

# **Bail Amendment Bill**

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Criminal Justice Reform Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it as follows:

- The Sentencing Council Bill, comprising clauses 1 and 2, Part 1, and Schedules 1 and 2
  - This bill, comprising subpart 1 of Part 2
  - The Sentencing Amendment Bill (No 3), comprising subpart 2 of Part 2, and Schedule 3
  - The Parole Amendment Bill (No 2), comprising subpart 3 of Part 2
  - The Prisoners' and Victims' Claims Amendment Bill, comprising subpart 4 of Part 2.
-

## Key to symbols used in reprinted bill

### As reported from a select committee

#### **Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

#### **New (unanimous)**

Subject to this Act,

Text inserted unanimously

---

*Hon Mark Burton*

# **Bail Amendment Bill**

Government Bill

## **Contents**

|   | Page |
|---|------|
| 1 Title   | 1    |
| 2 Commencement  | 1    |
| . . . . .   |      |
| 28 Principal Act amended                              | 1    |
| 29 New section 8 substituted                          | 1    |
| 8 Consideration of just cause for continued detention | 1    |
| 30 Bail on adjournment                                | 3    |
| 31 Bail on deferment of sentence                      | 3    |
| 32 Bail on deferment of sentence                      | 4    |
| . . . . .   |      |

---

### **The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Bail Amendment Act **2007**.
- 2 Commencement**  
This Act comes into force on a day to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates. 5
- 28 Principal Act amended**  
This **subpart** amends the Bail Act 2000. 10
- 29 New section 8 substituted**  
Section 8 is repealed and the following section substituted:
- “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— 15

- “(a) whether there is a real and significant 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 5
- “(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: 10
- “(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: 15
- “(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: 20
- “(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: 25
- “(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: 30
- “(h) any other special matter that is relevant in the particular circumstances.
- “(3) For the avoidance of doubt, in considering whether there is just cause for continued detention under this section, a breach of bail conditions may only be taken into account under **subsection (2)(e)** in so far as it is relevant to whether there is a real and significant risk that the defendant may do any of the things set out in **subsection (1)(a)**. 35
- “(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 40

a parent or legal guardian of a victim of that kind, conveyed in accordance with section 30 of that Act.

- “(5) In deciding, in relation to a defendant charged with an offence against section 49(1)(a) or (b) 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.” 5

**30 Bail on adjournment**

Section 28 is amended by repealing subsection (2) and substituting the following subsection: 10

- “(2) A Registrar may exercise the power conferred by subsection (1) to grant bail if—
  - “(a) the informant does not oppose bail and the offence with which the defendant has been charged—
    - “(i) is not punishable by imprisonment; or 15
    - “(ii) is punishable by a term of imprisonment of not more than 10 years; or
  - “(b) the prosecution agrees.”

**31 Bail on deferment of sentence**

- (1) Section 39A(1) is amended by inserting “**section 80V** or” after “deferred under”. 20
- (2) Section 39A(3) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

**Struck out (unanimous)**

- “(a) if the sentence is deferred under **section 80V** of the Sentencing Act 2002, go to and remain at the residence where the sentence is to be served 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. 25

**New (unanimous)**

- “(a) if the sentence is deferred under **section 80V** 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 30

**New (unanimous)**

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

5

- “(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.”

10

**32 Bail on deferment of sentence**

- (1) Section 65A(1) is amended by inserting “**section 80V** or” after “deferred under”.
- (2) Section 65A(3) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

15

**Struck out (unanimous)**

- “(a) if the sentence is deferred under **section 80V** of the Sentencing Act 2002, go to and remain at the residence where the sentence is to be served 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

20

**New (unanimous)**

- “(a) if the sentence is deferred under **section 80V** 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

25

**New (unanimous)**

“(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.”

5

---

**Legislative history**

19 July 2007

Divided from the Criminal Justice Reform Bill (Bill 93–2) by the committee of the whole House (Bill 93–3B)

---