

Bail Amendment Bill

Government Bill

As reported from the Law and Order
Committee

Commentary

Recommendation

The Law and Order Committee has examined the Bail Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Bail Act 2000, the Children, Young Persons, and Their Families Act 1989, the Sentencing Act 2002, the Bail Amendment Act 2011, the District Courts Act 1947, the District Courts Amendment Act 2011, and the Summary Proceedings Act 1957, in order to improve public safety and enhance the integrity of New Zealand's bail system. The bill seeks to introduce a reverse burden of proof for offenders charged with serious violent offences and class A drug dealing offences, and provides for district court judges to deal with bail matters of defendants charged with drug dealing offences. It also seeks to remove the strong presumption in favour of bail for defendants aged 17 to 19 years who have previously been sentenced to imprisonment, and seeks to enable the Police to uplift and return young defendants in breach of their bail curfews to the

custody of their parents or caregivers. Police would also be able to arrest a young defendant who was believed on reasonable grounds to have significantly or repeatedly breached a condition of bail. The bill seeks to remove the ability of the Police to impose a requirement for monetary bonds and sureties on defendants; and it would make a person convicted of the failure to answer police bail liable to three months' imprisonment as an alternative to the maximum fine of \$1,000. It also seeks to create an electronically monitored bail regime by writing current practices into legislation.

In the course of our consideration, we also heard evidence on Petition 2011/24 of Tracey Marceau on behalf of Christie's Law Group and 58,000 others because some issues it raised were relevant to this bill, while others fell outside its scope. We will examine issues outside the scope of this bill when we consider the petition.

The commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

Commencement

We recommend amending subclause 2(1) so that the provisions excluded from subclause 2(2) would come into force 30 days after the bill receives the Royal assent. This amendment would allow for the implementation of necessary operational changes as a result of this bill.

Amendments to the Bail Act 2000

Just cause for continuing detention

We recommend inserting new subsection 8(4B) in clause 6 to allow a court considering a bail application to take into account the defendant's co-operation with authorities in their investigations or prosecutions, if this is relevant to the court's assessment of the risk that the defendant will fail to appear in court, interfere with witnesses or evidence, or offend while on bail. As introduced, the bill would prevent the court from taking such considerations into account. While it is not appropriate to grant bail in return for information, co-operation with authorities could indicate that the defendant presents a relatively lower risk.

Granting of bail to defendants under 20 years of age

Under the bill as introduced, clause 9 would amend section 15 to remove the strong presumption in favour of bail for defendants aged 17 to 19, if they had previously been sentenced to imprisonment. We recommend amending section 15 in clause 9 so that this would apply only to 17-year-olds, 18- and 19-year-olds becoming subject to the standard adult test for bail. We considered a number of factors when examining this issue.

Young defendants who have served a previous prison sentence offend on bail at a significantly higher rate than those with no history of imprisonment. For example, from 2004–2009, over half of young defendants who had served a previous prison sentence were convicted of offending on bail, compared with less than a quarter of young defendants who had not previously been sentenced to imprisonment. We believe that, if the defendant is 17 years of age, is accused of committing a serious crime, and has previously been sentenced to imprisonment for a separate crime, the reverse burden of proof should apply, subject to the judge's discretion.

We are aware of the principle that adults, young people, and children should be tried with regard to the crime they are accused of, rather than their age, because age affects the judicial treatment of a particular crime. We recognise that imprisonment can affect long-term rehabilitation, and therefore that detention of children and young people should be a last resort. We believe it appropriate that, subject to the judge's discretion, a 17-year-old defendant be granted bail unless he or she has previously been sentenced to imprisonment.

We were concerned that this clause might be inconsistent with New Zealand's international obligations. New Zealand has ratified the United Nations Convention on the Rights of the Child, upon which policy and legislation concerning children and young people, 0–17-year-olds inclusively, ought to be developed. Furthermore, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice reinforce the principle that detention of children and young people should be a last resort, and as short as possible. The rules indicate that, whenever possible, detention pending trial should be replaced by alternative measures, such as close supervision. To align this legislation with New Zealand's international obligations, we believe that those aged 17 should be considered differently from adults facing similar charges, because of their age.

We considered all of these issues, and decided that we needed to find a balance between upholding a defendant's criminal process rights, enhancing public safety, and meeting New Zealand's international obligations. We believe that this amendment finds the right balance.

Regulation making powers

The Regulations Review Committee expressed concern that subsection 30B(3) in clause 17 would allow the making of a regulation that had the effect of amending a provision of the principal Act, otherwise known as a Henry VIII clause; as a matter of principle only Parliament should be able to amend provisions of an Act, and this should be done in primary legislation, not in regulations. We recommend deleting subsection 30B(3) to remove the ability for this subsection to amend the principal Act outside of legislation.

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

Arrest a child without warrant

We recommend inserting new section 214A in clause 26 to empower a constable to arrest without warrant a child or young person who has been released on bail and has repeatedly breached his or her bail conditions. Under the bill as introduced, police could arrest a young person in these circumstances, but it was not clear that the provision also applied to children. Under the Act, a child is a person aged less than 14 years, while a young person is aged more than 14 years but less than 17 years. We were told that some children and young people disregard their bail conditions because they are aware of the restrictions on their arrest, and consider that this amendment could help to combat such behaviour.

There are existing safeguards, and more being developed, to guide police conduct regarding arrests of children and young people. Subsection 214(4) of the Act, for example, requires police officers who have made such arrests to justify them to their superiors. The Police are currently developing operational guidelines on the application of the power to arrest for repeated breaches. Such guidelines will help prevent children from unnecessarily being arrested without warrant. We understand that they are likely to set out explicitly what a police

officer needs to consider before undertaking such an arrest, for example, whether to first issue a warning.

Significant breach of bail

We recommend replacing subparagraph 214(2A)(c)(i) with new subparagraph 214(2A)(b)(i) in subclause 26(3) to remove the provision referring to “significant” breaches. Under subclause 26(3) as introduced, police would be able to arrest a young person without warrant if they were satisfied on reasonable grounds that the defendant had significantly or repeatedly breached a condition of bail. In this case, the term “significant” is open to interpretation, and likely to complicate police officers’ decision-making when they are considering making an arrest. Existing arrest powers in section 214(1) are likely to be sufficient when a defendant’s breach appears significant. Consequently, we also recommend amending paragraph 235(1A)(b) in subclause 26(4) to align it with subclause 26(3).

The detention of children and young people

We recommend deleting paragraph 239(1)(d) in subclause 26(6) to avoid potentially increasing the number of children and young people being detained in custody. The subclause as introduced is intended to empower the Youth Court to order the detention of a child or young person who has significantly or repeatedly breached a condition of bail and is likely to continue to do so. This provision could lead to children or young people being detained unnecessarily, which would contravene New Zealand’s international obligations. We believe that the court’s ability to reconsider bail decisions at any time renders this provision unnecessary.

Uplifting children and young people in breach of bail curfews

Under the bill as introduced, the Police would have the power to uplift defendants younger than 17 years old found in breach of their bail curfews, and return them to the custody of their parents or caregivers. If the defendant failed to comply with police’s attempts to uplift and return him or her to compliance, the intended outcome would be unclear. In this situation, subclause 26(7) would not provide police with any safeguards or powers associated with an arrest power of a child or young person. Potentially, this subclause could complicate the re-

relationship between the existing care and protection provisions in the Act and the youth justice system. Therefore, we recommend deleting subsection 240(3) in subclause 26(7).

Impact on prison capacity

The intent of the bill is to make it harder for bail to be granted to defendants who are charged with or have previously committed serious offences. We acknowledge that doing so would inevitably increase the number of defendants remanded in custody. We are aware of concern that this bill could increase costs, put pressure on resources, and hinder rehabilitation. We note that the increase in the number of prison beds required each year would probably be modest. For example, applying the reverse burden of proof to defendants charged with class A drug offences would probably require 8.5 additional prison beds each year. While the number of prisoners held on remand would increase, the amount of offending on bail might be reduced. Defendants with the highest risk of offending on bail would be remanded in custody, thus increasing public safety. Ultimately, judges would continue to have discretion to consider how defendants are to be bailed.

Minority views

New Zealand Labour Party

Despite a major tightening of the Bail Act by Labour in 2000 and further changes to the Act in 2011 which had a minor impact, the level of criminal offending while on bail remains unacceptably high. Estimates indicate that one in five people reoffend while on bail. Much of this is minor offending but between 2006 and 2010, 23 people were convicted of murder while on bail, 21 were convicted of homicide, 7,146 of acts intended to cause injury, 1,132 of abducting, kidnapping, or threatening behaviour, and 763 of sexual assaults. The impact of this bill will be to deny bail to a relatively small number of people on the margins who under the current law would have been released on bail.

The Ministry of Justice estimates are that as a result of this law change, 50 additional prison beds will be necessary, with approxi-

mately 350 extra people held in custody for some period each year, out of the tens of thousands of bail applications heard annually.

Labour supports a reverse onus of proof operating in cases where the presumption of innocence needs to be constrained by evidence of high risk to public safety. Bail is already conditional on a judge being satisfied the defendant will not reoffend, abscond, or interfere with witnesses.

The reverse onus will cause judges to look more carefully at higher-risk cases, but the discretion quite properly remains with the judge to look at each case on its individual merits. The Attorney-General advises that these measures are consistent with the Bill of Rights.

The bill also removes the stronger presumption in favour of bail currently applied to 18- and 19-year-olds because of their age. Such persons under law are in every other respect considered as adults, and offending risks on bail are higher at these ages than for other age groups. Young people aged 17 continue to receive a stronger presumption for bail, provided they have not previously been imprisoned.

Labour accepts the recommendation of Youth Court Judges that police powers of arrest without warrant for children and young persons is necessary where the alleged offenders repeatedly breach bail in a serious and significant way. However, we believe that the statute should require that the breaches be significant as well as repeated, as judges have stated that the new power “needs to clearly exclude the trivial while providing the Police with the ability to be effective when faced with serious and significant breaches of bail”.

Labour’s principal concern, however, is that this bill does not address some of the key systemic reasons for a high level of offending on bail.

A critical issue that the Government must address is delays in the court system that result in people being out on bail for a long period of time waiting for their cases to be heard. There has been a significant increase in delays in Auckland and Manukau, for example, before cases come to court, which increase the likelihood of offending while on bail.

We also believe that because of the production-line manner in which bail applications are heard, more assistance should be available to judges to help ensure their decisions in finding a proper balance between presumption of innocence and public safety are well founded.

The provision of risk assessment tools for judges is necessary. Proper analysis of cases where bail decisions result in further serious offending so as to determine whether and how this might have been avoided is also necessary. This however should be done within the judicial system rather than from outside to avoid undermining the independence of the judiciary.

These are issues which need to be examined further when the Committee considers the petition on behalf of Christie's Law Group.

Green Party

The stated purpose of this bill is "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". The arguments put forward proposing that the latter "changes" will produce positive outcomes have not been persuasive, and the Green Party will continue to oppose the bill. It is recognised that problems do exist, but this bill does not offer long-term solutions to those problems.

The bill would compromise a number of New Zealand's international commitments to fairness and the maintenance of human rights; it contravenes sections of the New Zealand Bill of Rights Act 1990, and is unlikely to produce the desired improvements in public safety. Many of the provisions contained in the bill appear to be a purely political response to expressions of public concern about crime rather than a considered attempt to improve justice outcomes. Unfortunately much of that concern is based on misinformation aided by a vocal minority calling for excessively punitive measures, and some instances of sensationalist media reporting.

The bill widens the range of offences that call for a "reverse burden of proof", despite the challenge this poses to a basic principle of law, that a person is innocent until proven guilty.

This bill would significantly reduce judicial discretion when hearing bail applications, despite the exercise of discretion also being a basic principle of judicial practice.

The perception that judges are not sufficiently accountable, and so ought to be subject to additional constraints, does not stand up to analysis. Advice received by the committee from the Justice Depart-

ment outlined the various processes and procedures that are in place to ensure that the judiciary remains independent and impartial.

The bill would compromise the presumption in favour of bail for those aged 17–19 years, where the accused person had already served a term of imprisonment. As well as being an explicit admission that imprisonment is unlikely to reduce the likelihood of young people offending, it also contravenes relevant international obligations. In any case, section 142 of the Crimes Act 1961 allows sufficient scope to allow for the detention of a person in this age group, and no extension of the power to detain is necessary or desirable.

Appendix

Committee process

The Bail Amendment Bill was referred to the committee on 10 May 2012. The closing date for submissions was 29 June 2012. We received and considered 285 submissions from interested groups and individuals. We heard 44 submissions, which included holding hearings in Wellington and Auckland.

We received advice from the Ministry of Justice and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in section 30B in clause 17.

Committee membership

Jacqui Dean (Chairperson)

David Clendon

Kris Faafoi

Hon Phil Goff

Ian McKelvie

Mark Mitchell

Richard Prosser

Jami-Lee Ross

Lindsay Tisch

Bail Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Judith Collins

Bail Amendment Bill

Government Bill

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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 30th 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):
 - (ea) **section 15A** (amending section 28 of the principal Act): 10
 - (f) **section 16** (amending section 30 of the principal Act):
 - (g) **section 17** (inserting new **sections 30A to 30R** in the principal Act):
 - (h) **section 18** (amending section 31 of the principal Act):
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 - (j) **section 20** (amending section 34 of the principal Act):
 - (k) **section 21** (inserting new **section 34A** in the principal Act): 20
 - (l) **section 22** (amending section 35 of the principal Act):
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 - (ne) **section 24E** (amending section 48 of the principal Act):
 - (nf) **section 24F** (amending section 49 of the principal Act): 35
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- (nh) **section 24H** (amending section 51 of the principal Act):
- (ni) **section 24I** (amending section 52 of the principal Act):
- (nj) **section 24J** (inserting new **section 52A** in the principal Act): 5
- (nk) **section 24K** (amending section 54 of the principal Act):
- (nl) **section 24L** (amending section 59 of the principal Act):
- (nm) **section 25A** (amending section 60 of the principal Act): 10
- (nn) **section 25B** (inserting new **section 73A** in the principal Act):
- (o) **section 27** (amending the Sentencing Act 2002):
- (p) **section 29** (amending the District Courts Act 1947): 15
- (q) **section 31** (amending the Summary Proceedings Act 1957).

3 Principal Act

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

Part 1

20

Amendments to principal Act

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 25

“**Class B controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

“**court** means a court presided over by a judicial officer with authority to exercise the court’s jurisdiction in relation to the matter 30

“**Police bail** means bail granted by a Police employee under **section 21(1)**

“**Police employee** has the same meaning as in section 4 of the Policing Act 2008

- “working day** means a day that is not—
- “(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s Birthday, or Waitangi Day; or**
- “(b) a day in the period commencing on 25 December in one year and ending on 15 January in the next year”.** 5
- (2) In section 3, replace the definition of **drug dealing offence** with:
- “drug dealing offence** means—
- “(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** 10
- “(b) an attempt to commit an offence referred to in paragraph (a)”.**
- (3) In section 3, insert in their appropriate alphabetical order: 15
- “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 person authorised under **section 30E** to act as an EM assessor 20
- “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, every person of or over the age of 16 years who ordinarily lives there; or** 25
- “(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”.**
- 5 Section 7 amended (Rules as to granting bail) 30**
Repeal section 7(3).
- 6 Section 8 amended (Consideration of just cause for continued detention)**
- After section 8(4), insert:
- “(4A) When considering an application for bail, the court must not take into account the fact that the defendant has provided, or** 35

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.

“(4B) However, despite **subsection (4A)**, the court may take into account the cooperation by the defendant with authorities in the investigation or prosecution of any offence if that cooperation is relevant to the court’s assessment of the risk that the defendant will fail to appear in court, interfere with witnesses or evidence, or offend while on bail.” 5

7 New section 9A inserted (Restriction on bail if defendant charged with murder) 10

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. 15

“(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.

“(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. 20

“(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. 25

“(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.” 30

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

Replace section 10(2) with:

- “(2) In this section, **specified offence** means any offence against 5
any of the following provisions of the Crimes Act 1961:
- “(a) section 128B (sexual violation):
 - “(b) section 132 (sexual conduct with child under 12):
 - “(c) section 134 (sexual conduct with young person under 10
16):
 - “(d) section 167 (murder):
 - “(e) section 168 (murder):
 - “(f) section 171 (manslaughter):
 - “(g) section 173 (attempt to murder):
 - “(h) section 188 (wounding with intent): 15
 - “(i) section 189 (injuring with intent):
 - “(j) section 191 (aggravated wounding or injury):
 - “(k) section 198A (using any firearm against law enforcement officer, etc):
 - “(l) section 198B (commission of crime with firearm): 20
 - “(m) section 208 (abduction for purposes of marriage or sexual connection):
 - “(n) section 209 (kidnapping):
 - “(o) section 232 (aggravated burglary):
 - “(p) section 234 (robbery): 25
 - “(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)

(1A) In the heading to section 15, replace “under 20” with “who is 30
17”.

(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 35
otherwise subject to such conditions as it thinks fit if—

- “(a) the defendant appears to the court to be ~~of or over the age of 17 years but under the age of 20 years~~ 17 years of age; and
- “(b) the defendant has not previously been sentenced to imprisonment.” 5
- (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**
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. 10
- “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)—
- “(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.” 20
- 11 New section 17A inserted (Restriction on bail if defendant charged with serious Class A drug offence)**
After **section 17**, insert:
- “17A Restriction on bail if defendant charged with serious Class A drug offence** 25
- “(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.
- “(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. 30
- “(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.

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

12 Sections 21 and 22 replaced

Replace sections 21 and 22 with: 10

“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.
- “(2) **Subsection (1)** does not apply in any case to which any of section 9, **9A**, 10, 12, **16**, or **17A** applies. 15
- “(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. 20
- “(4) Despite section 7, no person is entitled to be granted Police bail under this section as of right.

“21A Notice of Police bail

- “(1) A Police employee who grants Police bail must ensure that a notice of Police bail is completed in accordance with **subsection (2)**. 25
- “(2) A notice of Police bail must—
- “(a) state—
- “(i) the defendant’s full name and address; and 30
- “(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
- “(iv) any other information required by rules made under section 386 of the Criminal Procedure Act 35

2011 to accompany a summons to a defendant issued under that Act; and

“(b) be dated.

“(3) A Police employee who grants Police bail must—

“(a) give the notice of Police bail to the defendant; and 5

“(b) ensure that the defendant understands the conditions of bail; and

“(c) ensure that the defendant ~~signs~~ authenticates the notice.

“(4) The date for attendance by the defendant before a court must not be later than 14 days from the date of the notice. 10

“**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.

“(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). 15

“(3) However, **subsection (2)** applies only if—

“(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 20

“(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. 25

“**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— 30

“(a) the victim of the alleged offence; and

“(b) any particular person residing with the victim.

“(2) In this section,— 35

“**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 5

“**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)

Replace section 24 with:

10

“**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 15

“(b) fails without reasonable excuse to attend personally at the time and place to which the hearing has been adjourned under section 167(2) of the Criminal Procedure Act 2011. 20

“(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

“(b) a fine not exceeding \$1,000.”

14 Section 25 repealed (Effect on bond of attendance or non-attendance of person bailed by constable)

25

Repeal section 25.

15 Section 26 replaced (Breach of condition of Police bail)

Replace section 26 with:

“**26 Breach of condition of Police bail**

30

Sections 39, 51, and 52 apply, with any necessary modifications, to a defendant who has been released on Police bail granted under **section 21** and who fails to comply with any condition of that bail.”

15A Section 28 amended (Warrant for detention of defendant remanded on bail)

- (1) In section 28(a), delete “under the Criminal Procedure Act 2011”.
- (2) In section 28(b), delete “the back of”. 5

16 Section 30 amended (Conditions of bail)

Replace section 30(2) with:

- “(2) A judicial officer or Registrar may impose, as further conditions of the defendant’s release,—
- “(a) an EM condition: 10
- “(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 **subsection (2)(a)** unless the prosecution agrees.” 15

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— 20

- “(a) appears in court on the date to which the defendant has been remanded; and
- “(b) does not interfere with any witnesses or any evidence against the defendant; and 25
- “(c) does not commit any offence while on bail.

“30B When court may grant bail with EM condition

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

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

- “(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
- “(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. 5
- ~~“(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.~~
- “(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. 10
- “(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. 15
- “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 conditions would be sufficient to ensure the outcomes set out in **section 30A(a) to (c)**. 20
- “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)**.
- “(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. 25
- “(3) The defendant must, as soon as practicable after receiving a notice of the hearing, serve a copy of the application on— 30
- “(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. 35

“30E Commissioner may authorise EM assessors

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

“30F EM reports

- “(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. 5
- “(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. 10
- “(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: 15
 - “(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 20
 - “(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: 25
 - “(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: 30
 - “(i) any victim of the alleged offence; and
 - “(ii) a parent or legal guardian of a victim of the alleged offence.
- “(4) An EM report may address any of the following matters:
- “(a) the defendant’s personal circumstances, including employment, training, and childcare commitments: 35
 - “(b) recommendations for other bail conditions:

- “(c) the response of the prosecuting agency to the application, including any reasons for opposing it:
- “(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. 5

“30G EM assessor must ascertain whether relevant occupants consent to defendant remaining at EM address

- “(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. 10
- “(2) Before ascertaining whether or not a relevant occupant consents, the EM assessor must—
 - “(a) ensure that the occupant— 15
 - “(i) is aware of the nature of the charges faced by the defendant; and
 - “(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 20
 - “(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 25
 - “(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
 - “(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. 30

“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. 5

“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— 10

“(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 15

“(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~~ appropriate for the purpose of bail with an EM condition; and 20

“(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. 25

“(2) In considering whether to grant bail with an EM condition, the court—

“(a) must consider the EM report prepared under **section 30F**; and 30

“(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

In granting bail with an EM condition, a court must specify the EM address. 35

“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.
- “(2) An EM assessor who defines the area of an EM address under **subsection (1)** must— 5
- “(a) show the area to the defendant; and
- “(b) advise the relevant occupants of the area.

“30L Defendant’s obligations under EM condition

- “(1) A defendant who is on bail with an EM condition must— 10
- “(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
- “(b) not leave the EM address at any time except— 15
- “(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
- “(iv) to avoid or minimise a serious risk of death or injury to the defendant or any other person; or 20
- “(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 25
- “(d) co-operate with, and comply with any lawful direction given by, an EM assessor; and
- “(e) present himself or herself at the door of the EM address when required to do so by any member of the Police; 30
- 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
- “(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 35

- “(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
- “(i) not tamper with or damage the electronic monitoring equipment or do anything with the intention of interfering with the functioning of that equipment. 5
- “(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** 10
- “(1) A court may, when granting bail with an EM condition, authorise the defendant to be absent from the EM address.
- “(2) However, a Registrar may authorise a defendant to be absent from the EM address only if the prosecution agrees to that authorisation. 15
- “(3) In authorising a defendant to be absent from the EM address, the court must specify—
- “(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. 20
- “**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: 25
- “(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: 30
- “(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. 35

“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—

- “(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.

5

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

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

10

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

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.

15

“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.”

20

18 Section 31 amended (Release of defendant granted bail)

(1) After section 31(1), insert:

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

25

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

(2) In section 31(2)(c), replace “sign” with “authenticate”.

(3) In section 31(3)(a), replace “signed” with “authenticated”.

30

(4) In section 31(3)(b), replace “sign” with “authenticate”.

(5) In section 31(4), replace “signed” with “authenticated”.

18A Section 32 repealed (Warrant of deliverance)Repeal section 32.**19 Section 33 amended (Variation of conditions of bail imposed by District Court)**

(1) In the heading to section 33, ~~delete~~ replace “by the” with “in”. 5

(1A) In section 33(1), after “Court ” insert “or a Registrar”.

(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: 10

“(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 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.” 15

(3) In section 33(2), delete “another District Court or”.

(4) In section 33(5)(a)(iii), replace “sign” with “authenticate”.

(5) In section 33(6), replace “sign” with “authenticate”. 20

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

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

(1) Replace the heading to section 34 with “**Variation of conditions of bail in High Court, Court of Appeal, or Supreme Court**”. 25

(1A) In section 34(1), replace “by the High Court,” with “in any proceeding to which section 33(1) does not apply,”.

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

“(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: 30

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

“(b) an order varying or revoking any existing authorisation of absence from the EM address: 35

- “(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.”
- (3) In section 34(2), replace “High Court has, in granting bail to a defendant” with “court has, in granting bail to a defendant under subsection (1)”. 5
- (4) In section 34(4)(a)(iii), replace “sign” with “authenticate”.
- 21 New section 34A inserted (Surrender of defendant on bail with EM condition)** 10
 After section 34, insert:
- “34A Surrender of defendant on bail with EM condition**
- “(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. 20
- “(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.
- “(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)** 30
 Replace section 35(2) with:
- “(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, 35

- unless the Solicitor-General has assumed responsibility 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. 25
- “(3) In **subsection (1)**, **authorised person** means—
- “(a) an EM assessor who has identified himself or herself to A; or
- “(b) a person accompanying a person described in **paragraph (a)**; or 30
- “(c) a person who—
- “(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.”

24A Section 37 amended (Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail)

- (1) In section 37(1), replace “of the relevant court may issue a warrant in the prescribed form” with “may issue a warrant”. 5
- (2) Replace section 37(7) with:
- “(7) In this section, **judicial officer or Registrar** means, in relation to proceedings for the offence with which the defendant is charged,— 10
- “(a) for proceedings in a District Court, a judicial officer or Registrar of a District Court:
- “(b) for proceedings in the High Court, a judicial officer or Registrar of the High Court:
- “(c) for proceedings in the Court of Appeal or the Supreme Court, a judicial officer or Registrar of the High Court.” 15

24B Section 39 amended (Non-performance of condition of bail may be certified and recorded)

- (1) In section 39(1), replace “of the relevant court may certify on the back of” with “may certify on”. 20
- (2) In section 39(3), replace “of the relevant court must direct the Registrar of that court” with “must direct the Registrar of the relevant court”.
- (3) Replace section 39(6) with:
- “(6) In this section, **judicial officer** means— 25
- “(a) any judicial officer, if the defendant was released on bail by a District Court, Registrar, or Police employee in relation to a category 1, 2, or 3 offence and the Solicitor-General has not assumed responsibility for the proceedings in accordance with section 187 of the Criminal Procedure Act 2011: 30
- “(b) a Judge, if any of the matters set out in **paragraph (a)** do not apply.”

<u>24C</u>	<u>Section 43 amended (Execution of decision of District Court on appeal relating to bail)</u>	
(1)	<u>In section 43(1), delete “and signed by a District Court Judge”.</u>	
(2)	<u>In section 43(3)(a)(iii), replace “sign” with “authenticate”.</u>	
<u>24D</u>	<u>Section 46 amended (Execution of decision of High Court on appeal relating to bail)</u>	5
(1)	<u>In section 46(1), delete “and signed by a Judge”.</u>	
(2)	<u>In section 46(3)(a)(iii), replace “sign” with “authenticate”.</u>	
<u>24E</u>	<u>Section 48 amended (Procedure relating to appeal under section 47)</u>	10
	<u>In section 48(1), replace “10 days” with “20 working days”.</u>	
<u>24F</u>	<u>Section 49 amended (Execution of decision of Court of Appeal on appeal relating to bail)</u>	
	<u>In section 49(4), delete “and signed by a Judge of the court”.</u>	
<u>24G</u>	<u>Section 50 amended (Execution of decision of Supreme Court on appeal relating to bail)</u>	15
	<u>In section 50(4), delete “and signed by a Judge of the court”.</u>	
<u>24H</u>	<u>Section 51 amended (Appeal against entry by Justice or Community Magistrate of non-performance of condition of bail in court record)</u>	20
	<u>In section 51(1), replace “28 days” with “20 working days”.</u>	
<u>24I</u>	<u>Section 52 amended (Appeal against entry by District Court Judge or High Court Judge of non-performance of condition of bail in court record)</u>	
	<u>In section 52(1), replace “28 days” with “20 working days”.</u>	25
<u>24J</u>	<u>New section 52A and cross-heading inserted</u>	
	<u>After section 52, insert:</u>	

“Issue of warrant for detention in custody**“52A Period for which warrant for detention in custody may be issued**

“(1) This section applies to a warrant issued under section 43(1), 46(1), 49(4), or 50(4).

5

“(2) A warrant to which this section applies must be issued for whichever of the following applies:

“(a) for the period of adjournment:

“(b) pending and during the defendant’s trial:

“(c) pending the defendant being brought up for sentence and during his or her sentencing.”

10

24K Section 54 amended (Granting of bail to appellant in custody pending appeal to High Court)

In section 54(4), replace “35, 37, 38, 39” with “35 to 39”.

24L Section 59 amended (Surrender of appellant released on bail)

15

In section 59(2), delete “in the prescribed form”.

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.

20

(2) In section 59(2), after “High Court Judge”, insert “or a District Court Judge”.

(3) In section 59(3), delete “High Court”.

25

(4) In section 59(4), delete “High Court”.

(5) In section 59(5), delete “bond”.

25A Section 60(1) amended (Issue of warrant to arrest defendant absconding or breaching bail condition)

In section 60(1), delete “in the prescribed form”.

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25B New section 73A inserted (Authentication of documents)

After section 73, insert:

“73A Authentication of documents

“(1) Any document that is filed, served, or issued in proceedings under this Act or rules made under section 73 must be authenticated by the person responsible for its content.

“(2) The person responsible for its content authenticates the document by— 5

“(a) signing and dating the document; or

“(b) in the case of any document in electronic form, any electronic means that adequately identifies that person and the date of authentication. 10

“(3) However, an affidavit or other document required to be sworn must be signed and dated.

“(4) In the absence of evidence to the contrary, any document is to be treated as having been authenticated in accordance with this section.” 15

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. 20

(2) In section 214 (1), after “Subject to”, insert “**subsection (2A) section 214A** and”.

(3) ~~After section 214(2); insert:~~

~~“(2A) A constable may arrest a young person without a warrant if—~~ 25

~~“(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—~~

~~“(i) the breach is a breach in a significant respect; or~~ 30

~~“(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).”~~

(3) After section 214, insert: 35

“214A Arrest of child or young person in breach of bail condition

A constable may arrest a child or young person without a warrant if—

“(a) the child or young person has been released on bail; and 5

“(b) the constable believes, on reasonable grounds, that—

“(i) the child or young person is in breach of a condition of that bail; and

“(ii) the child or young person has previously repeatedly breached a condition of that bail (whether or not the same condition).” 10

(4) Replace section 235(1) with:

“(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,— 15

“(a) must place the child or young person in the custody of the chief executive in accordance with subsection (2); and

“(b) must do so as soon as practicable and not later than 24 hours after the arrest. 20

“(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

“(ii) the child or young person may commit further offences; or 25

“(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 30

“(B) interference with any witness in respect of any such offence; or 35

“(b) the child or young person has been arrested under **section 214(2A) 214A** and is likely to continue to repeatedly breach a condition of bail.

~~“(i) repeatedly breach a condition of bail; or~~

- ~~“(ii) breach a condition of bail in a significant respect.”~~²²
- (5) In section 239(1)(c), replace “offence.” with “offence; or”.
- (6) ~~After section 239(1)(c), insert:~~
- ~~“(d) the child or young person—~~ 5
- ~~“(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.”~~²² 10
- (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.”~~²² 15

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: 20
- “(h) that the offender spent time on bail with an EM condition as defined in section 3 of the Bail Act 2000.”
- (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 25 consider—
- “(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 30 authorised absences from the electronic monitoring address; and
- “(c) the offender’s compliance with the bail conditions during the period of bail with an EM condition; and
- “(d) any other relevant matter.” 35

28 Amendment to Bail Amendment Act 2011

- (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.

29 Amendments to District Courts Act 1947

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- (1) This section amends the District Courts Act 1947.
- (2) In section 84C(2)(d), replace “take the bail bond of” with “grant bail to”.
- (3) In section 84O(6)(c), replace “take the bail bond of” with “grant bail to”.

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30 Amendments to District Courts Amendment Act 2011

- (1) This section amends the District Courts Amendment Act 2011.
- (2) In section 14, replace new section 84EA(5)(d) of the District Courts Act 1947 with:

“(d) if the judgment debtor or relevant officer cannot practicably be brought before a Judge or Registrar, then a Police employee or bailiff may grant bail to the judgment debtor or relevant officer, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”

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- (3) In section 23, replace new section 84OB(3)(c) of the District Courts Act 1947 with:

“(c) if the judgment debtor or relevant officer cannot practicably be brought before a Judge or Registrar, then a Police employee or bailiff may grant bail to the judgment debtor or relevant officer, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”

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31 Amendments to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Replace section 88AB(d) with:

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- “(d) for the purpose of any bail application by the defendant, if the defendant cannot practicably be brought immediately before the Registrar, a District Court Judge, or a Community Magistrate, then a Police employee or a bailiff may grant bail to the defendant, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.” 5
- (3) Replace section 88AC(e) with:
- “(e) if the defendant cannot practicably be brought immediately before the Registrar, a District Court Judge, or a Community Magistrate, then a Police employee or a bailiff may grant bail to the defendant, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.” 10 15

Legislative history

7 May 2012
10 May 2012

Introduction (Bill 17-1)
First reading and referral to Law and Order
Committee
