

**Reprint
as at 8 September 2018**



Bail Act 2000

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Date of assent 10 October 2000
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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[Repealed]

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Schedule 1AA

Transitional, savings, and related provisions

Schedule 1

Modifications of Part 3 where appeal is from District Court presided over by Community Magistrate or Community Magistrates to District Court presided over by District Court Judge

[Repealed]

Schedule 2

Amendments to other enactments

1 Title

This Act is the Bail Act 2000.

2 Commencement

This Act comes into force on 1 January 2001.

3 Interpretation

In this Act, unless the context otherwise requires,—

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

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

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

conviction includes an order; and **convicted** has a corresponding meaning

court means a court presided over by a judicial officer with authority to exercise the court's jurisdiction in relation to the matter

District Court includes a Justice or Justices, or a Community Magistrate or Community Magistrates presiding over the District Court; but does not include a Registrar

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
- (b) an attempt to commit an offence referred to in paragraph (a)

drug or alcohol condition means a condition of bail—

- (a) that is imposed under section 30(4) (alone or with any of sections 21B(2) and (3), 40(4), 53(4), and 54(4)); and
- (b) that prohibits a defendant from doing 1 or more of the following:
 - (i) using (as defined in this section) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

- (a) a controlled drug used by the person;
- (b) a psychoactive substance used by the person;
- (c) alcohol consumed by the person

electronic monitoring address or **EM address** means the address, specified by a judicial officer or Registrar or an EM assessor, 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

electronic monitoring condition or **EM condition** means a condition of bail imposed under section 30B

judicial officer has the same meaning as in section 5 of the Criminal Procedure Act 2011

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

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

psychoactive substance has the same meaning as in section 9 of the Psychoactive Substances Act 2013

Registrar means any Registrar of the High Court or of the District Court, as the case may require; and includes a Deputy Registrar.

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
- (b) in relation to any other EM address, every person who the EM assessor identifies as being a relevant occupant for the purposes of section 30G

temporary EM address means an address approved by an EM assessor under section 30N

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

using, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

working day has the same meaning as in section 5 of the Criminal Procedure Act 2011.

Section 3 **bodily sample**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **Class A controlled drug**: inserted, on 4 September 2013, by section 4(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **Class B controlled drug**: inserted, on 4 September 2013, by section 4(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **committal for trial**: repealed, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 3 **controlled drug**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **court**: inserted, on 4 September 2013, by section 4(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **District Court**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 3 **drug dealing offence**: replaced, on 4 September 2013, by section 4(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **drug or alcohol condition**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **drug or alcohol monitoring device**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **electronic monitoring address** or **EM address**: inserted, on 4 September 2013, by section 4(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **electronic monitoring assessor** or **EM assessor**: inserted, on 4 September 2013, by section 4(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **electronic monitoring condition** or **EM condition**: inserted, on 4 September 2013, by section 4(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **judicial officer**: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 3 **medical laboratory technologist**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **medical officer**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **medical practitioner**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **nurse**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **offence**: repealed, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 3 **Police bail**: inserted, on 4 September 2013, by section 4(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **Police employee**: inserted, on 4 September 2013, by section 4(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **psychoactive substance**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **Registrar**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 3 **relevant occupant**: inserted, on 4 September 2013, by section 4(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **temporary EM address**: inserted, on 4 September 2013, by section 4(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 3 **testing**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **using**: inserted, on 15 May 2017, by section 4 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 3 **working day**: inserted, on 4 September 2013, by section 4(1) of the Bail Amendment Act 2013 (2013 No 66).

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 3A: inserted, on 15 May 2017, by section 5 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

4 Act binds the Crown

This Act binds the Crown.

5 Purpose

The purpose of this Act is to reform and restate the law relating to bail.

Part 1

General provisions regarding bail

6 Application of this Part

Unless expressly stated otherwise in this or in any other enactment, any decision regarding the granting of bail under this Act is subject to the provisions of this Part.

7 Rules as to granting bail

- (1) A defendant is bailable as of right who is charged with an offence that is not punishable by imprisonment.
- (2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one against section 194 of the Crimes Act 1961 (which relates to assault on a child, or by a male on a female) or against section 49 of the Domestic Violence Act 1995 (which relate to contravention of a protection order).
- (3) *[Repealed]*

- (4) Despite anything in this section, a defendant who is charged with an offence punishable by imprisonment is not bailable as of right if the defendant has been previously convicted of an offence punishable by death or imprisonment.
- (5) Subject to sections 9 to 17, a defendant who is charged with an offence and is not bailable as of right must be released by a court on reasonable terms and conditions unless the court is satisfied that there is just cause for continued detention.

Compare: 1961 No 43 s 319

Section 7(2): amended, on 28 October 2009, by section 4 of the Bail Amendment Act 2009 (2009 No 45).

Section 7(3): repealed, on 4 September 2013, by section 5 of the Bail Amendment Act 2013 (2013 No 66).

8 Consideration of just cause for continued detention

- (1) In considering whether there is just cause for continued detention, the court must take into account—
 - (a) whether there is a risk that—
 - (i) the defendant may fail to appear in court on the date to which the defendant has been remanded; or
 - (ii) the defendant may interfere with witnesses or evidence; or
 - (iii) the defendant may offend while on bail; and
 - (b) any matter that would make it unjust to detain the defendant.
- (2) In considering whether there is just cause for continued detention under subsection (1), the court may take into account the following:
 - (a) the nature of the offence with which the defendant is charged, and whether it is a grave or less serious one of its kind;
 - (b) the strength of the evidence and the probability of conviction or otherwise;
 - (c) the seriousness of the punishment to which the defendant is liable, and the severity of the punishment that is likely to be imposed;
 - (d) the character and past conduct or behaviour, in particular proven criminal behaviour, of the defendant;
 - (e) whether the defendant has a history of offending while on bail, or breaching court orders, including orders imposing bail conditions;
 - (f) the likely length of time before the matter comes to hearing or trial;
 - (g) the possibility of prejudice to the defence in the preparation of the defence if the defendant is remanded in custody;
 - (h) any other special matter that is relevant in the particular circumstances.
- (3) *[Repealed]*

- (4) When considering an application for bail, the court must take into account any views of a victim of an offence of a kind referred to in section 29 of the Victims' Rights Act 2002, or of a parent or legal guardian of a victim of that kind, conveyed in accordance with section 30 of that Act.
- (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.
- (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) In deciding, in relation to a defendant charged with an offence against section 49 of the Domestic Violence Act 1995, whether or not to grant bail to the defendant or allow the defendant to go at large, the court's paramount consideration is the need to protect the victim of the alleged offence.

Section 8: substituted, on 1 October 2007, by section 4 of the Bail Amendment Act 2007 (2007 No 26).

Section 8(1)(a): amended, on 17 December 2008, by section 4(1) of the Bail Amendment Act 2008 (2008 No 107).

Section 8(3): repealed, on 17 December 2008, by section 4(2) of the Bail Amendment Act 2008 (2008 No 107).

Section 8(4A): inserted, on 4 September 2013, by section 6 of the Bail Amendment Act 2013 (2013 No 66).

Section 8(4B): inserted, on 4 September 2013, by section 6 of the Bail Amendment Act 2013 (2013 No 66).

Section 8(5): amended, on 28 October 2009, by section 5 of the Bail Amendment Act 2009 (2009 No 45).

9 Restriction on bail if defendant charged with treason or espionage

No defendant who is charged with a crime against section 73 or section 76 of the Crimes Act 1961 (which relate to treason) or against section 78 of the Crimes Act 1961 (which relates to espionage) may be granted bail except by order of the Governor-General or a High Court Judge.

Compare: 1961 No 43 s 318(1)

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.
- (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.
- (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.
- (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.

Section 9A: inserted, on 4 September 2013, by section 7 of the Bail Amendment Act 2013 (2013 No 66).

10 Restriction on bail if defendant with previous conviction for specified offence charged with further specified offence

- (1) This section applies to a defendant of or over the age of 17 years who is charged with a specified offence (as defined in subsection (2)), and who has 1 or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences).
- (2) In this section, **specified offence** means any offence against 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 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):
 - (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):
 - (m) section 208 (abduction for purposes of marriage or sexual connection):
 - (n) section 209 (kidnapping):
 - (o) section 232 (aggravated burglary):
 - (p) section 234 (robbery):

- (q) section 235 (aggravated robbery):
- (r) section 236 (assault with intent to rob).
- (3) 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.
- (4) 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.
- (5) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge under subsection (4)), 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.
- (6) In deciding whether or not to grant bail to a defendant to whom this section applies or 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 the victim or victims of the alleged offending, are primary considerations.

Compare: 1961 No 43 s 318(2)–(5), (7)

Section 10(2): replaced, on 4 September 2013, by section 8 of the Bail Amendment Act 2013 (2013 No 66).

11 Restriction on bail if defendant with previous conviction for specified offence found guilty or pleads guilty to further specified offence

No defendant of or over the age of 17 years who is found guilty of, or pleads guilty to, a specified offence (as defined in section 10(2)) and who has 1 or more previous convictions for a specified offence (whether those convictions were for the same specified offence or for different specified offences) may, while waiting to be sentenced or otherwise dealt with for the first-mentioned specified offence, be granted bail or allowed to go at large.

Compare: 1961 No 43 s 318(6)

12 Further restriction on bail in certain cases

- (1) This section applies to a defendant if—
 - (a) the defendant is of or over the age of 17 years and—
 - (i) is charged with an offence under the Crimes Act 1961 that carries a maximum sentence of 3 or more years' imprisonment; and
 - (ii) at the time of the alleged commission of the offence was remanded at large or on bail awaiting trial for another offence under the Crimes Act 1961 that carries a maximum sentence of 3 or more years' imprisonment; and
 - (iii) has at any time previously received a sentence of imprisonment (within the meaning of that term in section 4(1) of the Sentencing Act 2002); or

- (b) the defendant is of or over the age of 17 years and—
- (i) is charged with an offence that carries a maximum sentence of 3 or more years' imprisonment; and
 - (ii) has previously received 14 or more sentences of imprisonment (within the meaning of that term in section 4(1) of the Sentencing Act 2002); and
 - (iii) has previously been convicted of an offence that was committed while the defendant was remanded at large or on bail and that carries a maximum sentence of 3 or more years' imprisonment (whether or not the conviction resulted in any of the sentences of imprisonment referred to in subparagraph (ii)).
- (2) For the purposes of subsection (1), a sentence of imprisonment is counted whether or not it was served concurrently with any other 1 or more sentences.
- (3) 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.
- (4) 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.
- (5) In particular (but without limiting any other matters in respect of which the defendant must satisfy the Judge under subsection (4)), the defendant must satisfy the Judge on the balance of probabilities that the defendant will not, while on bail or at large, commit—
- (a) any offence involving violence against, or danger to the safety of, any other person; or
 - (b) burglary or any other serious property offence.
- (6) For the purposes of subsection (5), **serious property offence** means an offence against Part 10 of the Crimes Act 1961 punishable by imprisonment for a term of more than 7 years.
- (7) In deciding whether or not to grant bail to a defendant to whom this section applies or 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 the victim or victims of the alleged offending, are primary considerations.
- (8) For the purposes of this section, a reference in this section to a **sentence of imprisonment** includes a sentence of corrective training imposed under the Criminal Justice Act 1985 or any former Act.

Section 12(1)(a)(iii): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 12(1)(b)(ii): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 12(1)(b)(iii): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 12(2): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 12(8): added, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

13 Exercise of discretion when considering bail pending sentencing

- (1) If a defendant is found guilty or if a defendant pleads guilty, the court must not grant bail unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.
- (2) The onus is on the defendant to show cause why bail should be granted.
- (3) When considering the interests of justice under subsection (1), the court may, instead of the considerations in section 8, take into account the following considerations:
 - (a) whether the defendant is likely to receive a sentence of imprisonment:
 - (b) the likely length of time that will pass before the defendant is sentenced:
 - (c) the personal circumstances of the defendant and the defendant's immediate family:
 - (d) any other consideration that the court considers relevant.
- (4) If the defendant is unlikely to receive a sentence of imprisonment, this must count against the defendant being remanded in custody.
- (4A) Despite being satisfied that it would otherwise be in the interests of justice to grant bail, the court may remand the defendant in custody for the purpose described in subsection (4B) if it is satisfied that—
 - (a) the defendant has breached a condition of bail imposed under section 30(3); and
 - (b) there is no other reasonable means to achieve the purpose described in subsection (4B).
- (4B) The purpose referred to in subsection (4A) is to ensure that the defendant takes the steps necessary for the proceedings to be progressed within a reasonable time frame.
- (5) This section is subject to section 11.

Section 13(4A): inserted, on 5 March 2012, by section 4 of the Bail Amendment Act 2011 (2011 No 82).

Section 13(4A)(a): amended, on 15 May 2017, by section 6 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Section 13(4B): inserted, on 5 March 2012, by section 4 of the Bail Amendment Act 2011 (2011 No 82).

14 Exercise of discretion when considering bail pending appeal

- (1) This section applies if an appellant—
 - (a) is appealing his or her conviction or sentence, or both; and
 - (b) is—
 - (i) in custody; or

- (ii) in a home detention residence subject to a sentence of home detention.
- (1A) The court must not grant bail to the appellant unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.
- (2) The onus is on the appellant to show cause why bail should be granted.
- (3) When considering the interests of justice under subsection (1A) the court may, instead of the considerations in section 8, take into account the following considerations:
 - (a) the apparent strength of the grounds of appeal:
 - (b) the length of the sentence that has been imposed on the appellant:
 - (c) the likely length of time that will pass before the appeal is heard:
 - (d) the personal circumstances of the appellant and the appellant's immediate family:
 - (e) any other consideration that the court considers relevant.

Section 14(1): replaced, on 17 December 2016, by section 8(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 14(1A): inserted, on 17 December 2016, by section 8(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 14(3): amended, on 17 December 2016, by section 8(2) of the Statutes Amendment Act 2016 (2016 No 104).

Special provision as to bail of young persons remanded

Heading: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

15 Granting of bail to defendant who is 17 years of age

- (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—
 - (a) the defendant appears to the court to be 17 years of age; and
 - (b) the defendant has not previously been sentenced to imprisonment.
- (2) Subsection (1) is subject to—
 - (a) sections 7 (except subsection (5)), 9 to 12, and 16 to 17A; and
 - (b) section 175 of the Criminal Procedure Act 2011,—
 but no other enactment.
- (3) Subject to sections 171(1) and 172(1) of the Criminal Procedure Act 2011 and to the Oranga Tamariki Act 1989, this section applies in respect of a defendant

who is under the age of 17 years and who is charged with or convicted of any offence in the District Court or the High Court.

Compare: 1985 No 120 s 142(4)

Section 15 heading: amended, on 4 September 2013, by section 9(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 15(1): replaced, on 4 September 2013, by section 9(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 15(2)(a): amended, on 4 September 2013, by section 9(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 15(2)(b): replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 15(3): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 15(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 15(3): amended, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Special provisions in respect of bail for drug dealing offences

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.

Section 16: replaced, on 4 September 2013, by section 10 of the Bail Amendment Act 2013 (2013 No 66).

17 Bail for drug dealing offence may be continued or renewed by District Court

[Repealed]

Section 17: repealed, on 4 September 2013, by section 11 of the Bail Amendment Act 2013 (2013 No 66).

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.
- (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.
- (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).

Section 17A: inserted, on 4 September 2013, by section 12 of the Bail Amendment Act 2013 (2013 No 66).

General provisions relating to bail hearings

18 Bail hearing may be in private

A court may, having regard to the interests of the defendant or any other person and to the public interest, order that the whole or any part of an application for bail or an appeal against a bail decision be heard in private.

19 Publication of matters relating to hearing

- (1) No person may publish a report or account of any matters dealt with at a bail hearing, apart from the following matters:
 - (a) the identity of the defendant applying for bail;
 - (b) the charges faced by the defendant;
 - (c) the decision of the court on the application;
 - (d) the conditions of bail, if bail is granted.
- (2) Despite subsection (1), a court may make an order—
 - (a) that permits publication of other details; or
 - (b) that prohibits publication of all or any of the details set out in subsection (1)(a) to (d).
- (3) The general prohibition on publication of details of a bail hearing under subsection (1), and any specific prohibition that is ordered under subsection (2)(b), applies until—
 - (a) the conclusion of the defendant's trial; or
 - (b) any earlier time ordered by the court.
- (4) For the purposes of subsection (3), the **conclusion of the defendant's trial** means—
 - (a) the expiry of the appeal period for an appeal of the decision or verdict at the defendant's trial; or
 - (b) if the decision or verdict is appealed, the date on which that appeal is finally determined or withdrawn.
- (5) Every person commits an offence who knowingly or recklessly publishes details of a bail hearing in breach of subsection (1), or in breach of any specific prohibition that is ordered under subsection (2), and is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months:
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (6) Every person commits an offence who publishes details of a bail hearing in breach of subsection (1), or in breach of any specific prohibition that is ordered under subsection (2), and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$25,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.
- (7) Subsection (6) does not apply to a person who hosts material on websites or other electronic retrieval systems that can be accessed by a user unless the specific details have been placed or entered on the site or system by that person.
- (8) In a prosecution for an offence against subsection (6), it is not necessary for the prosecution to prove that the defendant intended to commit an offence.
- Section 19: replaced, on 5 March 2012, by section 5 of the Bail Amendment Act 2011 (2011 No 82).

20 Evidence in bail hearing

- (1) In hearing an application for bail a court may receive as evidence any statement, document, information, or matter that it considers relevant, whether or not it would be otherwise admissible in a court of law.
- (2) Despite subsection (1), when considering the matter described in section 8(2)(b),—
- (a) the court may only consider a statement, document, information, or matter that would be admissible in a court of law if made by the appropriate person or given or produced in proper form; but
 - (b) for the purpose of the bail hearing, it does not matter whether the evidence—
 - (i) is given or produced by the appropriate person or given or produced in sworn or unsworn form; or
 - (ii) is otherwise given or produced in a form in which it would be admissible in a court of law.

Section 20(2): substituted, on 19 December 2002, by section 3 of the Bail Amendment Act 2002 (2002 No 57).

Part 2 Police bail

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.
- (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.
- (4) Despite section 7, no person is entitled to be granted Police bail under this section as of right.

Section 21: replaced, on 4 September 2013, by section 13 of the Bail Amendment Act 2013 (2013 No 66).

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).
- (2) A notice of Police bail must—
 - (a) state—
 - (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
 - (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.
- (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 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.

Section 21A: inserted, on 4 September 2013, by section 13 of the Bail Amendment Act 2013 (2013 No 66).

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).
- (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
- (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.

Section 21B: inserted, on 4 September 2013, by section 13 of the Bail Amendment Act 2013 (2013 No 66).

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—
 - (a) the victim of the alleged offence; and
 - (b) any particular person residing with the victim.

- (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

violence has the same meaning as in section 3(2), (4), and (5) of the Domestic Violence Act 1995.

Section 22: replaced, on 4 September 2013, by section 13 of the Bail Amendment Act 2013 (2013 No 66).

23 Bail and breach of protection order

- (1) If a person is arrested under section 50 of the Domestic Violence Act 1995 and charged with an offence against section 49 of that Act, the person must not be released on bail by a Police employee under section 21 during the 24 hours immediately following the arrest.
- (2) Nothing in subsection (1) limits or affects the obligation of the Police to bring a person who is charged with an offence before a court as soon as possible.
- (3) If a person to whom subsection (1) applies is not brought before a court during the 24 hours immediately following the arrest, the person may, at the expiry of that period, be released on bail by a Police employee under section 21.
- (4) If a person to whom subsection (1) applies has also been charged with 1 or more other offences arising out of the same incident, the person must not be released on bail by a Police employee under section 21 in respect of any of

those offences during the 24 hours immediately following the arrest for an offence against section 49 of the Domestic Violence Act 1995.

Compare: 1995 No 86 s 51

Section 23(1): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 23(3): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 23(4): amended, on 28 October 2009, by section 7 of the Bail Amendment Act 2009 (2009 No 45).

Section 23(4): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

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 adjourned 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
 - (b) a fine not exceeding \$1,000.

Section 24: replaced, on 4 September 2013, by section 14 of the Bail Amendment Act 2013 (2013 No 66).

25 Effect on bond of attendance or non-attendance of person bailed by constable

[Repealed]

Section 25: repealed, on 4 September 2013, by section 15 of the Bail Amendment Act 2013 (2013 No 66).

26 Breach of condition of Police bail

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.

Section 26: replaced, on 4 September 2013, by section 16 of the Bail Amendment Act 2013 (2013 No 66).

Part 3

Court bail

Part 3: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Subpart 1—Granting of bail on adjournment

Subpart 1 heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

27 Bail on adjournment

- (1) In any case referred to in section 168(1) of the Criminal Procedure Act 2011 (which relates to dealing with a defendant on adjournment), a judicial officer may grant the defendant bail under this section.
- (2) A Registrar may exercise the power conferred by subsection (1) to grant bail if the prosecutor agrees.

Section 27: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

28 Warrant for detention of defendant remanded on bail

If the defendant is granted bail under section 27 but the defendant is not released within the period specified in section 31(3)(a), a judicial officer or Registrar may—

- (a) issue a warrant for the detention of the defendant in custody until a date, time, and place appointed for bail to be reconsidered (which date and time must be as soon as reasonably practicable); and
- (b) certify on the warrant the fact that the judicial officer or Registrar has granted the defendant bail, and the condition or conditions imposed.

Section 28: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 28(a): amended, on 4 September 2013, by section 17(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 28(b): amended, on 4 September 2013, by section 17(2) of the Bail Amendment Act 2013 (2013 No 66).

29 Defendant, ifailable as of right, to be brought before court on request

- (1) A defendant who isailable as of right must, if the defendant so requests, be brought before a court for the purpose of making an application for bail if—
 - (a) the defendant has been remanded in custody under section 168 of the Criminal Procedure Act 2011; and
 - (b) the defendant did not make application for bail under this Act at the time of the remand.
- (2) The application may be granted as if it were an application made at the time at which the defendant was remanded.
- (3) If bail is granted under this section, the particulars required to be certified by the judicial officer or Registrar under section 28(b) must be certified in writing

by the court granting bail, and forwarded to the prison manager of the prison in which the defendant is detained under the remand warrant.

Section 29: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

30 Conditions of bail

- (1) Subject to sections 31 and 40, if a defendant is granted bail, the defendant must be released on condition that the defendant attend personally—
 - (a) at the time and place at which the hearing is adjourned; or
 - (b) at every time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.
- (2) A judicial officer or Registrar may impose, as further conditions 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 subsection (2)(a) unless the prosecution agrees.
- (3) When considering bail pending sentencing, a judicial officer or Registrar may impose any condition that the judicial officer or Registrar considers reasonably necessary to ensure that the defendant takes the steps necessary for the proceedings to be progressed within a reasonable timeframe.
- (4) Whether or not the judicial officer or Registrar imposes a condition under subsection (2) or (3), the judicial officer or Registrar may impose any other condition that the judicial officer or Registrar considers reasonably necessary to ensure that the defendant—
 - (a) appears in court on the date to which the defendant has been remanded; and
 - (b) does not interfere with any witness or any evidence against the defendant; and
 - (c) does not commit any offence while on bail.
- (4A) However, a Registrar must not impose a drug or alcohol condition under subsection (4) unless the defendant consents to the condition being imposed.
- (5) Despite subsection (4), the judicial officer or Registrar must not require as a further condition of the defendant's release the deposit of any sum or the entering into of any obligation in the nature of a bond, guarantee, or surety, whether by the defendant or any other person.
- (6) Subsection (5) does not apply if bail is granted by the High Court.

Section 30: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 30(2): replaced, on 4 September 2013, by section 18 of the Bail Amendment Act 2013 (2013 No 66).

Section 30(2A): inserted, on 4 September 2013, by section 18 of the Bail Amendment Act 2013 (2013 No 66).

Section 30(4A): inserted, on 15 May 2017, by section 7 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

30AA Imposition, and effect, of drug or alcohol condition

- (1) This section applies if a judicial officer or Registrar imposes a drug or alcohol condition on a defendant under section 30(4) (alone or with any of sections 40(4), 53(4), and 54(4)).
- (2) The judicial officer or Registrar cannot direct, indicate, or require that the defendant undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the defendant to comply with all requirements arising from an authorised person giving the defendant notice under section 30T(1).
- (3) The judicial officer or Registrar must advise the defendant that the defendant must do any 1 or more of the following things if required to do so by notice given to the defendant by an authorised person under section 30T(1):
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol;
 - (b) submit to continuous monitoring of the defendant's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the defendant's body;
 - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.
- (4) To avoid doubt, this section does not apply to a defendant who has been granted Police bail with a drug or alcohol condition.

Section 30AA: inserted, on 15 May 2017, by section 8 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Electronic monitoring condition

Heading: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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
- (b) does not interfere with any witnesses or any evidence against the defendant; and
- (c) does not commit any offence while on bail.

Section 30A: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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

Section 30B: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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).

Section 30C: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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.
- (3) The defendant must, as soon as practicable after receiving a notice of the hearing, serve a copy of the application on—
 - (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.

Section 30D: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30E Responsibility for management of EM bail

- (1) The Minister of Justice, in consultation with the Minister of Police and the Minister of Corrections, may, by notice in writing, nominate 1 or both of the following as the person or persons responsible for the management of EM bail:
 - (a) the Commissioner of Police;
 - (b) the chief executive of the Department of Corrections.
- (2) The person or persons nominated under subsection (1) are responsible for the management of EM bail and may authorise their respective employees to act as EM assessors.
- (3) The Minister of Justice may make a nomination under subsection (1) from time to time, and, in consultation with the Minister of Police and the Minister of Corrections, may revoke a nomination by notice in writing to the person concerned.

Section 30E: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30F EM reports

- (1) If a defendant applies under section 30D for bail with an EM condition, the court or a Registrar may direct that an EM assessor prepares an EM report in relation to the application or, if satisfied that a previous EM report is sufficient, may direct that the previous EM report be used 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.
- (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;
 - (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:

- (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:
 - (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;
 - (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.

Section 30F: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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.
- (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
 - (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
 - (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.

Section 30G: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30H Use of information obtained for EM report

- (1) The uses to which information obtained for the purpose of preparing an EM report under section 30F may be put are the following:
 - (a) use in the determination of the application to which the report relates;
 - (b) use in the preparation of a pre-sentence report under section 26 of the Sentencing Act 2002 in relation to the defendant;
 - (c) any other use to which the defendant has consented.
- (2) EM information may not be used except in accordance with subsection (1).

Section 30H: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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—
 - (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
 - (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 appropriate for the purpose of bail with an EM condition; and
 - (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.
- (2) In considering whether to grant bail with an EM condition, the court—
 - (a) must consider the EM report or previous EM report referred to in section 30F(1); and
 - (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.

Section 30I: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30J Court must specify EM address

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

Section 30J: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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—
 - (a) show the area to the defendant; and
 - (b) advise the relevant occupants of the area.

Section 30K: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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
 - (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
 - (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
 - (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 or an EM assessor; 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

- (h) not tamper with or damage the electronic monitoring equipment or do anything with the intention of interfering with the functioning of that equipment.
- (2) A breach by a defendant of an obligation under subsection (1) is a breach of the EM condition.

Section 30L: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

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.
- (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—
 - (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.

Section 30M: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30N EM assessor may approve temporary EM address

- (1) If the EM address becomes unsuitable or unavailable through a change of circumstances (including the withdrawal of consent of a relevant occupant),—
 - (a) an EM assessor may approve a temporary EM address; and
 - (b) within 5 working days after approving a temporary EM address, the EM assessor must make an application under section 33(1)(b) or 34(1)(b) for a variation of the EM address.
- (2) Subsection (1)(b) does not apply if, within 5 working days after approval of the temporary EM address, the defendant makes an application under section 33(1)(a) or 34(1)(a) for a variation of the EM address.
- (3) The defendant must remain at the temporary EM address pending the determination of the application for variation, and section 30L(1)(b) to (g), and (2) apply as if the temporary EM address was the EM address.
- (4) If, in the opinion of the EM assessor, there is no suitable temporary EM address available, the EM assessor must notify the Police and the defendant without delay, and the defendant must surrender himself or herself to Police custody.

Section 30N: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30O 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:

- (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:
- (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.

Section 30O: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30P 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.

Section 30P: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30Q Defendant on bail with EM condition not in custody

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

Section 30Q: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30R 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.

Section 30R: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

30S 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.

Section 30S: inserted, on 4 September 2013, by section 19 of the Bail Amendment Act 2013 (2013 No 66).

Testing and monitoring of defendants on bail with drug or alcohol conditions

Heading: inserted, on 15 May 2017, by section 9 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

30T Defendant on bail (other than Police bail) with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) An authorised person may, by notice given to a defendant who is on bail (other than Police bail) with a drug or alcohol condition, require the defendant to do any 1 or more of the following:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 73AA(1)(a):
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the defendant's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under section 73AA(1)(d):
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 73AA(1)(a).
- (2) An authorised person exercising that person's discretion under subsection (1)—
 - (a) must comply with any rules made under section 73AA(1); and
 - (b) may—
 - (i) select a defendant to do what is specified in subsection (1)(a), (b), or (c) in any manner (including randomly); and
 - (ii) make a determination in respect of the defendant with or without evidence that the defendant has breached the condition; and
 - (c) must, if requiring the defendant to do what is specified in subsection (1)(a) or (c), determine the prescribed testing procedure to be used for the testing required under subsection (1)(a), or required if the defendant is selected to undergo testing by an automated system that the defendant is required to contact under subsection (1)(c).
- (3) A notice given to a defendant under subsection (1)(b) may include a requirement that the defendant comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or

protect it from events, such as submersion in water, that may damage it or interfere with its functioning).

- (4) An automated system specified in a notice given under subsection (1)(c) must include an automated selection method that determines, in any manner consistent with rules made under section 73AA(1)(b) (including randomly), whether a defendant is required to undergo testing.
- (5) Only a medical practitioner or medical officer may collect a blood sample from a defendant under this section.
- (6) In this section and in sections 30U to 30X, **authorised person** means a person who is—
 - (a) a constable; or
 - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require defendants to undergo testing, or submit to continuous monitoring, under this section.

Section 30T: inserted, on 15 May 2017, by section 9 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

30U How notice of requirement to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give a defendant a notice under section 30T(1) in any of the following ways:
 - (a) by giving the notice personally and in writing to the defendant:
 - (b) by giving the notice personally and orally to the defendant, then, unless the notice requires the defendant only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the defendant:
 - (c) if the notice is given under section 30T(1)(a), by giving the notice by telephone or other means of electronic communication (as defined in section 209 of the Contract and Commercial Law Act 2017) to the defendant, then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the defendant.
- (2) An automated system must, in response to a defendant contacting it as required by a notice given under section 30T(1)(c) and subsection (1), give the defendant a spoken or written response notice specifying whether the defendant is required to undergo testing.
- (3) A notice given by an authorised person under subsection (1)(c), or a response notice that is given by an automated system under subsection (2) and that requires a defendant to undergo testing, must specify the name and location of a testing facility to which the defendant is required to report to undergo testing, and the time or times when the defendant is required to report, under section 30V.

Section 30U: inserted, on 15 May 2017, by section 9 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

30V Where prescribed testing procedure may be carried out

- (1) An authorised person may require a defendant to undergo testing at the place where the defendant is given notice under section 30T(1) personally by the authorised person.
- (2) Subsection (1) applies even if the place where the defendant is given notice personally by the authorised person is—
 - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the defendant's residential address.
- (3) However, a defendant cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.
- (4) A defendant given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if subsection (3) applies or if it is not reasonably practicable to require the defendant to undergo testing at the place where the defendant is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the defendant to undergo testing.
- (5) A defendant given a notice under section 30U(1)(c) or (2) that requires the defendant to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

Section 30V: inserted, on 15 May 2017, by section 9 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

30W Breach of drug or alcohol condition

- (1) A defendant on bail with a drug or alcohol condition breaches the condition if the defendant—
 - (a) uses a controlled drug or a psychoactive substance, or consumes alcohol, in contravention of the condition; or
 - (b) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under sections 30T(1)(a) and 30V; or
 - (ii) to submit to continuous monitoring when required to do so under section 30T(1)(b); or
 - (iii) to comply with instructions specified in a notice given under section 30T(1)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or

- (iv) to accompany an authorised person, when required to do so under section 30V(4), to a place where it is likely that it will be reasonably practicable for the defendant to undergo testing; or
 - (v) to contact a specified automated system when required to do so under section 30T(1)(c); or
 - (vi) to report, at any time or times when required to do so under section 30V(5), to a specified testing facility to undergo testing; or
 - (vii) to undergo a testing procedure when required to do so under sections 30T(1)(c) and 30V; or
 - (viii) to allow 1 or more persons specified in subsection (2) to enter the defendant's residential address for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant:
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; or
 - (c) does anything with the intention of diluting or contaminating a bodily sample required under section 30T(1)(a) or (c) for the purposes of a prescribed testing procedure; or
 - (d) tampers with a drug or alcohol monitoring device required under section 30T(1)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) The persons referred to in subsection (1)(b)(viii) are—
- (a) an authorised person who has produced evidence of that person's identity to the defendant; and
 - (b) a person accompanying a person described in paragraph (a); and
 - (c) a person who—
 - (i) has produced evidence of that person's identity to the defendant; and
 - (ii) is authorised in writing by an authorised person to enter the defendant's residential address for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant:
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the defendant.

- (3) Subsection (1)(b) to (d) does not apply to a defendant who has been granted Police bail with a drug or alcohol condition.

Section 30W: inserted, on 15 May 2017, by section 9 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

30X Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 30T(1)—
- (a) may be used for all or any of the following purposes:
- (i) verifying compliance by the defendant with a drug or alcohol condition;
 - (ii) detecting non-compliance by the defendant with a drug or alcohol condition, and providing evidence of that non-compliance;
 - (iii) verifying that the defendant has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the defendant has requested, or consented to, the information being used; and
- (b) must not, except at the request or with the consent of the defendant, be used as evidence that the defendant committed an offence or for any other purpose not listed in paragraph (a).
- (2) A judicial officer or court may, in the absence of evidence that is available to the judicial officer or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
- (a) is accurate; and
 - (b) was obtained in the manner required by sections 30T to 30V.

Section 30X: inserted, on 15 May 2017, by section 9 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Procedures after defendant granted bail

Heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

31 Release of defendant granted bail

- (1) If a defendant is granted bail, the Registrar must prepare a notice of bail or a bail bond (whichever is applicable) setting out the conditions of bail imposed by or under section 30.
- (1A) If electronic monitoring is a condition of bail, the notice of bail must—
- (a) state the EM address; and
 - (b) list the defendant's obligations, set out in section 30L, under an EM condition.

- (2) The Registrar or (as the case may require) the judicial officer or prison manager of the prison in which the defendant is detained must—
- (a) give the notice of bail or bail bond to the defendant; and
 - (b) be satisfied that the defendant understands the conditions of bail; and
 - (c) require the defendant to authenticate the notice of bail or bail bond.
- (3) If a defendant is granted bail, the judicial officer or Registrar may direct that the defendant be detained in the custody of the Court—
- (a) for such time, not exceeding 2 hours, as may be necessary to enable the notice of bail or bail bond to be prepared and authenticated; and
 - (b) if, within the period of 2 hours, the defendant is not released (whether by reason of having refused to authenticate the notice of bail or bail bond or for any other reason), for such time as may be necessary to enable a warrant to be issued under section 28.
- (4) If bail is granted to a defendant who has been remanded in custody and is in custody only under the warrant issued in respect of the remand, the defendant must be released from custody as soon as is reasonably practicable after the defendant has authenticated the notice of bail or bail bond.
- (5) A copy of the notice of bail or bail bond must be given to the defendant on his or her release or as soon as practicable after that.

Section 31: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 31(1A): inserted, on 4 September 2013, by section 20(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 31(2)(c): amended, on 4 September 2013, by section 20(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 31(3)(a): amended, on 4 September 2013, by section 20(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 31(3)(b): amended, on 4 September 2013, by section 20(4) of the Bail Amendment Act 2013 (2013 No 66).

Section 31(4): amended, on 4 September 2013, by section 20(5) of the Bail Amendment Act 2013 (2013 No 66).

32 Warrant of deliverance

[Repealed]

Section 32: repealed, on 4 September 2013, by section 21 of the Bail Amendment Act 2013 (2013 No 66).

33 Variation of conditions of bail in District Court

- (1) If the proceeding for the offence with which the defendant has been charged is in the District Court, the court may,—
- (a) on the application of the defendant or the prosecutor, make an order varying or revoking any condition of bail or substituting any other condition of bail; and

- (b) on the application of an EM assessor, make an order varying the EM address.
- (1A) However, in the case of the variation of an EM condition, the court may only make the following orders under subsection (1)(a) 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 the court makes an order under subsection (1) in relation to an EM condition, sections 30A to 30S apply to the extent necessary and with the necessary modifications.
- (2) If the proceedings for the offence with which the defendant is charged are transferred to the High Court, any application for an order varying or revoking any condition of bail or substituting or imposing any other condition of bail must be made to the court to which the proceedings have been transferred.
- (3) A Registrar may exercise the power conferred by subsection (1) to make an order if the prosecutor agrees.
- (4) If a court or Registrar has, in granting bail to any defendant, imposed the condition that the defendant report to the Police at such time or times and at such place or places as the court or Registrar orders, any Registrar may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to so report.
- (5) If the District Court or a Registrar varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply:
- (a) if the defendant is present at the court, the Registrar must—
 - (i) as soon as is reasonably practicable prepare a new notice of bail setting out the conditions of bail as amended (if any); and
 - (ii) be satisfied that the defendant understands the conditions of bail; and
 - (iii) require the defendant to authenticate the notice of bail:
 - (b) if the defendant is not present at the court, the Registrar must send written notice to the defendant requiring the defendant to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions as amended (if any).
- (6) If, in any case to which subsection (5) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to authenticate a fresh notice of bail, the Registrar or a District Court Judge may issue a warrant for the arrest of the defendant.

- Section 33: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).
- Section 33 heading: amended, on 4 September 2013, by section 22(1) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(1): replaced, on 4 September 2013, by section 22(2) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).
- Section 33(1A): inserted, on 4 September 2013, by section 22(3) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(1B): inserted, on 4 September 2013, by section 22(3) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(2): amended, on 4 September 2013, by section 22(4) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(4): amended, on 4 September 2013, by section 22(5) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).
- Section 33(5)(a)(iii): amended, on 4 September 2013, by section 22(6) of the Bail Amendment Act 2013 (2013 No 66).
- Section 33(6): amended, on 4 September 2013, by section 22(7) of the Bail Amendment Act 2013 (2013 No 66).

34 Variation of conditions of bail in High Court, Court of Appeal, or Supreme Court

- (1) Subject to subsection (3), if a defendant is granted bail in any proceeding to which section 33(1) does not apply, a High Court Judge may,—
- (a) on the application of the prosecutor or the defendant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail; and
 - (b) on the application of an EM assessor, make an order varying the EM address.
- (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)(a) 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 30S apply to the extent necessary and with the necessary modifications.
- (2) Subject to subsection (3), if a court or Registrar has, in granting bail to a defendant, imposed the condition that the defendant report to the Police at such times and at such place or places as the court or Registrar orders, any Registrar

- may, on the application of the defendant, make an order varying the time or times or the place or places at which the defendant is required to report.
- (3) No application may be made under subsection (1) or (2) in respect of a bail bond that has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented to the making of the application.
- (4) If a court varies or revokes any condition of bail or substitutes or imposes any other condition of bail under subsection (1), the following provisions apply:
- (a) if the defendant is present at the court, the Registrar must—
 - (i) as soon as is reasonably practicable prepare a new bail bond setting out the conditions of bail as amended (if any); and
 - (ii) satisfy himself or herself that the defendant granted bail understands the conditions of bail; and
 - (iii) require the defendant to authenticate the bail bond:
 - (b) if the defendant is not present at the court, the Registrar of the court that varied or revoked or substituted or imposed the condition must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions as amended (if any).
- (5) If, in any case to which subsection (4) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a Judge, who may issue a warrant for the arrest of the defendant.

Section 34: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 34 heading: replaced, on 4 September 2013, by section 23(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(1): replaced, on 4 September 2013, by section 23(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(1A): inserted, on 4 September 2013, by section 23(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(1B): inserted, on 4 September 2013, by section 23(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(2): replaced, on 4 September 2013, by section 23(4) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(4): amended, on 4 September 2013, by section 23(5) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(4)(a): amended, on 4 September 2013, by section 23(5) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(4)(a)(iii): amended, on 4 September 2013, by section 23(6) of the Bail Amendment Act 2013 (2013 No 66).

Section 34(4)(b): amended, on 4 September 2013, by section 23(5) of the Bail Amendment Act 2013 (2013 No 66).

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 no suitable temporary EM address is available; and
 - (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.
- (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 Oranga Tamariki Act 1989 apply with any necessary modifications.

Section 34A: inserted, on 4 September 2013, by section 24 of the Bail Amendment Act 2013 (2013 No 66).

Section 34A(3): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

35 Defendant on bail may be arrested without warrant in certain circumstances

- (1) Any constable may arrest without warrant a defendant who has been released on bail by a court or Registrar or Police employee if the constable believes on reasonable grounds that—
 - (a) the defendant has absconded or is about to abscond for the purpose of evading justice; or
 - (b) the defendant has contravened or failed to comply with any condition of bail.
- (2) A defendant who is arrested under subsection (1) must,—
 - (a) if released on bail by the District Court, a Registrar, or a Police employee in relation to a category 1, 2, or 3 offence, be brought before the District Court as soon as possible, 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.
- (3) In any such case, the judicial officer, on being satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, must reconsider the question of bail.

- (4) After a defendant has been arrested under subsection (1), the defendant cannot be bailed as of right and is bailable only under section 7(5).
- (5) This section does not apply if section 36 applies.
- (6) Nothing in this section prevents a constable from seeking a warrant to arrest a defendant under section 37.

Section 35: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 35(1): amended, on 4 September 2013, by section 25(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 35(2): replaced, on 4 September 2013, by section 25(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 35(2)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

36 Arrest of defendant charged with drug dealing offence

- (1) If a defendant has been released on bail under section 16, any constable may arrest the defendant without warrant if—
 - (a) the constable believes on reasonable grounds that the defendant has absconded or is about to abscond for the purpose of evading justice; or
 - (b) the Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice, and the constable is satisfied that there are reasonable grounds for that belief; or
 - (c) the constable believes, on reasonable grounds, that the defendant has broken, is breaking, or is about to break, any condition of bail (whether imposed under section 30 or otherwise); or
 - (d) the Police have been notified by any surety for the defendant that the surety believes that the defendant has broken, is breaking, or is about to break, any such condition of bail, and the constable is satisfied that there are reasonable grounds for that belief.
- (2) A defendant who has been arrested under subsection (1) must be brought before a High Court Judge or a District Court Judge as soon as possible, and in any event not later than 72 hours after the arrest.
- (3) If a defendant is brought before a Judge under subsection (2), the Judge must, if satisfied on the balance of probabilities that the defendant has absconded or was about to abscond, remand the defendant in custody.
- (4) If a defendant is brought before a Judge under subsection (2), the Judge may,—
 - (a) if satisfied on the balance of probabilities that the defendant has broken, was breaking, or was about to break any condition of bail, remand the defendant in custody; or
 - (b) release the defendant.

- (5) If a defendant is released under subsection (4)(b), the defendant's bail continues in force in all respects as if the defendant had not been arrested under subsection (1).
- (6) Despite subsections (4)(b) and (5), if a defendant was arrested under subsection (1)(d), the Judge may release the defendant under subsection (4)(b) only if—
 - (a) the surety consents in writing to the release; or
 - (b) a fresh bail bond is issued.
- (7) Nothing in this section prevents a constable from seeking a warrant to arrest a defendant under section 37.

Section 36: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 36(2): amended, on 4 September 2013, by section 26(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 36(3): amended, on 4 September 2013, by section 26(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 36(4): amended, on 4 September 2013, by section 26(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 36(5): amended, on 4 September 2013, by section 26(4) of the Bail Amendment Act 2013 (2013 No 66).

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.
- (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—
 - (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—
 - (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
 - (iii) has produced that written authority to A.

Section 36A: inserted, on 4 September 2013, by section 27 of the Bail Amendment Act 2013 (2013 No 66).

37 Issue of warrant to arrest defendant absconding or breaching bail condition or who fails to answer bail

- (1) A judicial officer or Registrar may issue a warrant for the arrest of a defendant if—

- (a) the judicial officer or Registrar is satisfied by evidence on oath that—
 - (i) the defendant has absconded or is about to abscond for the purpose of evading justice; or
 - (ii) the defendant has contravened or failed to comply with any condition of bail; or
- (b) the defendant—
 - (i) does not attend personally at the time and place specified in the notice of bail or, as the case may be, the bail bond; or
 - (ii) does not attend personally at any time or place to which during the course of the proceedings the hearing has been adjourned.
- (2) A warrant to arrest a defendant under this section must be directed to a constable by name or generally to every constable.
- (3) The warrant may be executed by any constable.
- (4) For the purpose of executing a warrant issued under this section, the constable executing it may at any time enter on to any premises, by force if necessary, if the constable has reasonable grounds to believe that the defendant against whom it is issued is on those premises.
- (5) The constable executing the warrant—
 - (a) must have the warrant, or a copy of it, with him or her; and
 - (b) must produce it, or a copy of it, on initial entry and, if requested, at any subsequent time; and
 - (c) if he or she is not in uniform, produce evidence that he or she is a constable.
- (6) If a defendant is arrested under a warrant issued under this section,—
 - (a) section 35(2) to (4) apply as if the defendant had been arrested under section 35(1); and
 - (b) in the case of a person who is charged with or convicted of a drug dealing offence and who has been released on bail in relation to that offence, section 36(2) to (6) apply as if the defendant had been arrested under section 36(1).
- (7) In this section, **judicial officer or Registrar** means, in relation to proceedings for the offence with which the defendant is charged,—
 - (a) for proceedings in the District Court, a judicial officer or Registrar of the District Court;
 - (b) for proceedings in the High Court, a Judge or Registrar of the High Court;
 - (c) for proceedings in the Court of Appeal or the Supreme Court, a Judge or Registrar of the High Court.

Section 37: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 37(1): amended, on 4 September 2013, by section 28(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 37(7): replaced, on 4 September 2013, by section 28(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 37(7)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

38 Failure to answer bail

A defendant commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$2,000 who, having been released on bail by the Supreme Court, the Court of Appeal, the High Court, the District Court, or a Registrar,—

- (a) fails without reasonable excuse to attend personally at the time and the court specified in the notice of bail or bail bond; or
- (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned; or
- (c) fails without reasonable excuse to comply with any condition imposed under section 40(3).

Section 38: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 38: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

39 Non-performance of condition of bail may be certified and recorded

- (1) If a defendant who has been released on bail at any time fails to comply with any condition of bail, a judicial officer may certify on the notice of bail or, as the case may require, the bail bond the non-performance of that condition.
- (2) A certificate given by a judicial officer under subsection (1) is, in the absence of proof to the contrary, sufficient evidence for the purposes of sections 24 and 38 that the defendant has failed to comply with the condition of the notice of bail or bail bond specified in the certificate.
- (3) In addition to the certification described in subsection (1), if a defendant who has been released on bail at any time fails to comply with any condition of bail, without reasonable excuse, a judicial officer must direct the Registrar that the nature of the condition and the non-performance of the condition be entered in the court record kept in accordance with section 184 of the Criminal Procedure Act 2011.
- (4) Despite subsection (3), the judicial officer may decide not to direct that the failure to comply be entered in the court record if in the judicial officer's opinion the failure to comply is of such a minor nature that it does not warrant being taken into account when considering an application for bail from the defendant on a subsequent occasion.

- (5) A failure to comply with any condition of bail that is entered in the court record under subsection (3) may be considered in any subsequent application for bail made by that defendant over his or her lifetime.
- (6) In this section, **judicial officer** means—
- (a) any judicial officer, if the defendant was released on bail by the District Court, a Registrar, or a 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:
- (b) a Judge, if any of the matters set out in paragraph (a) do not apply.

Section 39: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 39(1): amended, on 4 September 2013, by section 29(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 39(3): amended, on 4 September 2013, by section 29(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 39(6): replaced, on 4 September 2013, by section 29(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 39(6)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

39A Court must order bail money to be paid to the Crown unless justice, etc, requires money to be returned to surety

- (1) If a defendant's failure to comply with a condition of bail has been entered in the court record under section 39(3), any money paid by a surety under a bail bond is forfeited.
- (2) The court must order money forfeited under a bail bond to be paid to the Crown, unless the court considers that equity and good conscience and the real merits and justice of the case require the money to be returned to the surety.

Compare: 1950 No 54 s 21

Section 39A: inserted, on 8 September 2018, by section 39(2) of the Statutes Amendment Act 2018 (2018 No 27).

Subpart 2—Bail on deferment of sentence

Subpart 2 heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

40 Bail on deferment of sentence

- (1) This section applies if the start date of a sentence imposed on an offender is deferred under section 80W or 100 of the Sentencing Act 2002 and the offender is not liable to be detained under any other sentence or order.
- (2) If this section applies, the court that defers the start date of the offender's sentence must grant the offender bail.
- (3) An offender who is granted bail under this section must be released on condition that the offender must,—

- (a) if the sentence is deferred under section 80W of the Sentencing Act 2002,—
 - (i) go to and remain at the home detention residence (as defined in section 4 of that Act) at the expiry of the period of deferral specified by the court, unless absent in accordance with section 80C(3)(a) or (b) of that Act; and
 - (ii) advise a probation officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence; or
- (b) if the sentence is deferred under section 100 of the Sentencing Act 2002, surrender himself or herself to the prison manager of the prison concerned at the expiry of the period of deferral specified by the court.
- (4) The provisions of sections 30 to 39, and 44 to 52, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.
- (5) If any decision is made by the District Court under section 33(1) (as applied by subsection (4)) in respect of an offender, the provisions of section 44(3) to (6) and section 45, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.
- (6) If any decision is made by the High Court under section 34(1) (as applied by subsection (4)) in respect of an offender, the provisions of sections 47 and 48, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.

Section 40: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 40(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Subpart 3—Appeals on question of bail

Subpart 3 heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Appeals from decisions of Justices or Community Magistrates

Heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

41 Appeals from decisions of Justices or Community Magistrates relating to bail

- (1) If a Justice or Justices or a Community Magistrate or Community Magistrates refuse to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the District Court presided over by a District Court Judge against that refusal.
- (2) If a Justice or Justices or a Community Magistrate or Community Magistrates grant bail to a defendant (whether before or after conviction), the prosecutor

may appeal to the District Court presided over by a District Court Judge against that decision.

- (3) Subsection (4) applies if, in respect of any grant of bail to a defendant (whether before or after conviction),—
 - (a) a Justice or Justices or a Community Magistrate or Community Magistrates have imposed any condition of bail, or have refused to impose any condition of bail, or any particular condition of bail; or
 - (b) a Justice or Justices or a Community Magistrate or Community Magistrates have, on an application made under section 33(1), made an order varying or revoking any condition of bail or substituting or imposing any other condition of bail, or refused to make such an order.
- (4) The defendant or the prosecutor may appeal to the District Court presided over by a District Court Judge against the imposition of that condition of bail or, as the case may be, against that refusal or against the decision in respect of that application.
- (5) For the purposes of an appeal under this section, the failure of a Justice or Justices or a Community Magistrate or Community Magistrates to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.
- (6) No person may seek bail in the High Court under that court's inherent jurisdiction—
 - (a) who has been refused bail by a Justice or Justices or a Community Magistrate or Community Magistrates; or
 - (b) in respect of whom a Justice or Justices or a Community Magistrate or Community Magistrates have imposed any condition of bail or refused to impose any condition of bail, or any particular condition of bail.
- (7) An appeal under this section is by way of rehearing.

Section 41: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 41(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 41(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 41(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

42 Procedure relating to appeal under section 41

- (1) Sections 273 to 275 and subpart 12 of Part 6 of the Criminal Procedure Act 2011 apply to an appeal under section 41 as if the appeal were a first appeal against a decision on a costs order.
- (2) Despite any other enactment or rule of law, on the hearing of the appeal it is not necessary to produce—

- (a) any note or transcript of the evidence adduced to the District Court; or
 - (b) any note of the reasons for the decision appealed against; or
 - (c) any copy of any note or transcript referred to in paragraph (a) or (b).
- (3) Every decision of the District Court presided over by a District Court Judge on an appeal under section 41 is final.
- (4) No decision appealed against under section 41 is suspended merely because notice of that appeal has been given.
- (5) An appeal under section 41 that is not heard before the date on which the decision appealed against ceases to have any effect—
- (a) lapses on that date; and
 - (b) is deemed to have been abandoned.

- (6) If, in the case of an appeal under section 41(2), the defendant does not appear at the hearing of the appeal, the District Court presided over by a District Court Judge may, if it thinks fit, issue a warrant for the arrest of the defendant.

Section 42: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 42(2)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 42(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 42(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

43 Execution of decision of District Court on appeal relating to bail

- (1) If, on an appeal under section 41, the District Court presided over by a District Court Judge determines that bail should not be granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody must be issued out of the District Court.
- (2) The person who executes the warrant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.
- (3) If, on an appeal in respect of any condition of bail, the District Court presided over by a District Court Judge varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions apply:
- (a) if the defendant is present at the District Court, the Registrar of the office of the court at the place where the appeal was determined must,—
 - (i) as soon as is reasonably practicable, prepare a new notice of bail setting out the conditions of bail as amended (if any); and
 - (ii) satisfy himself or herself that the defendant understands the conditions of bail; and
 - (iii) require the defendant to authenticate the notice of bail:

- (b) if the defendant is not present at the District Court, the Registrar of the office of the District Court at the place where the appeal was determined must send written notice to the defendant requiring him or her to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions (if any) required to give effect to the decision on the appeal.
- (4) If, in any case to which subsection (3) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail, the Registrar of the office of the District Court at the place where the appeal was determined appealed from must refer the matter to a District Court Judge, who may issue a warrant for the arrest of the defendant.
- Section 43: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).
- Section 43(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).
- Section 43(1): amended, on 4 September 2013, by section 30(1) of the Bail Amendment Act 2013 (2013 No 66).
- Section 43(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).
- Section 43(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).
- Section 43(3)(a)(iii): amended, on 4 September 2013, by section 30(2) of the Bail Amendment Act 2013 (2013 No 66).
- Section 43(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).
- Section 43(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Appeals from decisions of District Court Judges

Heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

44 Appeal from decision of District Court Judge relating to bail

- (1) If a District Court Judge refuses to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the High Court against that refusal.
- (2) If a District Court Judge grants bail to a defendant (whether before or after conviction), the prosecutor may appeal to the High Court against that decision.
- (3) Subsection (4) applies if, in respect of any grant of bail to a defendant (whether before or after conviction),—
- (a) a District Court Judge has imposed any condition of bail, or has refused to impose any condition of bail, or any particular condition of bail; or
- (b) a District Court Judge has, on an application made under section 33(1), made an order varying or revoking any condition of bail or substituting or imposing any other condition of bail, or refused to make such an order.

- (4) The defendant or the prosecutor may appeal to the High Court against the imposition of that condition of bail or, as the case may be, against that refusal or against the decision in respect of that application.
- (5) For the purposes of an appeal under this section, the failure of a District Court Judge to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.
- (6) An appeal under this section is by way of rehearing.
Section 44: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

45 Procedure relating to appeal under section 44

- (1) Sections 273 to 275 and subpart 12 of Part 6 of the Criminal Procedure Act 2011 apply to an appeal under section 44 as if the appeal were a first appeal against a decision on a costs order.
- (2) Despite any other enactment or rule of law, on the hearing of an appeal under section 44 it is not necessary to produce—
 - (a) any note or transcript of the evidence adduced to the District Court; or
 - (b) any note of the reasons for the decision appealed against; or
 - (c) any copy of any note or transcript referred to in paragraph (a) or (b).
- (3) Every decision of the High Court on an appeal under section 44 is final.
- (4) No decision appealed against under section 44 is suspended merely because notice of that appeal has been given.
- (5) An appeal under section 44 that is not heard before the date on which the decision appealed against ceases to have any effect—
 - (a) lapses on that date; and
 - (b) is deemed to have been abandoned.
- (6) If, in the case of an appeal under section 44(2), the defendant does not appear at the hearing of the appeal, the High Court may, if it thinks fit, issue a warrant for the arrest of the defendant.

Section 45: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 45(2)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

46 Execution of decision of High Court on appeal relating to bail

- (1) If, on an appeal under section 44, the High Court determines that bail should not be granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody must be issued out of the High Court.
- (2) The person who executes the warrant must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

- (3) If, on an appeal in respect of any condition of bail, the High Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions apply:
- (a) if the defendant is present at the High Court, the Registrar of the High Court must—
 - (i) as soon as is reasonably practicable, prepare a new notice of bail setting out the conditions of bail as amended (if any); and
 - (ii) satisfy himself or herself that the defendant understands the conditions of bail; and
 - (iii) require the defendant to authenticate the notice of bail:
 - (b) if the defendant is not present at the High Court, the Registrar of the office of the District Court at the place where the decision appealed from was made must send written notice to the defendant requiring him or her to attend at a specified time and place for the execution of a fresh notice of bail containing the conditions (if any) required to give effect to the High Court's decision.
- (4) If, in any case to which subsection (3) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh notice of bail, the Registrar of the office of the District Court at the place where the decision appealed from was made must refer the matter to a District Court Judge who may issue a warrant for the arrest of the defendant.

Section 46: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 46(1): amended, on 4 September 2013, by section 31(1) of the Bail Amendment Act 2013 (2013 No 66).

Section 46(3)(a)(iii): amended, on 4 September 2013, by section 31(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 46(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 46(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Appeals from decisions of High Court

Heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

47 Appeal from decision of High Court relating to bail

- (1) Subject to subsection (4), this section applies to any decision made (whether under any enactment or rule of law or otherwise) by a High Court Judge to—
- (a) grant or refuse bail to a defendant; or
 - (b) impose or substitute or revoke or vary any condition of bail; or
 - (c) refuse to impose any condition of bail or any particular condition of bail; or
 - (d) refuse to vary or revoke any condition of bail.

- (2) Either the prosecutor or the defendant may appeal to the Court of Appeal against any decision to which this section applies.
- (3) For the purposes of an appeal under this section, the failure of a High Court Judge to impose any condition of bail, or any particular condition of bail, on any occasion on which the condition could lawfully have been imposed is deemed to be a refusal to impose the condition.
- (4) Nothing in this section applies in respect of any decision made by a High Court Judge if that decision was made on appeal from any decision of the District Court.

Section 47: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 47(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

48 Procedure relating to appeal under section 47

- (1) A defendant wishing to appeal under section 47 must file notice of appeal with the Registrar of the Court of Appeal within 20 working days after the date of the decision to be appealed against.
- (2) An appeal under section 47 that is not heard before the date on which the decision appealed against ceases to have any effect—
 - (a) lapses on that date; and
 - (b) is deemed to have been abandoned.
- (3) No decision of a High Court Judge appealed against under section 47 is suspended merely because notice of that appeal has been given.
- (4) No decision of a High Court Judge appealed against under section 47 is suspended merely because the defendant has applied for or been given leave to appeal to the Supreme Court against a decision of the Court of Appeal on the appeal under section 47.
- (5) On an appeal under section 47 the Court of Appeal may confirm the decision appealed against, or vary it, or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

Section 48: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 48(1): amended, on 4 September 2013, by section 32 of the Bail Amendment Act 2013 (2013 No 66).

49 Execution of decision of Court of Appeal on appeal relating to bail

- (1) If, on an appeal under section 47 against a refusal to grant bail to a defendant, the Court of Appeal determines that bail should be granted, the Court of Appeal must order that the defendant be released on bail, subject to such conditions as the Court of Appeal thinks fit.
- (2) If, on an appeal under section 47 in respect of any condition of bail, the Court of Appeal revokes or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the court whose decision was appealed against

must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal's decision.

- (3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a High Court Judge who may issue a warrant for the arrest of the defendant.
- (4) If, on an appeal under section 47 against a grant of bail, the Court of Appeal determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Court of Appeal.
- (5) The person who executes the warrant under subsection (4) must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.
- (6) A defendant to whom subsection (4) applies and who is not in custody may be arrested without warrant by any constable or any officer of a prison.

Section 49: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 49(4): amended, on 4 September 2013, by section 33 of the Bail Amendment Act 2013 (2013 No 66).

Appeals from decisions of Court of Appeal on appeal

Heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

50 Execution of decision of Supreme Court on appeal relating to bail

- (1) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 47 against a refusal to grant bail to a defendant, the Supreme Court determines that bail should be granted, the Supreme Court must order that the defendant be released on bail, subject to any conditions the Supreme Court thinks fit.
- (2) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 47 in respect of any condition of bail, the Supreme Court revokes or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Supreme Court's decision.
- (3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a High Court Judge who may issue a warrant for the arrest of the defendant.

- (4) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 47 against a refusal to grant bail to a defendant, the Supreme Court determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Supreme Court.
- (5) The person who executes the warrant under subsection (4) must ensure that a copy of the notice of the result of the appeal is given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.
- (6) A defendant to whom subsection (4) applies who is not in custody may be arrested without warrant by any constable or any officer of a prison.

Section 50: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 50(4): amended, on 4 September 2013, by section 34 of the Bail Amendment Act 2013 (2013 No 66).

Appeal against entry of non-performance of condition of bail

Heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

51 Appeal against entry by Justice or Community Magistrate of non-performance of condition of bail in court record

- (1) If a Justice or Justices or a Community Magistrate or Community Magistrates direct under section 39 that the non-performance of a bail condition be entered into the court record, the defendant may, within 20 working days of the direction being made, appeal the direction to the District Court presided over by a District Court Judge.
- (2) After considering an appeal under subsection (1), the District Court Judge may order that—
 - (a) the direction stand; or
 - (b) the direction be amended; or
 - (c) the direction be revoked.
- (3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the court record than that given by this section.
- (4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

Section 51: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 51(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 51(1): amended, on 4 September 2013, by section 35 of the Bail Amendment Act 2013 (2013 No 66).

52 Appeal against entry by District Court Judge or High Court Judge of non-performance of condition of bail in court record

- (1) If a District Court Judge or High Court Judge directs under section 39 that the non-performance of a bail condition be entered in the court record, the defend-

ant may, within 20 working days of the direction being made, appeal the direction to the High Court or the Court of Appeal, as the case may require.

- (2) After considering an appeal under subsection (1), the High Court or the Court of Appeal may order that—
 - (a) the direction stand; or
 - (b) the direction be amended; or
 - (c) the direction be revoked.
- (3) There is no further right of appeal against a direction to enter the non-performance of a condition of bail in the court record than that given by this section.
- (4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

Section 52: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 52(1): amended, on 4 September 2013, by section 36 of the Bail Amendment Act 2013 (2013 No 66).

Issue of warrant for detention in custody

Heading: inserted, on 4 September 2013, by section 37 of the Bail Amendment Act 2013 (2013 No 66).

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).
- (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.

Section 52A: inserted, on 4 September 2013, by section 37 of the Bail Amendment Act 2013 (2013 No 66).

Subpart 4—Bail pending appeal against conviction or sentence

Subpart 4 heading: inserted, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

53 Granting of bail to appellant in custody or on home detention pending appeal to District Court presided over by District Court Judge

- (1) This section applies if an appellant—
 - (a) is appealing his or her conviction or sentence, or both, to the District Court presided over by a District Court Judge; and
 - (b) is—

- (i) in custody; or
 - (ii) in a home detention residence subject to a sentence of home detention.
- (2) If the appellant is in custody, or is subject to a sentence of home detention, only under the conviction to which the appeal relates, the appellant is bailable, at any time before the hearing of the appeal,—
 - (a) at the discretion of the Justice or Justices or a Community Magistrate or Community Magistrates who presided over the District Court whose determination is appealed against; or
 - (b) if that Justice or those Justices or that Community Magistrate or those Community Magistrates are not available, at the discretion of a District Court Judge or some other Justice or Community Magistrate.
- (3) Subject to the provisions of section 31 (as applied by subsection (4)), if an appellant is granted bail, the appellant must be released on condition that the appellant attend personally at the District Court at the place where the appeal is being dealt with on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.
- (4) If an appellant is granted bail under this section, the provisions of sections 30 to 33, 35, 37, 38, 39, and 51, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.
- (5) If an appellant is granted or refused bail under this section, or any decision is made under section 33(1) (as applied by subsection (4)) in respect of any appellant, the provisions of sections 41 and 42, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.
- (6) For the purposes of this section,—
 - (a) an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed; and
 - (b) an appellant is not deemed to be subject to a sentence of home detention only under the conviction to which the appeal relates if a direction has been given under section 80B of the Sentencing Act 2002 that another sentence of home detention is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence was imposed.

- (7) If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person's conviction, this section applies to the convicted person as it does to the appellant.

Section 53: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 53 heading: amended, on 23 October 2013, by section 6(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 53(1): replaced, on 17 December 2016, by section 9 of the Statutes Amendment Act 2016 (2016 No 104).

Section 53(2): amended, on 23 October 2013, by section 6(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 53(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 53(4): amended, on 23 October 2013, by section 6(4) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 53(6): replaced, on 23 October 2013, by section 6(5) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

54 Granting of bail to appellant in custody or on home detention pending appeal to High Court

- (1) This section applies if an appellant—
- (a) is appealing his or her conviction or sentence, or both, to the High Court; and
 - (b) is—
 - (i) in custody; or
 - (ii) in a home detention residence subject to a sentence of home detention.
- (2) If the appellant is in custody, or is subject to a sentence of home detention, only under the conviction to which the appeal relates, the appellant is bailable at any time before the hearing of the appeal—
- (a) at the discretion of the District Court Judge who presided over the District Court whose determination is appealed against; or
 - (b) if that District Court Judge is not available, at the discretion of some other District Court Judge.
- (3) Subject to the provisions of section 31 (as applied by subsection (4)), if an appellant is granted bail, the appellant must be released on condition that the appellant attend personally at the High Court on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.
- (4) If an appellant is granted bail under this section, the provisions of sections 30 to 33, 35 to 39, and 52, as far as they are applicable and with any necessary modifications, apply as if the appellant were a defendant remanded in custody who had been granted bail.

- (5) If an appellant is granted or refused bail under this section, or any decision is made under section 33(1) (as applied by subsection (4)) in respect of any appellant, the provisions of sections 44 and 45, as far as they are applicable and with all necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.
- (6) Section 53(6) applies for the purposes of this section.
- (7) If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person's conviction, this section applies to the convicted person as it does to the appellant.

Compare: 1957 No 87 s 125

Section 54: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 54 heading: amended, on 23 October 2013, by section 7(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 54(1): replaced, on 17 December 2016, by section 10 of the Statutes Amendment Act 2016 (2016 No 104).

Section 54(2): amended, on 23 October 2013, by section 7(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 54(4): amended, on 4 September 2013, by section 38 of the Bail Amendment Act 2013 (2013 No 66).

Section 54(6): replaced, on 23 October 2013, by section 7(4) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

55 Granting of bail to appellant in custody or on home detention pending appeal to Court of Appeal or Supreme Court

- (1) This section applies if an appellant—
 - (a) is appealing his or her conviction or sentence, or both, to the Court of Appeal or the Supreme Court; and
 - (b) is—
 - (i) in custody; or
 - (ii) in a home detention residence subject to a sentence of home detention.
- (2) The Court of Appeal or the Supreme Court (as the case may be) or the Judge who presided at the trial in the court below may, if it or the Judge thinks fit, on the application of an appellant and on such terms and subject to such conditions as the court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is in custody, or is subject to a sentence of home detention, only under the conviction to which the appeal relates.
- (3) If an appeal is filed on a question of law under subpart 8 of Part 6 of the Criminal Procedure Act 2011 and the appeal relates to a person's conviction, this section applies to the convicted person as it does to the appellant.
- (4) Section 53(6) applies for the purposes of this section.

Section 55: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 55 heading: amended, on 23 October 2013, by section 8(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 55(1): replaced, on 17 December 2016, by section 11 of the Statutes Amendment Act 2016 (2016 No 104).

Section 55(2): amended, on 23 October 2013, by section 8(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 55(4): replaced, on 23 October 2013, by section 8(4) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

56 Appeals on questions of law

If under section 302(2) of the Criminal Procedure Act 2011 the District Court or the High Court has decided to postpone sentencing a person or deferred the commencement of any sentence imposed, the court may, in accordance with the applicable provisions of this Act and the Criminal Procedure Act 2011,—

- (a) allow the defendant to go at large; or
- (b) grant the defendant bail; or
- (c) remand the defendant in custody.

Section 56: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 56: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

57 Intermediate effects of appeal

(1) In every case where an appeal court directs a new trial or remits a sentence, the court must, in accordance with the applicable provisions of this Act and the Criminal Procedure Act 2011,—

- (a) allow the defendant to go at large; or
- (b) grant the defendant bail; or
- (c) remand the defendant in custody.

(2) If no application for bail has been made to the appeal court, the defendant may at any time apply to a High Court Judge or a District Court Judge (as the case may require), who may in the Judge's discretion grant bail on such terms and subject to such conditions as the Judge thinks fit.

Section 57: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

58 Time on bail pending appeal not to be taken as time served

(1) Section 95 of the Parole Act 2002 applies if an appellant is released on bail pending an appeal.

(2) For the purpose of calculating how much time an offender who is subject to a sentence of home detention has served, time ceases to run on the sentence during any period in which the offender is released on bail pending an appeal.

Section 58: replaced, on 23 October 2013, by section 9 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

59 Surrender of appellant released on bail from sentence of imprisonment

- (1) An appellant who has been released from custody on bail pending the hearing of the appeal may surrender himself or herself and apply to a judicial officer of the court that released the appellant on bail for the discharge of bail.
- (2) A judicial officer who discharges the bail of an appellant may then issue a warrant for the arrest of the appellant and for his or her committal to a prison for the unexpired term of the sentence originally imposed.

Section 59: replaced, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Section 59 heading: amended, on 23 October 2013, by section 10(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 59(1): amended, on 23 October 2013, by section 10(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 59(2): amended, on 23 October 2013, by section 10(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 59(2): amended, on 4 September 2013, by section 39 of the Bail Amendment Act 2013 (2013 No 66).

60 Surrender of appellant released on bail from sentence of home detention

- (1) An appellant who has been released from a sentence of home detention on bail pending the hearing of an appeal may surrender himself or herself and apply to a District Court Judge for the discharge of bail, and the District Court Judge may order that the appellant resume serving the sentence of home detention.
- (2) If an appellant applies for the discharge of bail under subsection (1), the District Court Judge may,—
 - (a) if the appellant has been on bail for longer than 2 months, adjourn the matter to enable a probation officer to obtain the information required under subsection (3); and
 - (b) either—
 - (i) remand the appellant in custody; or
 - (ii) grant the appellant bail for the period of the adjournment.
- (3) Before ordering that an appellant resume serving a sentence of home detention under subsection (1), the District Court Judge must, if the appellant has been on bail for longer than 2 months, consider information from a probation officer on—
 - (a) whether the home detention residence is still available and suitable; and
 - (b) whether every relevant occupant (as defined in section 26A(4)(a) of the Sentencing Act 2002) of the home detention residence consents, in accordance with section 26A(3)(d) of the Sentencing Act 2002, to the appellant resuming the sentence at the home detention residence.
- (4) If a District Court Judge orders that the appellant resume serving the sentence of home detention,—

- (a) the appellant must go to and remain at the home detention residence unless absent in accordance with section 80C(3)(a) or (b) of the Sentencing Act 2002; and
- (b) the sentence of home detention resumes when the appellant has arrived at the home detention residence under paragraph (a).

Section 60: inserted, on 23 October 2013, by section 11 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Part 4

Bail when proceedings taken by way of indictment

[Repealed]

Part 4: repealed, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Part 5

Miscellaneous provisions

73 Rules relating to practice and procedure of courts

- (1) The Governor-General may, by Order in Council, make rules regulating the practice and procedure of any court in proceedings under this Act.
- (2) Until rules are made under this section, or if they are made so far as they do not extend, the existing practice and procedure in New Zealand in relation to bail is not affected as far as it is not altered by or inconsistent with the provisions of this Act.

Section 73 heading: replaced, on 15 May 2017, by section 10 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

73AA Rules about drug and alcohol testing and monitoring

- (1) The Commissioner may, by notice in the *Gazette*, make rules for all or any of the following purposes:
 - (a) prescribing, for the purposes of section 30T(1)(a) and (c), 1 or more types of testing procedure that defendants on bail with a drug or alcohol condition may be required to undergo;
 - (b) specifying how often each of the prescribed testing procedures may be carried out;
 - (c) prohibiting authorised persons from requiring a defendant to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances;
 - (d) prescribing, for the purposes of section 30T(1)(b), 1 or more types of drug or alcohol monitoring device that may be connected to a defendant on bail with a drug or alcohol condition;
 - (e) specifying restrictions as to how often, and for how long,—

- (i) continuous monitoring may be carried out:
- (ii) a defendant may be required to contact an automated system:
- (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from a defendant in order for the sample to be used as evidence that the defendant has breached a drug or alcohol condition:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.
- (2) In this section and in sections 73AAB and 73AAC, **Commissioner** means the Commissioner of Police.

Section 73AA: inserted, on 15 May 2017, by section 11 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

73AAB Further provisions concerning rules about drug and alcohol testing and monitoring

- (1) Rules made under section 73AA(1)(a) may, without limitation, prescribe testing procedures that do all or any of the following:
 - (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening:
 - (ii) the collection and analysis of a bodily sample:
 - (b) require a defendant to be supervised by a person of the same sex as the defendant during the collection of a bodily sample required for testing:
 - (c) provide for a defendant to elect, if the defendant meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The Commissioner may make rules under section 73AA(1) only if satisfied that the rules—
 - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (b) allow for defendants to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (c) ensure that defendants liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) Subsection (1)(b) overrides subsection (2)(c).

Section 73AAB: inserted, on 15 May 2017, by section 11 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

73AAC Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012

- (1) The Commissioner must ensure that any rules made under section 73AA are, while in force, made available—
 - (a) on an Internet site that is maintained by or on behalf of the New Zealand Police and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under section 73AA are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 73AAC: inserted, on 15 May 2017, by section 11 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

73A Authentication of documents

- (1) Any warrant issued under this Act must be authenticated by the judicial officer or Registrar who issues the warrant.
- (2) The person who is required to authenticate a document (including a notice of bail or bail bond) under this Act does so—
 - (a) by signing and dating the document; or
 - (b) in the case of a document in electronic form, by any electronic means that adequately identifies that person and the date of authentication.
- (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.

Section 73A: inserted, on 4 September 2013, by section 40 of the Bail Amendment Act 2013 (2013 No 66).

74 Repeal and enactments amended

- (1) The Crimes Amendment Act (No 2) 1991 is repealed.
- (2) The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

75 Savings

Despite the repeal of any enactment by this Act, where any notice of appeal has been filed in any office of a court under any such enactment before the date of the commencement of this Act, and the appeal is not finally determined before that date, the provisions of that enactment continue to apply to that appeal in all respects as if this Act had not been passed.

Schedule 1AA

Transitional, savings, and related provisions

s 3A

Schedule 1AA: inserted, on 15 May 2017, by section 12 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Part 1

Provisions relating to Bail (Drug and Alcohol Testing) Amendment Act 2016

Schedule 1AA Part 1: inserted, on 15 May 2017, by section 12 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

1 Interpretation

In this schedule,—

commencement date means the date on which the Bail (Drug and Alcohol Testing) Amendment Act 2016 comes into force

pre-commencement drug or alcohol condition means a condition—

- (a) that is imposed before the commencement date under section 30(4) (alone or with any of sections 40(4), 53(4), and 54(4)); and
- (b) that prohibits a defendant from doing 1 or more of the following:
 - (i) using (as defined in section 3) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

Schedule 1AA clause 1: inserted, on 15 May 2017, by section 12 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

2 Testing and monitoring of defendants on bail with pre-commencement drug or alcohol conditions

- (1) This clause applies if a defendant is on bail with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 30T to 30X, 73AA, and 73AAB, and any rules made under section 73AA, apply in respect of the defendant—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a judicial officer or Registrar on or after the commencement date; and
 - (b) as if the judicial officer or Registrar had complied with section 30AA(3) in respect of the condition.

Schedule 1AA clause 2: inserted, on 15 May 2017, by section 12 of the Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83).

Schedule 1

Modifications of Part 3 where appeal is from District Court presided over by Community Magistrate or Community Magistrates to District Court presided over by District Court Judge

[Repealed]

s 40(3)

Schedule 1: repealed, on 1 July 2013, by section 15 of the Bail Amendment Act 2011 (2011 No 82).

Schedule 2

Amendments to other enactments

s 74(2)

Antarctica (Environmental Protection) Act 1994 (1994 No 119)

Amendment(s) incorporated in the Act(s).

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Amendment(s) incorporated in the Act(s).

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act (No 2) 1980 (1980 No 85)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act (No 2) 1985 (1985 No 121)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act (No 2) 1995 (1995 No 68)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act 1998 (1998 No 35)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act (No 2) 1998 (1998 No 79)

Amendment(s) incorporated in the Act(s).

Criminal Justice Act 1985 (1985 No 120)

Amendment(s) incorporated in the Act(s).

District Courts Act 1947 (1947 No 16)

Amendment(s) incorporated in the Act(s).

District Courts Amendment Act 1998 (1998 No 76)

Amendment(s) incorporated in the Act(s).

Domestic Violence Act 1995 (1995 No 86)

Amendment(s) incorporated in the Act(s).

Extradition Act 1999 (1999 No 55)

Amendment(s) incorporated in the Act(s).

International War Crimes Tribunal Act 1995 (1995 No 27)

Amendment(s) incorporated in the Act(s).

Misuse of Drugs Amendment Act 1978 (1975 No 116)

Amendment(s) incorporated in the Act(s).

Misuse of Drugs Amendment Act 1998 (1998 No 14)

Amendment(s) incorporated in the Act(s).

Privacy Act 1993 (1993 No 28)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act (No 2) 1987 (1987 No 172)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act (No 2) 1991 (1991 No 105)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act 1993 (1993 No 47)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act 1994 (1994 No 161)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act 1995 (1995 No 64)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act (No 2) 1995 (1995 No 87)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act (No 2) 1998 (1998 No 77)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act (No 3) 2011

Public Act	2011 No 79
Date of assent	19 September 2011
Commencement	see section 2

1 Title

This Act is the Crimes Amendment Act (No 3) 2011.

2 Commencement

This Act comes into force 6 months after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Crimes Act 1961.

Part 2

Amendments to other enactments and transitional provision

12 Transitional provision

- (1) The amendments and repeals made by this Act do not apply to any offence committed or alleged to have been committed (in whole or in part) before the commencement of this Act and the principal Act as in force before the commencement of this Act continues to apply to any such offence.
- (2) Section 414 of the principal Act has effect (with any necessary modifications) if the date on which the offence was committed cannot be established with sufficient certainty.

Bail Amendment Act 2011

Public Act	2011 No 82
Date of assent	17 October 2011
Commencement	see section 2

1 Title

This Act is the Bail Amendment Act 2011.

2 Commencement

- (1) Sections 4, 5, and 7 to 14 come into force on a date appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council.
- (3) Any provision that has not earlier been brought into force comes into force on the day that is 2 years after the date on which this Act receives the Royal assent.

Section 2(1): sections 4, 5, and 7–14 brought into force, on 5 March 2012, by section 2 of the Bail Amendment Act 2011 Commencement Order 2011 (SR 2011/411).

3 Principal Act amended

This Act amends the Bail Act 2000.

10 Transitional provision regarding offence provision under new section 19 of principal Act

- (1) This section applies if an Order in Council is made under section 2(1) bringing section 5 into force before the date appointed under section 2(2) or provided by section 2(3).
- (2) Until the date appointed under section 2(2) or provided by section 2(3), section 19 of the principal Act must be read as if the offence prescribed in that section were punishable on summary conviction.

11 Transitional provision regarding section 5

- (1) This section applies to any bail hearing if the proceedings for the offence with which the defendant is charged were commenced before the date on which section 5 came into force.
- (2) Section 19 of the principal Act, as it was before section 5 came into force, applies.
- (3) Section 397(3) of the Criminal Procedure Act 2011 (which sets out when a proceeding has commenced) applies for the purpose of this section whether or not section 397(3) has itself been brought into force.

12 Transitional provision regarding sections 4 and 7

- (1) This section applies to any decision regarding the granting of bail if the proceedings for the offence with which the defendant is charged were commenced before the date on which sections 4 and 7 came into force.
- (2) Sections 13 and 31 of the principal Act, as they were before sections 4 and 7 came into force, apply.
- (3) Section 397(3) of the Criminal Procedure Act 2011 (which sets out when a proceeding has commenced) applies for the purpose of this section whether or not section 397(3) has itself been brought into force.

13 Transitional provision regarding sections 8 and 9

Sections 36(4) and 60(4) of the principal Act (as amended by sections 8 and 9) apply to the execution of any warrant of arrest on or after the date on which sections 8 and 9 come into force even if the warrant was issued before that date.

16 Application of amendments made by section 15

The amendments made by section 15 apply in respect of any decision regarding the granting of bail to a defendant in relation to a proceeding for an offence that was commenced before section 15 came into force in accordance with the provisions of sections 397 and 399 to 401 of the Criminal Procedure Act 2011.

Reprints notes

1 *General*

This is a reprint of the Bail Act 2000 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Statutes Amendment Act 2018 (2018 No 27): section 39

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Statutes Amendment Act 2016 (2016 No 104): Part 3

Bail (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 83)

District Court Act 2016 (2016 No 49): section 261

Administration of Community Sentences and Orders Act 2013 (2013 No 88): Parts 1, 2

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): section 3(1)

Bail Amendment Act 2013 (2013 No 66)

Bail Amendment Act 2011 (2011 No 82)

Bail Amendment Act 2009 (2009 No 45)

Bail Amendment Act 2008 (2008 No 107)

Policing Act 2008 (2008 No 72): section 130(1)

Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41): section 18

Bail Amendment Act 2007 (2007 No 26)

Sentencing Amendment Act 2004 (2004 No 68): sections 20–24

Corrections Act 2004 (2004 No 50): section 206

Bail Amendment Act 2003 (2003 No 60)

Supreme Court Act 2003 (2003 No 53): section 48(1)

Bail Amendment Act 2002 (2002 No 57)

Parole Act 2002 (2002 No 10): section 125

Sentencing Act 2002 (2002 No 9): section 186

