



## Bail Amendment Act 2013

Public Act 2013 No 66  
Date of assent 3 September 2013  
Commencement see section 2

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## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Bail Amendment Act 2013.

### 2 Commencement

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

### 3 Principal Act

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

## Part 1 Amendments to principal Act

### 4 Section 3 amended (Interpretation)

- (1) In section 3, insert in their appropriate alphabetical order:
- “**Class A controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975
  - “**Class B controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975
  - “**court** means a court presided over by a judicial officer with authority to exercise the court’s jurisdiction in relation to the matter
  - “**Police bail** means bail granted by a Police employee under section 21(1)
  - “**Police employee** has the same meaning as in section 4 of the Policing Act 2008
  - “**working day** has the same meaning as in section 5 of the Criminal Procedure Act 2011”.
- (2) In section 3, replace the definition of **drug dealing offence** with:
- “**drug dealing offence** means—
  - “(a) any offence against section 6 or 12C(1)(a) of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug or a Class B controlled drug; or
  - “(b) an attempt to commit an offence referred to in paragraph (a)”.
- (3) In section 3, insert in their appropriate alphabetical order:
- “**electronic monitoring address** or **EM address** means the address, specified by a judicial officer or Registrar 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

“**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”.

**5 Section 7 amended (Rules as to granting bail)**

Repeal section 7(3).

**6 Section 8 amended (Consideration of just cause for continued detention)**

After section 8(4), insert:

“(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.”

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

After section 9, insert:

**“9A Restriction on bail if defendant charged with murder**

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

- “(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.”

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

Replace section 10(2) with:

- “(2) In this section, **specified offence** means any offence against 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).”

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

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

**10 Section 16 replaced (Bail allowable for drug dealing offence only by order of Judge)**

Replace section 16 with:

**“16 Judge only may grant bail for drug dealing offence**

A defendant who is charged with or convicted of a drug dealing offence may be granted bail by order of a High Court Judge or District Court Judge but not otherwise.”

**11 Section 17 repealed (Bail for drug dealing offence may be continued or renewed by District Court)**

Repeal section 17.

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

After section 17, insert:



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

- “(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).”

**13 Sections 21 and 22 replaced**

Replace sections 21 and 22 with:

**“21 Police employee may grant bail**

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

**“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.

**“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.

**“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.”

**14 Section 24 replaced (Failure to answer Police bail)**

Replace section 24 with:

**“24 Failure to answer Police bail**

“(1) A defendant commits an offence if he or she, having been released on Police bail under section 21,—

“(a) fails without reasonable excuse to attend personally at the time and the court specified in the notice of Police bail; or

“(b) fails without reasonable excuse to attend personally at the time and place to which the hearing has been 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.”

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

Repeal section 25.

**16 Section 26 replaced (Breach of condition of Police bail)**

Replace section 26 with:

**“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.”

**17 Section 28 amended (Warrant for detention of defendant remanded on bail)**

(1) In section 28(a), delete “under the Criminal Procedure Act 2011”.

(2) In section 28(b), delete “the back of”.

**18 Section 30 amended (Conditions of bail)**

Replace section 30(2) with:

“(2) A judicial officer or Registrar may impose, as further conditions of the defendant’s release,—

“(a) an EM condition:

“(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.”

**19 New sections 30A to 30R and cross-heading inserted**

After section 30, insert:

*“Electronic monitoring condition*

**“30A Purpose of EM condition**

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

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

**“30B When court may grant bail with EM condition**

- “(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.

**“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).

**“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.

**“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.

**“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.

**“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.

**“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).



**“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.

**“30J Court must specify EM address**

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

**“30K EM assessor must define area of EM address to which defendant is confined**

- “(1) An EM assessor must define the area of an EM address to which a defendant on bail with an EM condition is confined.
- “(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.

**“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
    - 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.

**“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.

**“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.

**“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.

**“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.

**“30Q Defendant on bail with EM condition not in custody**

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

**“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.

**“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.”

**20 Section 31 amended (Release of defendant granted bail)**

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

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

“(a) state the EM address; and

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

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

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

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

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

**21 Section 32 repealed (Warrant of deliverance)**

Repeal section 32.

**22 Section 33 amended (Variation of conditions of bail imposed by District Court)**

(1) In the heading to section 33, replace “**imposed by the**” with “**in**”.

(2) Replace section 33(1) with:

“(1) If the proceeding for the offence with which the defendant has been charged is in a 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.”

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

“(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.”

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

(5) In section 33(4), replace “District Court” with “court”.

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

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

### **23 Section 34 amended (Variation of conditions of bail imposed by High Court)**

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

(2) Replace section 34(1) with:

“(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.”

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

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

(4) Replace section 34(2) with:

- “(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.”
- (5) In section 34(4), replace “High Court” with “court” in each place.
- (6) In section 34(4)(a)(iii), replace “sign” with “authenticate”.

**24 New section 34A inserted (Surrender of defendant on bail with EM condition)**

After section 34, insert:

**“34A Surrender of defendant on bail with EM condition**

- “(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 Children, Young Persons, and Their Families Act 1989 apply with any necessary modifications.”

**25 Section 35 amended (Defendant on bail may be arrested without warrant in certain circumstances)**

- (1) In section 35(1), replace “the Supreme Court or the Court of Appeal or the High Court or a District Court” with “a court”.

- (2) Replace section 35(2) with:
- “(2) A defendant who is arrested under subsection (1) must,—
- “(a) if released on bail by a District Court, Registrar, or Police employee in relation to a category 1, 2, or 3 offence, be brought before a District Court as soon as possible, 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.”

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

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

**27 New section 36A inserted (Offence to refuse authorised person entry to EM address)**

After section 36, insert:

- “36A Offence to refuse authorised person entry to EM address**
- “(1) A person (A) commits an offence who refuses or fails, without reasonable excuse, to allow an authorised person to enter an EM address for the purpose of servicing or inspecting any electronic monitoring equipment at that address.
- “(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.”

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

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

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

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

- 30 Section 43 amended (Execution of decision of District Court on appeal relating to bail)**
- (1) In section 43(1), delete “and signed by a District Court Judge”.
  - (2) In section 43(3)(a)(iii), replace “sign” with “authenticate”.
- 31 Section 46 amended (Execution of decision of High Court on appeal relating to bail)**
- (1) In section 46(1), delete “and signed by a Judge”.
  - (2) In section 46(3)(a)(iii), replace “sign” with “authenticate”.
- 32 Section 48 amended (Procedure relating to appeal under section 47)**
- In section 48(1), replace “10 days” with “20 working days”.
- 33 Section 49 amended (Execution of decision of Court of Appeal on appeal relating to bail)**
- In section 49(4), delete “and signed by a Judge of the court”.
- 34 Section 50 amended (Execution of decision of Supreme Court on appeal relating to bail)**
- In section 50(4), delete “and signed by a Judge of the court”.
- 35 Section 51 amended (Appeal against entry by Justice or Community Magistrate of non-performance of condition of bail in court record)**
- In section 51(1), replace “28 days” with “20 working days”.
- 36 Section 52 amended (Appeal against entry by District Court Judge or High Court Judge of non-performance of condition of bail in court record)**
- In section 52(1), replace “28 days” with “20 working days”.
- 37 New section 52A and cross-heading inserted**
- After section 52, insert:

*“Issue of warrant for detention in custody*

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

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

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

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

**39 Section 59 amended (Surrender of appellant released on bail)**

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

**40 New section 73A inserted (Authentication of documents)**

After section 73, insert:

**“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.”

## Part 2 Amendments to other Acts

### 41 Amendments to Children, Young Persons, and Their Families Act 1989

- (1) This section amends the Children, Young Persons, and Their Families Act 1989.
- (2) In section 214(1), after “Subject to”, insert “section 214A and”.
- (3) After section 214, insert:

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

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

- “(a) the child or young person has been released on bail; and
- “(b) the constable believes, on reasonable grounds, that—
  - “(i) the child or young person has breached a condition of that bail; and
  - “(ii) the child or young person has on 2 or more previous occasions breached a condition of that bail (whether or not the same condition).”

- (4) Replace section 235(1) with:

“(1) Notwithstanding section 234 but subject to section 244, a constable, in relation to any child or young person who has been arrested and if subsection (1A) applies,—

- “(a) must place the child or young person in the custody of the chief executive in accordance with subsection (2); and
- “(b) must do so as soon as practicable and not later than 24 hours after the arrest.

“(1A) This subsection applies if—

- “(a) the constable believes, on reasonable grounds, that—
  - “(i) the child or young person is not likely to appear before the court; or
  - “(ii) the child or young person may commit further offences; or
  - “(iii) it is necessary to prevent—
    - “(A) the loss or destruction of evidence relating to an offence committed by the child

or young person or an offence that the constable has reasonable cause to suspect the child or young person of having committed; or

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

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

#### **42 Amendments to Sentencing Act 2002**

(1) This section amends the Sentencing Act 2002.

(2) In section 9(2)(g), replace “character.” with “character.”.

(3) After section 9(2)(g), insert:

“(h) that the offender spent time on bail with an EM condition as defined in section 3 of the Bail Act 2000.”

(4) After section 9(3), insert:

“(3A) In taking into account that the offender spent time on bail with an EM condition under subsection (2)(h), the court must consider—

“(a) the period of time that the offender spent on bail with an EM condition; and

“(b) the relative restrictiveness of the EM condition, particularly the frequency and duration of the offender’s authorised absences from the electronic monitoring address; and

“(c) the offender’s compliance with the bail conditions during the period of bail with an EM condition; and

“(d) any other relevant matter.”

#### **43 Amendments to District Courts Act 1947**

(1) This section amends the District Courts Act 1947.

(2) Replace section 84C(2)(d) with:

“(d) if the judgment debtor cannot practically be brought immediately before a Judge or a Registrar, then a Police employee or bailiff may grant bail to the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply, with

any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”

- (3) Replace section 84O(6)(c) with:
- “(c) if the judgment debtor cannot practically be brought immediately before a Judge or a Registrar, then a Police employee or bailiff may grant bail to the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”

#### **44 Amendments to District Courts Amendment Act 2011**

- (1) This section amends the District Courts Amendment Act 2011.
- (2) In section 14, replace new section 84EA(5)(d) of the District Courts Act 1947 with:
- “(d) if the judgment debtor or relevant officer cannot practically be brought immediately before a Judge or Registrar, then a Police employee or bailiff may grant bail to the judgment debtor or relevant officer, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”
- (3) In section 23, replace new section 84OB(3)(e) of the District Courts Act 1947 with:
- “(e) if the judgment debtor cannot practicably be brought immediately before a Judge or Registrar, then a Police employee or bailiff may grant bail to the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”

#### **45 Amendments to Summary Proceedings Act 1957**

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Replace section 88AB(d) with:
- “(d) for the purpose of any bail application by the defendant, if the defendant cannot practicably be brought immediately before the Registrar, a District Court Judge, or a Community Magistrate, then a Police employee or a bailiff may grant bail to the defendant, and Parts 1 to 3

of the Bail Act 2000 apply, with any necessary modifications, as if the bail were granted by a Police employee under section 21(1) of that Act.”

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

#### **46 Bail Rules 2000**

The Bail Rules 2000 (SR 2000/248) are revoked.

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#### **Legislative history**

7 May 2012	Introduction (Bill 17–1)
10 May 2012	First reading and referral to Law and Order Committee
9 November 2012	Report from Law and Order Committee (Bill 17–2)
2 July 2013	Second reading
27 August 2013	Committee of the whole House, third reading
3 September 2013	Royal assent

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This Act is administered by the Ministry of Justice.

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