bail will be liable to a sentence of three months' imprisonment as an alternative to the current maximum \$1,000 fine. This is intended to give the court a wider range of sentencing options, including community-based sentences, when dealing with these offenders.

Electronically monitored bail

The Bill legislates the electronically monitored bail regime. Since 2006, the courts have been able to impose an electronic monitoring condition (an **EM condition**) as part of bail under their general power to impose bail conditions on a defendant. The regime has been managed operationally by New Zealand Police. However, given the restrictiveness of an EM condition, and the potential for differing operational practices to develop in different locations over time, the Government considers that it is appropriate for the EM regime to be given express legislative effect.

The general intent is to codify the existing EM regime, rather than introduce new practices. The key features of the regime are:

- the court has the power to grant bail with an EM condition if the defendant has been remanded in custody, is not in custody for any other reason, and is likely to be on bail with an EM condition for 2 weeks or more:
- the court must not grant bail with an EM condition if it considers a less restrictive condition or combination of conditions is sufficient:
- Police EM assessors are responsible for preparing reports to the court that set out whether an EM condition is appropriate in the circumstances and whether it is technically practicable for an EM condition to be imposed at the proposed address:
- amongst other matters, the EM report must address whether there is evidence of violence between the defendant and any occupant of the address or anyone reasonably expected to visit those premises. The court must expressly take this information into account when making a decision about imposing an EM condition:
- a defendant subject to an EM condition must not leave the EM address except in accordance with the requirements of the con-

dition, and must surrender to Police custody if for any reason he or she cannot remain at the EM address.

It will be an offence to refuse an authorised person entry to an EM address without reasonable excuse. The maximum penalty is 3 months' imprisonment or a fine not exceeding \$5,000.

The Sentencing Act 2002 is also amended to require the court to take time spent on bail with an EM condition into account during sentencing, and to provide guidance as to the relevant matters to be considered by the court when doing so.

Other amendments intended to improve integrity of bail system

The list of offences in section 7(3) of the Act that are "bailable as of right" is repealed. The Government does not consider it appropriate to single out these offences as being exempt from the usual considerations of the court in bail decisions.

The Bill also amends section 8 of the Act to make it clear that the fact that a defendant has provided information assisting in the prosecution or investigation of an offence must not be taken into account when the court considers whether there is just cause for the continued detention of the defendant.

In addition, the Bill restores jurisdiction to Justices of the Peace (**JPs**) and Community Magistrates (**CMs**) to reconsider bail after a defendant has been arrested for breaching their bail conditions or absconding. The jurisdiction of JPs and CMs was inadvertently reduced during the passage of the Criminal Procedure Act 2011. The Bill gives jurisdiction to the District Court (which includes District Court Judges, JPs, and CMs) to deal with a defendant arrested for breaching bail or absconding, if—

- the defendant is charged with a category 1, 2, or 3 offence (defined in section 6 of the Criminal Procedure Act 2011); and
- the defendant was initially released on bail by Police, the District Court, or a Registrar; and
- the Solicitor-General or a Crown prosecutor has not assumed responsibility for prosecuting the case in accordance with section 187 of the Criminal Procedure Act 2011.

In other situations, bail must only be reconsidered by a District Court Judge or High Court Judge. It is expected that the Crown will take responsibility for the more serious or complex cases involving cat-

egory 3 offences, meaning that the cases JPs and CMs deal with will be at the lower end of the spectrum in terms of seriousness and complexity.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 15 September 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/policy/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

Clause by clause analysis

Clause 1: this is the Title clause.

Clause 2: this is the commencement clause. The commencement of the Bill is complicated by the fact that the Bill makes a number of amendments to provisions of the principal Act which in turn are the subject of amendment by the Bail Amendment Act 2011 (the **2011 Act**). Those amendments have not yet come into force, and consequently some of the amendments made by this Bill have to wait for that to occur. The provisions that are stacked up behind the 2011 Act are set out in *clause 2(2)*. The rest of the Bill comes into force on the day after assent.

Clause 3: this is the amending clause and provides that the Bill amends the principal Act, the Bail Act 2000.

Part 1

Amendments to principal Act

Clause 4: this clause amends the interpretation provision of the principal Act to insert or revise a number of definitions. *Clause 4(3)* is broken out for commencement reasons (see *clause 2(2)(a)*).

Clause 5: this clause repeals section 7(3) with the result that the offences listed in that subsection are no longer bailable as of right.

Clause 6: this clause amends section 8 dealing with the factors that must or may be taken into account by a court in considering whether

there is just cause for continued detention. *New section 8(4A)* makes clear that the court must not take into account the provision of information by the defendant relating to the investigation or prosecution of any offence.

Clause 7: this clause inserts *new section 9A*, which is a reverse onus bail restriction in the case of a defendant of or over the age of 17 years who is charged with murder under section 167 or 168 of the Crimes Act 1961. The drafting mirrors that in existing section 10 and the essence is that the onus is on the defendant to satisfy the court that he or she should be granted bail or allowed to go at large.

Clause 8: this clause amends section 10(2) by expanding the list of specified offences to include the offences committed under the following provisions of the Crimes Act 1961: sections 132, 134, 208, 209, 232, and 236. For ease of drafting, the subsection is replaced in toto.

Clause 9: this clause recasts section 15(1) (which relates to the granting of bail to a defendant under 20 years of age) so that the mandatory release of the defendant on bail is subject to the precondition that the defendant has not previously been sentenced to imprisonment.

Clause 10: this clause replaces existing sections 16 and 17 (which relate to bail for a drug dealing offence). There are 2 substantive changes to note in this context. The first substantive change is that the limitation in existing section 16(1)(b) on the grant of bail by the District Court is removed. The second is that the definition of drug dealing offence is expanded to include an attempt (see *clause 4(2)* which amends section 3 by replacing the definition of drug dealing offence).

Clause 11: this clause inserts *new section 17A*, which provides for a reverse onus bail restriction in the case of a defendant charged with a serious Class A drug offence, which is defined in *new section 17A(4)*. The drafting mirrors that in existing section 10.

Clauses 12 to 15: these clauses amend the principal Act in relation to Police bail. The principal change is that the Police are given a general power of granting bail on the arrest of a defendant without a warrant (*new section 21(1)*) rather than the power of taking a bail bond. There is no power to grant Police bail where the defendant has been charged with an offence listed in the provisions referred to in *new section 21(2)*. *New section 21A* sets out the requirements for

the notice of Police bail that must be given to the defendant and *new section 21B* deals with the conditions of Police bail. *New section 22*, which relates to the conditions of Police bail granted to a defendant who is charged with a domestic violence offence, is carried over with necessary modifications from existing section 21(4A) and (4B) of the principal Act. The offence provision in existing section 24 is recast (*clause 13*) and existing section 25 is repealed (*clause 14*). The penalty for failure to answer Police bail is punishable by a maximum of 3 months' imprisonment or a maximum fine of \$1,000 (previously, only the latter). Under *new section 26* (see *clause 15*), sections 39, 51, and 52 apply to a defendant who fails to comply with a condition of Police bail. The provisions referred to are provisions inserted by the Bail Amendment Act 2011, which has yet to come into force; the corresponding provisions in the principal Act as it currently stands are sections 38 and 43.

Clauses 16 and 18 to 20: these clauses amend the principal Act to accommodate the EM regime.

Clause 17: this inserts *new sections 30A to 30R*. Those provisions set out the rules relating to electronic monitoring (EM) of a defendant as a condition of bail. The drafting of those provisions should be sufficiently clear that no commentary is required.

Clause 21: this clause inserts *new section 34A*, which relates to the surrender to Police custody by a defendant on bail with an EM condition.

Clause 22: this clause replaces section 35(2) of the principal Act (as inserted by the 2011 Act), which specifies the court before which a defendant on bail who is arrested without a warrant must be brought.

Clauses 23 and 25: *clause 23* amends section 36 of the principal Act (as inserted by the 2011 Act) to allow a defendant on bail who is charged with a drug dealing offence and who has been arrested under section 36(1) to be brought before the High Court or a District Court (previously, the High Court only). This clause is linked to *clause 25*, which makes the same amendments to section 59 of the principal Act before amendment by the 2011 Act. Section 36 post-amendment by the 2011 Act corresponds to section 59 pre-amendment by the 2011 Act. *Clause 25* only comes into force if this Bill comes into force before the relevant operative provision in the 2011 Act. The result in that case is to bring forward the amendments.

Clause 24: this clause inserts *new section 36A*, which is part of the package of new provisions required for the EM regime. *New section 36A* creates the offence of refusing to allow an authorised person entry to an EM address for the purpose of servicing or inspecting EM equipment at that address.

Part 2

Amendments to other Acts

Clause 26: this clause effects a number of amendments to the Children, Young Persons, and Their Families Act 1989 to implement the policy of more effective policing of breach of bail conditions by a child or young person.

Clause 27: this clause amends the Sentencing Act 2002 to allow time spent on bail with an EM condition to be taken into account as a mitigating factor in sentencing.

Clause 28: this clause amends the 2011 Act by repealing, in the Schedule, the amendment made to section 15(1) of the principal Act. The reason is that the amendment in the 2011 Act has been overtaken by the amendment to section 15(1) by *clause 9*.

Hon Judith Collins

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Bail Amendment Act **2012**.

2 Commencement

- (1) Except for the provisions set out in **subsection (2)**, this Act 5
comes into force on the day after the date on which it receives
the Royal assent.

- (2) The following sections come into force immediately after section 15 of the Bail Amendment Act 2011 comes into force:
- (a) **section 4(3)** (amending section 3 of the principal Act):
 - (b) **section 12** (replacing sections 21 and 22 of the principal Act): 5
 - (c) **section 13** (replacing section 24 of the principal Act):
 - (d) **section 14** (repealing section 25 of the principal Act):
 - (e) **section 15** (replacing section 26 of the principal Act):
 - (f) **section 16** (amending section 30 of the principal Act):
 - (g) **section 17** (inserting new **sections 30A to 30R** in the principal Act): 10
 - (h) **section 18** (amending section 31 of the principal Act):
 - (i) **section 19** (amending section 33 of the principal Act):
 - (j) **section 20** (amending section 34 of the principal Act):
 - (k) **section 21** (inserting new **section 34A** in the principal Act): 15
 - (l) **section 22** (amending section 35 of the principal Act):
 - (m) **section 23** (amending section 36 of the principal Act):
 - (n) **section 24** (inserting new **section 36A** in the principal Act): 20
 - (o) **section 27** (amending the Sentencing Act 2002).

3 Principal Act

This Act amends the Bail Act 2000 (the **principal Act**).

Part 1

Amendments to principal Act

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4 Section 3 amended (Interpretation)

- (1) In section 3, insert in their appropriate alphabetical order:
- “**Class A controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975
 - “**Class B controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975 30
 - “**court** means a court presided over by a judicial officer with authority to exercise the court’s jurisdiction in relation to the matter
 - “**Police bail** means bail granted by a Police employee under **section 21(1)** 35

- “**Police employee** has the same meaning as in section 4 of the Policing Act 2008”.
- (2) In section 3, replace the definition of **drug dealing offence** with:
- “**drug dealing offence** means— 5
- “(a) any offence against section 6 or 12C(1)(a) of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug or a Class B controlled drug; or
- “(b) an attempt to commit an offence referred to in **paragraph (a)**”. 10
- (3) In section 3, insert in their appropriate alphabetical order:
- “**electronic monitoring address** or **EM address** means the address, specified by a judicial officer or Registrar, where a defendant subject to an EM condition must remain
- “**electronic monitoring assessor** or **EM assessor** means a 15
person authorised under **section 30E** to act as an EM assessor
- “**electronic monitoring condition** or **EM condition** means a condition of bail imposed under **section 30B**
- “**relevant occupant** means,—
- “(a) in relation to an EM address that is a family residence, 20
every person of or over the age of 16 years who ordinarily lives there; or
- “(b) in relation to any other EM address, every person whom the EM assessor identifies as being a relevant occupant for the purposes of **section 30G**”. 25
- 5 Section 7 amended (Rules as to granting bail)**
Repeal section 7(3).
- 6 Section 8 amended (Consideration of just cause for continued detention)**
After section 8(4), insert: 30
- “(4A) When considering an application for bail, the court must not take into account the fact that the defendant has provided, or may provide, information relating to the investigation or prosecution of any offence, including any offence committed or alleged to have been committed by the defendant.” 35

7 New section 9A inserted (Restriction on bail if defendant charged with murder)

After section 9, insert:

“9A Restriction on bail if defendant charged with murder

“(1) This section applies to a defendant of or over the age of 17 years who is charged with murder under section 167 or 168 of the Crimes Act 1961. 5

“(2) No defendant to whom this section applies may be granted bail or allowed to go at large except by order of a High Court Judge or a District Court Judge. 10

“(3) No defendant to whom this section applies may be granted bail or allowed to go at large unless the defendant satisfies the Judge that bail or remand at large should be granted.

“(4) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge under **subsection (3)**), the defendant must satisfy the Judge on the balance of probabilities that the defendant will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person. 15

“(5) In deciding whether or not to grant bail to a defendant to whom this section applies or to allow the defendant to go at large, the need to protect the safety of the public and, where appropriate, the need to protect the safety of any particular person or persons are the primary considerations.” 20

8 Section 10 amended (Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence) 25

Replace section 10(2) with:

“(2) In this section, **specified offence** means any offence against any of the following provisions of the Crimes Act 1961: 30

“(a) section 128B (sexual violation):

“(b) section 132 (sexual conduct with child under 12):

“(c) section 134 (sexual conduct with young person under 16):

“(d) section 167 (murder): 35

“(e) section 168 (murder):

“(f) section 171 (manslaughter):

- “(g) section 173 (attempt to murder):
- “(h) section 188 (wounding with intent):
- “(i) section 189 (injuring with intent):
- “(j) section 191 (aggravated wounding or injury):
- “(k) section 198A (using any firearm against law enforcement officer, etc): 5
- “(l) section 198B (commission of crime with firearm):
- “(m) section 208 (abduction for purposes of marriage or sexual connection):
- “(n) section 209 (kidnapping): 10
- “(o) section 232 (aggravated burglary):
- “(p) section 234 (robbery):
- “(q) section 235 (aggravated robbery):
- “(r) section 236 (assault with intent to rob).”

9 Section 15 amended (Granting of bail to defendant under 20 years of age) 15

- (1) Replace section 15(1) with:
 - “(1) A court that remands a defendant at any stage of the proceedings for the offence with which the defendant is charged, including for sentence, must release the defendant on bail or otherwise subject to such conditions as it thinks fit if— 20
 - “(a) the defendant appears to the court to be of or over the age of 17 years but under the age of 20 years; and
 - “(b) the defendant has not previously been sentenced to imprisonment.” 25
- (2) In section 15(2)(a), replace “and 17” with “to **17A**”.

10 Sections 16 and 17 replaced

Replace sections 16 and 17 with:

- “**16 Judge only may grant bail for drug dealing offence** 30
 A defendant who is charged with or convicted of a drug dealing offence may be granted bail by order of a High Court Judge or District Court Judge but not otherwise.

“17 District Court may continue or renew bail for drug dealing offence

A District Court may continue or renew bail granted under **section 16** (whether granted by a High Court Judge or a District Court Judge)—

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“(a) on the same or substantially the same conditions as were imposed under that section; or

“(b) on any conditions, if the defendant and the prosecution agree.”

11 New section 17A inserted (Restriction on bail if defendant charged with serious Class A drug offence)

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After **section 17**, insert:

“17A Restriction on bail if defendant charged with serious Class A drug offence

“(1) This section applies to a defendant of or over the age of 17 years who is charged with a serious Class A drug offence.

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“(2) No defendant to whom this section applies may be granted bail or allowed to go at large unless the defendant satisfies the Judge that bail or remand at large should be granted.

“(3) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge under **subsection (2)**), the defendant must satisfy the Judge on the balance of probabilities that the defendant will not, while on bail or at large, commit any drug dealing offence.

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“(4) In this section, **serious Class A drug offence** means—

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“(a) an offence under section 6 or 12C(1)(a) of the Misuse of Drugs Act 1975 for contravention of section 6(1)(a), (b), (c), or (f) in relation to a Class A controlled drug; or

“(b) an attempt to commit an offence in **paragraph (a)**.”

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12 Sections 21 and 22 replaced

Replace sections 21 and 22 with:

“21 Police employee may grant bail

“(1) Any Police employee may, if he or she considers it prudent to do so, grant bail (**Police bail**) to a defendant who is charged with an offence and has been arrested without a warrant.

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- “(2) **Subsection (1)** does not apply in any case to which any of section 9, **9A**, 10, 12, **16**, or **17A** applies.
- “(3) In determining whether it is prudent to grant Police bail to a defendant charged with an offence against section 49 of the Domestic Violence Act 1995, the Police employee must make the need to protect the victim of the alleged offence the paramount consideration. 5
- “(4) Despite section 7, no person is entitled to be granted Police bail under this section as of right.
- “**21A Notice of Police bail** 10
- “(1) A Police employee who grants Police bail must ensure that a notice of Police bail is completed in accordance with **subsection (2)**.
- “(2) A notice of Police bail must—
- “(a) state— 15
- “(i) the defendant’s full name and address; and
- “(ii) the particulars of the charge; and
- “(iii) the conditions of bail, including the time, date, and place for attendance by the defendant before a court; and 20
- “(iv) any other information required by rules made under section 386 of the Criminal Procedure Act 2011 to accompany a summons to a defendant issued under that Act; and
- “(b) be dated. 25
- “(3) A Police employee who grants Police bail must—
- “(a) give the notice of Police bail to the defendant; and
- “(b) ensure that the defendant understands the conditions of bail; and
- “(c) ensure that the defendant signs the notice. 30
- “(4) The date for attendance by the defendant before a court must not be later than 14 days from the date of the notice.
- “**21B Conditions of Police bail**
- “(1) It is a condition of every grant of Police bail that the defendant must attend personally before a court at the time, date, and place specified in the notice of bail. 35

- “(2) A Police employee who grants Police bail may impose, in addition to the condition imposed by **subsection (1)**, any condition of the bail that might be imposed by a judicial officer under **section 30(2)** or (4).
- “(3) However, **subsection (2)** applies only if— 5
- “(a) the time stated in the notice of Police bail for the appearance by the defendant before a court is less than 7 days from the date of that notice; or
- “(b) the court that the defendant must attend will be closed for more than 7 consecutive days after the date of the defendant’s arrest. 10
- “**22 Conditions of Police bail granted to defendant charged with domestic violence offence**
- “(1) In addition to the condition or conditions imposed under **section 21B**, a Police employee who grants Police bail to a defendant charged with a domestic violence offence may impose as a condition of the bail any condition that he or she considers reasonably necessary to protect— 15
- “(a) the victim of the alleged offence; and
- “(b) any particular person residing with the victim. 20
- “(2) In this section,—
- “**domestic relationship** has the same meaning as in section 4 of the Domestic Violence Act 1995
- “**domestic violence offence** means an offence against any enactment if the offence involves the use of violence against a person with whom the offender is, or has been, in a domestic relationship 25
- “**violence** has the same meaning as in section 3(2), (4), and (5) of the Domestic Violence Act 1995.”
- 13 Section 24 replaced (Failure to answer Police bail) 30**
Replace section 24 with:
- “**24 Failure to answer Police bail**
- “(1) A defendant commits an offence if he or she, having been released on Police bail under **section 21**,—

- “(a) fails without reasonable excuse to attend personally at the time and the court specified in the notice of Police bail; or
 - “(b) fails without reasonable excuse to attend personally at the time and place to which the hearing has been ad- 5
journed under section 167(2) of the Criminal Procedure Act 2011.
- “(2) A person who commits an offence under **subsection (1)** is liable on conviction to—
 - “(a) imprisonment for a term not exceeding 3 months; or 10
 - “(b) a fine not exceeding \$1,000.”
- 14 Section 25 repealed (Effect on bond of attendance or non-attendance of person bailed by constable)**
Repeal section 25.
- 15 Section 26 replaced (Breach of condition of Police bail)** 15
Replace section 26 with:
- “26 Breach of condition of Police bail**
Sections 39, 51, and 52 apply, with any necessary modifica-
tions, to a defendant who has been released on Police bail
granted under **section 21** and who fails to comply with any 20
condition of that bail.”
- 16 Section 30 amended (Conditions of bail)**
Replace section 30(2) with:
- “(2) A judicial officer or Registrar may impose, as further condi- 25
tions of the defendant’s release,—
 - “(a) an EM condition:
 - “(b) a condition that the defendant report to the Police at the
time or times and at the place or places that the judicial
officer or Registrar orders.
- “(2A) However, a Registrar must not impose an EM condition under 30
subsection (2)(a) unless the prosecution agrees.”
- 17 New sections 30A to 30R and cross-heading inserted**
After section 30, insert:

*“Electronic monitoring condition***“30A Purpose of EM condition**

The purpose of an EM condition is to restrict and monitor a defendant’s movements to ensure that the defendant—

- “(a) appears in court on the date to which the defendant has been remanded; and 5
- “(b) does not interfere with any witnesses or any evidence against the defendant; and
- “(c) does not commit any offence while on bail.

“30B When court may grant bail with EM condition

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“(1) A court may grant bail with an EM condition if the defendant—

- “(a) is eligible for bail with an EM condition; and
- “(b) the court has satisfied itself as to the matters set out in **section 30I**. 15

“(2) A defendant is eligible for bail with an EM condition if the defendant—

- “(a) is in custody on remand, including if he or she has consented to being remanded in custody; and
- “(b) is not liable to be detained in custody under any other sentence or order; and 20
- “(c) if bail with an EM condition is granted, is likely to be on bail with an EM condition for not less than 14 days.

“(3) The Governor-General may from time to time, by Order in Council, amend **subsection (2)(c)** by amending the period of time specified in that subsection. 25

“(4) Nothing in this section limits the discretion of a court to remand the defendant in custody if there is just cause for continued detention.

“(5) For the purposes of the grant of bail with an EM condition, **court** includes a Registrar in any circumstance in which a Registrar is empowered to grant bail. 30

“30C Court must not grant bail with EM condition if less restrictive bail conditions suffice

A court must not grant bail with an EM condition if the court considers that a less restrictive condition or combination of 35

conditions would be sufficient to ensure the outcomes set out in **section 30A(a) to (c)**.

“30D Application for bail with EM condition

- “(1) An application for bail with an EM condition must be in a form approved and issued under **subsection (4)**. 5
- “(2) On receiving the application, the Registrar must set the matter down for a hearing and notify the defendant, the Police, and the prosecuting agency (if not the Police) of the date, time, and place of the hearing.
- “(3) The defendant must, as soon as practicable after receiving a notice of the hearing, serve a copy of the application on— 10
- “ (a) the Police; and
- “ (b) the prosecuting agency (if not the Police).
- “(4) The chief executive of the Ministry of Justice must approve and publish a form for an application for bail with an EM condition. 15

“30E Commissioner may authorise EM assessors

The Commissioner of Police may, in writing, authorise Police employees to act as EM assessors.

“30F EM reports 20

- “(1) If a defendant applies under **section 30D** for bail with an EM condition, the Police must ensure that an EM assessor prepares an EM report in relation to the application.
- “(2) The purpose of an EM report is to assist the court hearing the application in determining whether an EM condition is practicable and appropriate. 25
- “(3) An EM report must address all of the following matters:
- “ (a) whether an EM condition is appropriate:
- “ (b) whether an EM condition is practicable at the proposed EM address, including whether the monitoring equipment will function adequately at that address: 30
- “ (c) whether the proposed EM address is appropriate for electronic monitoring of the defendant, including whether there is any evidence of violence between—

- “(i) the defendant and any occupant of the premises at that address; and
- “(ii) the defendant and any person who may reasonably be expected to visit those premises:
- “(d) whether every relevant occupant of the premises at the proposed EM address has consented, in accordance with **section 30G(2)**, to the defendant remaining at the address while on bail with an EM condition: 5
- “(e) if the defendant has been charged with an offence of a kind referred to in section 29 of the Victims’ Rights Act 2002, the views of the following persons as to the appropriateness of bail with an EM condition: 10
- “(i) any victim of the alleged offence; and
- “(ii) a parent or legal guardian of a victim of the alleged offence. 15
- “(4) An EM report may address any of the following matters:
- “(a) the defendant’s personal circumstances, including employment, training, and childcare commitments:
- “(b) recommendations for other bail conditions:
- “(c) the response of the prosecuting agency to the application, including any reasons for opposing it: 20
- “(d) any other matter that the EM assessor considers to be relevant to the decision whether or not to grant a defendant bail with an EM condition.
- “**30G EM assessor must ascertain whether relevant occupants consent to defendant remaining at EM address** 25
- “(1) In preparing an EM report in relation to an application under **section 30D**, an EM assessor must ascertain, after following the steps set out in **subsection (2)**, whether the relevant occupants consent to the defendant remaining at the EM address while on bail with an EM condition. 30
- “(2) Before ascertaining whether or not a relevant occupant consents, the EM assessor must—
- “(a) ensure that the occupant—
- “(i) is aware of the nature of the charges faced by the defendant; and 35
- “(ii) is aware of the nature of any past offending by the defendant; and

- “(iii) is aware of and understands the effects of an EM condition; and
- “(b) inform the occupant that the information in **paragraph (a)** is given to the occupant to enable him or her to make an informed decision whether to consent to the defendant remaining at the EM address while on bail with an EM condition; and 5
- “(c) inform the occupant that the information in **paragraph (a)** must be used only for the purpose of making the decision referred to in **paragraph (b)**; and 10
- “(d) inform the occupant that consent to the defendant remaining at the EM address while on bail with an EM condition can be withdrawn at any time and inform the occupant how he or she may withdraw his or her consent. 15
- “**30H Use of information obtained for EM report**
- “(1) Information obtained for the purpose of preparing an EM report under **section 30F** may only be used in determining the application to which the report relates.
- “(2) However, if the defendant consents to the use of the information for another purpose, **subsection (1)** does not apply and the information may be used for that other purpose. 20
- “**30I Court must be satisfied as to certain matters before granting bail with EM condition**
- “(1) The court hearing an application made under **section 30D** must, before granting bail with an EM condition, be satisfied that— 25
- “(a) the defendant has been made aware of and understands his or her obligations under the EM condition; and
- “(b) the defendant agrees to comply with the requirements of the EM condition; and 30
- “(c) it is practicable for the defendant to remain at the proposed EM address on bail with an EM condition; and
- “(d) the proposed EM address is suitable for the purpose of bail with an EM condition; and 35

- “(e) every relevant occupant of the proposed EM address has consented to the defendant remaining at the proposed EM address while on bail with an EM condition; and
- “(f) in each case the consent of the relevant occupant has been obtained after the steps set out in **section 30G(2)** have been followed. 5
- “(2) In considering whether to grant bail with an EM condition, the court—
- “(a) must consider the EM report prepared under **section 30F**; and 10
- “(b) in particular, must have regard to any evidence of violence between the defendant and any occupant of the proposed EM address; and
- “(c) may have regard to any other relevant information.
- “**30J Court must specify EM address** 15
In granting bail with an EM condition, a court must specify the EM address.
- “**30K EM assessor must define area of EM address to which defendant is confined**
- “(1) An EM assessor must define the area of an EM address to which a defendant on bail with an EM condition is confined. 20
- “(2) An EM assessor who defines the area of an EM address under **subsection (1)** must—
- “(a) show the area to the defendant; and
- “(b) advise the relevant occupants of the area. 25
- “**30L Defendant’s obligations under EM condition**
- “(1) A defendant who is on bail with an EM condition must—
- “(a) submit to the electronic monitoring of his or her compliance with the restrictions placed on his or her movements under **paragraphs (b) and (c)**; and 30
- “(b) not leave the EM address at any time except—
- “(i) as authorised under **section 30M**; or
- “(ii) to attend his or her scheduled court appearances; or
- “(iii) to seek urgent medical or dental treatment; or 35

- “(iv) to avoid or minimise a serious risk of death or injury to the defendant or any other person; or
 “(v) to surrender himself or herself to Police custody; and
- “(c) remain in the area of the EM address that has been defined by an EM assessor under **section 30K**, except when leaving the EM address as permitted under **paragraph (b)(i) to (v)**; and 5
- “(d) co-operate with, and comply with any lawful direction given by, an EM assessor; and 10
- “(e) present himself or herself at the door of the EM address when required to do so by any member of the Police; and
- “(f) keep the notice of bail in his or her possession at the EM address and present it when required to do so by any member of the Police; and 15
- “(g) allow an EM assessor access to the EM address for the purpose of speaking to another occupant of the EM address at the request of that occupant; and
- “(h) surrender himself or herself to Police custody if, for any reason (including the withdrawal of the consent of a relevant occupant), he or she is unable to remain at the EM address; and 20
- “(i) not tamper with or damage the electronic monitoring equipment or do anything with the intention of interfering with the functioning of that equipment. 25
- “(2) A breach by a defendant of an obligation under **subsection (1)** is a breach of the EM condition.

“30M Authorised absence from EM address

- “(1) A court may, when granting bail with an EM condition, authorise the defendant to be absent from the EM address. 30
- “(2) However, a Registrar may authorise a defendant to be absent from the EM address only if the prosecution agrees to that authorisation.
- “(3) In authorising a defendant to be absent from the EM address, the court must specify— 35
- “(a) the time or times during which the defendant may be absent; and

“(b) the purpose or purposes for which the defendant may be absent.

“30N Use of information obtained from electronic monitoring

Information that is obtained from the electronic monitoring of a defendant on bail with an EM condition may be used for the purpose set out in **section 30A** and for any of the following purposes: 5

“(a) verifying compliance by the defendant with bail conditions:

“(b) detecting non-compliance by the defendant with bail conditions and providing evidence of that non-compliance: 10

“(c) detecting the commission by the defendant of an offence and providing evidence of that offence:

“(d) verifying that the defendant has not tampered with or otherwise interfered with the electronic monitoring equipment. 15

“30O Court may remand defendant in custody pending installation of electronic monitoring equipment, etc

A court that grants bail with an EM condition may postpone the commencement of the bail and remand the defendant in custody for a period reasonably necessary for— 20

“(a) the installation of electronic monitoring equipment at the EM address:

“(b) the making of any other arrangement to enable the defendant to comply with the EM condition. 25

“30P Defendant on bail with EM condition not in custody

A defendant on bail with an EM condition is not in custody.

“30Q Bail with EM condition does not affect entitlements under Social Security Act 1964 30

The fact that a defendant is on bail with an EM condition does not, of itself, affect any entitlement the defendant may have under the Social Security Act 1964.

“30R Subsequent application for bail with EM condition

Nothing in this Act prevents a defendant, who has previously applied for bail without an EM condition and been refused, from subsequently applying for bail with an EM condition on the same charges.”

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18 Section 31 amended (Release of defendant granted bail)

After section 31(1), insert:

“(1A) If electronic monitoring is a condition of bail, the notice of bail must—

“(a) state the EM address; and

10

“(b) list the defendant’s obligations, set out in **section 30L**, under an EM condition.”

19 Section 33 amended (Variation of conditions of bail imposed by the District Court)

(1) In the heading to section 33, delete “**the**”.

15

(2) After section 33(1), insert:

“(1A) However, in the case of the variation of an EM condition, a District Court may only make the following orders under subsection (1) in relation to that EM condition:

“(a) an order authorising absence from the EM address:

20

“(b) an order varying or revoking any existing authorisation of absence from the EM address:

“(c) an order varying the EM address.

“(1B) If a District Court makes an order under subsection (1) in relation to an EM condition, **sections 30A to 30R** apply to the extent necessary and with the necessary modifications.”

25

20 Section 34 amended (Variation of conditions of bail imposed by the High Court)

(1) In the heading to section 34, delete “**the**”.

(2) After section 34(1), insert:

30

“(1A) However, in the case of the variation of an EM condition, a High Court Judge may only make the following orders under subsection (1) in relation to that EM condition:

“(a) an order authorising absence from the EM address:

- “(b) an order varying or revoking any existing authorisation of absence from the EM address:
- “(c) an order varying the EM address.
- “(1B) If a High Court Judge makes an order under subsection (1), in relation to an EM condition, **sections 30A to 30R** apply to the extent necessary and with the necessary modifications.” 5
- 21 New section 34A inserted (Surrender of defendant on bail with EM condition)**
- After section 34, insert:
- “34A Surrender of defendant on bail with EM condition” 10**
- “(1) A defendant on bail with an EM condition—
- “(a) must surrender himself or herself to Police custody if, for any reason (including the withdrawal of the consent of a relevant occupant), he or she is unable to remain at the EM address; and 15
- “(b) may surrender himself or herself to Police custody pending determination of an application under section 33 or 34 to vary the EM address or revoke the EM condition.
- “(2) The Police must bring a defendant on bail with an EM condition who surrenders himself or herself to Police custody before a judicial officer at the earliest opportunity. 20
- “(3) If a defendant on bail with an EM condition who is under the age of 17 years surrenders himself or herself to Police custody, sections 234(c), 235, and 236 of the Children, Young Persons, and Their Families Act 1989 apply with any necessary modifications.” 25
- 22 Section 35 amended (Defendant on bail may be arrested without warrant in certain circumstances)**
- Replace section 35(2) with: 30
- “(2) A defendant who is arrested under subsection (1) must,—
- “(a) if released on bail by a District Court, Registrar, or Police employee in relation to a category 1, 2, or 3 offence, be brought before a District Court as soon as possible, unless the Solicitor-General has assumed responsibility 35

for the proceedings in accordance with section 187 of the Criminal Procedure Act 2011; or

- “(b) if released on bail in any circumstances to which **paragraph (a)** does not apply, be brought before a High Court Judge or a District Court Judge as soon as possible.” 5

23 Section 36 amended (Arrest of defendant charged with drug dealing offence)

- (1) In section 36(2), after “High Court Judge”, insert “or a District Court Judge”. 10
- (2) In section 36(3), delete “High Court”.
- (3) In section 36(4), delete “High Court”.
- (4) In section 36(5), delete “bond”.

24 New section 36A inserted (Offence to refuse authorised person entry to EM address) 15

After section 36, insert:

“36A Offence to refuse authorised person entry to EM address

- “(1) A person (A) commits an offence who refuses or fails, without reasonable excuse, to allow an authorised person to enter an EM address for the purpose of servicing or inspecting any electronic monitoring equipment at that address. 20
- “(2) A person who commits an offence under **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- “(3) In **subsection (1), authorised person** means— 25
 - “(a) an EM assessor who has identified himself or herself to A; or
 - “(b) a person accompanying a person described in **paragraph (a)**; or
 - “(c) a person who— 30
 - “(i) has identified himself or herself to A; and
 - “(ii) is authorised in writing by an EM assessor to enter the EM address for the purpose of servicing or inspecting any electronic monitoring equipment at that address; and 35
 - “(iii) has produced that written authority to A.”

25 Section 59 amended (Arrest of defendant charged with drug dealing offence)

- (1) This section applies only if this Act receives the Royal assent before section 15 of the Bail Amendment Act 2011 comes into force. 5
- (2) In section 59(2), after “High Court Judge”, insert “or a District Court Judge”.
- (3) In section 59(3), delete “High Court”.
- (4) In section 59(4), delete “High Court”.
- (5) In section 59(5), delete “bond”. 10

Part 2

Amendments to other Acts

26 Amendments to Children, Young Persons, and Their Families Act 1989

- (1) This section amends the Children, Young Persons, and Their Families Act 1989. 15
- (2) In section 214 (1), after “Subject to”, insert “**subsection (2A)** and”.
- (3) After section 214(2), insert:
- “(2A) A constable may arrest a young person without a warrant if— 20
- “(a) the young person has been remanded on bail; and
- “(b) the constable believes, on reasonable grounds, that the young person is in breach of a condition of that bail; and
- “(c) either— 25
- “(i) the breach is a breach in a significant respect; or
- “(ii) the constable believes, on reasonable grounds, that the young person has previously repeatedly breached a condition of that bail (whether or not the same condition).”
- (4) Replace section 235(1) with: 30
- “(1) Notwithstanding section 234 but subject to section 244, a constable, in relation to any child or young person who has been arrested and if **subsection (1A)** applies,—
- “(a) must place the child or young person in the custody of the chief executive in accordance with subsection (2); 35
- and

- “(b) must do so as soon as practicable and not later than 24 hours after the arrest.
- “(1A) This subsection applies if—
- “(a) the constable believes, on reasonable grounds, that—
- “(i) the child or young person is not likely to appear before the court; or 5
- “(ii) the child or young person may commit further offences; or
- “(iii) it is necessary to prevent—
- “(A) the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the constable has reasonable cause to suspect the child or young person of having committed; or 10 15
- “(B) interference with any witness in respect of any such offence; or
- “(b) the child or young person has been arrested under **section 214(2A)** and is likely to continue to—
- “(i) repeatedly breach a condition of bail; or 20
- “(ii) breach a condition of bail in a significant respect.”
- (5) In section 239(1)(c), replace “offence.” with “offence; or”.
- (6) After section 239(1)(c), insert:
- “(d) the child or young person— 25
- “(i) has previously breached a condition of bail repeatedly (whether or not the same condition) or in a significant respect; and
- “(ii) if granted bail, is likely to breach a condition of that bail repeatedly (whether or not the same condition) or in a significant respect.” 30
- (7) After section 240(2), insert:
- “(3) A constable may return a young person who is found absent from home in breach of a condition imposed under subsection (1) to the parents or guardians or other persons having the care of the young person.” 35

27 Amendments to Sentencing Act 2002

- (1) This section amends the Sentencing Act 2002.
- (2) In section 9(2)(g), replace “character.” with “character:”.
- (3) After section 9(2)(g), insert:
 - “(h) that the offender spent time on bail with an EM condition as defined in section 3 of the Bail Act 2000.” 5
- (4) After section 9(3), insert:
 - “(3A) In taking into account that the offender spent time on bail with an EM condition under **subsection (2)(h)**, the court must consider— 10
 - “(a) the period of time that the offender spent on bail with an EM condition; and
 - “(b) the relative restrictiveness of the EM condition, particularly the frequency and duration of the offender’s authorised absences from the electronic monitoring address; and 15
 - “(c) the offender’s compliance with the bail conditions during the period of bail with an EM condition; and
 - “(d) any other relevant matter.”

28 Amendment to Bail Amendment Act 2011 20

- (1) This section amends the Bail Amendment Act 2011.
- (2) In the Schedule, repeal the item relating to section 15(1) of the Bail Act 2000.