

Bail (Drug and Alcohol Testing) Amendment Bill

(Divided from the Drug and Alcohol Testing of Community-based Offenders,
Bailees, and Other Persons Legislation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Bill as reported from the Law and Order Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- this Bill comprising clauses 1 and 2, Part 1, and Schedule 1
- Parole (Drug and Alcohol Testing) Amendment Bill comprising Part 2 and Schedule 2
- Sentencing (Drug and Alcohol Testing) Amendment Bill comprising Part 3 and Schedule 3
- Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Bill comprising Part 4
- Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Bill comprising Part 5 and Schedule 4.

Bail (Drug and Alcohol Testing) Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Judith Collins

Bail (Drug and Alcohol Testing) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Bail (Drug and Alcohol Testing) Amendment Act **2016**.

2 Commencement

- (1) This Act comes into force on the earlier of the following: ~~day immediately~~ 5
~~after the expiry of the period of 6 months that commences on the date on which this Act receives the Royal assent.~~

(a) a date appointed by the Governor-General by Order in Council;

(b) the day immediately after the expiry of the 6-month period.

- (2) The **6-month period** is the period of 6 months that commences on the date on which this Act receives the Royal assent. 10

3 Principal Act

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

Definitions and correction of cross-reference

4 Section 3 amended (Interpretation) 15

In section 3, insert in their appropriate alphabetical order:

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

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975 20

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:	5
(ia) using a psychoactive substance:	
(ii) 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:	10
(a) a controlled drug used by the person:	
(ab) a psychoactive substance used by the person:	
(b) alcohol consumed by the person	
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	15
medical officer means—	
(aa) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or	20
(a) a nurse; or	
(b) 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	25
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	30
psychoactive substance has the same meaning as in section 9 of the Psychoactive Substances Act 2013	
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	35
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	

4A	New section 3A inserted (Transitional, savings, and related provisions)	
	After section 3, insert:	
3A	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.	5
5	Section 13 amended (Exercise of discretion when considering bail pending sentencing)	
	In section 13(4A)(a), replace “section 30(3A)” with “section 30(3)”.	
	<i>Conditions of bail</i>	
6	Section 30 amended (Conditions of bail)	10
	After section 30(4), insert:	
(4A)	However, a Registrar must not impose a drug or alcohol condition under subsection (4) unless the defendant consents to the condition being imposed.	
7	New section 30AA inserted (Imposition, and effect, of drug or alcohol condition)	15
	After section 30, insert:	
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)).	20
(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) .	25
(3)	The judicial officer or Registrar must advise the defendant that the defendant must do either or both <u>any 1 or more</u> 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:	30
(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)	<u>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.</u>	35

- (4) To avoid doubt, this section does not apply to a defendant who has been granted Police bail with a drug or alcohol condition.

8 New sections 30T to 30W and cross-heading inserted

After section 30S, insert:

<i>Testing and monitoring of defendants on bail with drug or alcohol conditions</i>	5
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 orally or in writing to a defendant who is on bail (other than Police bail) with a drug or alcohol condition, require the defendant to do either or both any 1 or more of the following:	10
(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) ;	15
(c) <u>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).</u>	20
(2) In exercising his or her discretion under subsection (1), an authorised person—	25
(a) must comply with any rules made under section 73AA(1); and	
(b) may determine—	
(i) whether to require the defendant to undergo a prescribed testing procedure or to submit to continuous monitoring; and	
(ii) which of the prescribed testing procedures, if any, the defendant is required to undergo.	30
(2) <u>An authorised person exercising that person's discretion under subsection (1)—</u>	
(a) <u>must comply with any rules made under section 73AA(1); and</u>	
(b) <u>may—</u>	35
(i) <u>select a defendant to do what is specified in subsection (1)(a), (b), or (c) in any manner (including randomly); and</u>	

- (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)**. 5
- (3) A determination under **subsection (2)(b)(i)** may be made in respect of—
- (a) a defendant who is on bail with a drug or alcohol condition; or
- (b) a defendant who is on bail with a drug or alcohol condition and who the authorised person has cause to suspect has breached the condition. 10
- (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). 15
- (3A) 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. 20
- (4) Only a medical practitioner or medical officer may collect a blood sample from a defendant under this section.
- (5) ~~If a notice under **subsection (1)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the defendant, as soon as is reasonably practicable.~~ 25
- (6) In this section and in **sections 30U30TA to 30W**, **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. 30
- 30TA 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: 35
- (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 5 of the Electronic Transactions Act 2002) 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. 5
- (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. 10
- (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 30U**. 15
- 30U 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. 20
- (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 25
- (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. 30
- (4) ~~An authorised person may, 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, require the defendant 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.~~ 35
- (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. 40

(5) A defendant given a notice under **section 30TA(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.

30V 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 30U**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 30T(1)(b)**; or
 - (iia) 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
 - (iii) to accompany an authorised person, when required to do so under **section 30U(4)**, to a place where it is likely that it will be reasonably practicable for the defendant to undergo testing; or
 - (iiia) to contact a specified automated system when required to do so under **section 30T(1)(c)**; or
 - (iiib) to report, at any time or times when required to do so under **section 30U(5)**, to a specified testing facility to undergo testing; or
 - (iiic) to undergo a testing procedure when required to do so under **sections 30T(1)(c) and 30U**; or
 - (iv) 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)(iv)** are—
- (a) an authorised person who has produced evidence of that person’s identity to the defendant; and 5
- (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 10
- (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; 15
- (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. 20
- 30W 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: 25
- (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; 30
- (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)**. 35
- (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** and **to 30U**.

Rules

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10 Section 73 amended (Rules)

Replace the heading to section 73 with “**Rules relating to practice and procedure of courts**”.

11 New sections 73AA to 73AAC inserted

After section 73, insert:

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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: 15
 - (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: 20
 - (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, ~~continuous monitoring may be carried out:—~~ 25
 - (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: 30
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol. 35
- (2) In this section and in **sections 73AAB** and **73AAC**, **Commissioner** means the Commissioner of Police.

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: 5
 - (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. 10
- (2) The Commissioner may make rules under **section 73AA(1)** only if satisfied that the rules— 15
- (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. 20
- (3) **Subsection (1)(b)** overrides **subsection (2)(c)**.

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— 25
- (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 30
 - (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.

11A New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 1** of this Act.

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Schedule 1
New Schedule 1AA of Bail Act 2000 inserted

s 11A

Schedule 1AA
Transitional, savings, and related provisions

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s 3A

Part 1
Provisions relating to Part 1 of Drug and Alcohol Testing of
Community-based Offenders, Bailees, and Other Persons Legislation
Act 2014

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*Transitional and savings provisions relating to amendments made to this Act by **Part 1 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014***

1 Interpretation

In this schedule,—

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commencement date means the date on which **Part 1 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** 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

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(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.

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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 30W, 73AA, and 73AAB**, and any rules made under **section 73AA**, apply in respect of the defendant—

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- (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.

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Legislative history

2 November 2016

Divided from Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Bill (Bill 238–2) as Bill 238–3A
