

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 20 August 1991.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. D. A. M. Graham

BAIL (MISCELLANEOUS PROVISIONS)

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A BILL INTITULED

An Act to amend the law relating to bail

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Bail (Miscellaneous Provisions) Act 1990.

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Struck Out

(2) This Act shall come into force on the 1st day of May 1991.

New

(2) This Act shall come into force on the 1st day of December 1991.

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PART I

AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

2. Part to be read with Summary Proceedings Act 1957—This Part of this Act shall be read together with and deemed part of the Summary Proceedings Act 1957* (in this Part referred to as the principal Act).

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*R.S. Vol. 9, p. 583

Amendments: 1982, No. 47; 1982, No. 131; 1982, No. 158; 1985, No. 51; 1985, No. 55; 1985, No. 99; 1985, No. 162; 1985, No. 191; 1986, No. 73; 1986, No. 76; 1987, No. 165; 1987, No. 172; 1989, Nos. 21, 105

New

2A. Issue of summons or warrant for attendance of witness—Section 20 of the principal Act is hereby amended by inserting in subsection (4D) (d) (as substituted by section 8 (2) of the Summary Proceedings Amendment Act (No. 2) 1987), after the word “any”, the words “appearance or”.

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3. Dealing with defendant on adjournment—Section 46 (2) of the principal Act (as substituted by section 2 of the

Summary Proceedings Amendment Act (No. 2) 1987), is hereby amended by omitting the expression “section 319”, and substituting the expression “sections 318 and 319”.

New

5 **3A. Warrant for detention of defendant remanded in custody**—Section 47 (2) of the principal Act (as substituted by section 2 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by omitting the words “but is not released immediately, the Court or Justice shall”, and
10 substituting the words “, the Court or Justice may, and shall if the defendant is not released within the period specified in section 50 (2A) (a) of this Act,”.

15 **3B. Release of defendant granted bail**—Section 50 of the principal Act (as substituted by section 3 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by inserting, after subsection (2), the following subsection:

“**(2A)** Where a defendant is granted bail, the Court or Justice may direct that the defendant be detained in the custody of the Court,—

20 “(a) For such time, not exceeding 2 hours, as may be necessary to enable the notice of bail to be prepared and signed; and

25 “(b) If, within that period of 2 hours, the defendant is not released (whether by reason of having refused to sign the notice of bail or for any other reason), for such time as may be necessary to enable a warrant to be issued under section 47 (2) of this Act.”

30 **4. Variation of conditions of bail**—The principal Act is hereby amended by repealing section 50A (as inserted by section 2 of the Summary Proceedings Amendment Act (No. 2) 1987), and substituting the following section:

35 “**50A.** (1) Where the defendant has been granted bail, any District Court Judge may, on the application of the defendant or the informant, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

“**(2)** Where any Court or Justice 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 Justice 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.

“(3) Where, pursuant to **subsection (1)** of this section, any Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply: 5

“(a) If the defendant is present at the Court, the Registrar shall forthwith prepare a new notice of bail setting out the conditions of bail as so amended (if any), satisfy himself or herself that the defendant understands the conditions of bail, and require the defendant to sign the notice of bail: 10

“(b) If the defendant is not present at the Court, the Registrar shall 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 as so amended (if any). 15

“(4) If, in any case to which **subsection (3)** of this section 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 as aforesaid, the Registrar shall refer the matter to a District Court Judge, who may issue a warrant for the arrest of the defendant.” 20 25

Struck Out

5. Defendant on bail may be arrested without warrant in certain circumstances—Section 53 (3) of the principal Act (as substituted by section 3 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by omitting the words “notwithstanding anything in the Crimes Act 1961”, and substituting the words “subject to section 318 of the Crimes Act 1961 but notwithstanding any other provision of that Act”. 30

New

5. Defendant on bail may be arrested without warrant in certain circumstances—(1) Section 53 of the principal Act (as substituted by section 3 of the Summary Proceedings 35

New

Amendment Act (No. 2) 1987) is hereby amended by repealing subsection (1), and substituting the following subsection:

5 “(1) Where, in respect of any defendant who has been released on bail by any Court or Justice or member of the Police, any member of the Police believes on reasonable grounds that—

10 “(a) The defendant has absconded or is about to abscond for the purpose of evading any appearance or further appearance in Court; or

“(b) The defendant has contravened or failed to comply with any condition of bail,—

the member of the Police may arrest the defendant without warrant.”

15 (2) Section 53 (3) of the principal Act (as so substituted) is hereby amended by omitting the words “notwithstanding anything in the Crimes Act 1961”, and substituting the words “subject to section 318 of the Crimes Act 1961 but notwithstanding any other provision of that Act”.

20 **5A. Failure to answer bail**—(1) Section 54 of the principal Act (as substituted by section 3 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by inserting, after the word “bail” where it first appears, the words “by a Court or Justice”.

25 (2) Section 54 of the principal Act (as so substituted) is hereby amended by adding the following subsection:

30 “(2) Every defendant commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, having been released on bail by a member of the Police, fails without reasonable excuse to attend personally at the time and the Court specified in the bail bond.”

5B. Arrest of defendant who does not attend hearing—
The principal Act is hereby amended by repealing section 55 (as amended by section 8 (2) of the Summary Proceedings Amendment Act (No. 2) 1987), and substituting the following section:

“55. Where a defendant who has been released on bail by a Court or Justice or member of the Police—

New

<p>“(a) 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</p> <p>“(b) Does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned,—</p> <p>any District Court Judge or Justice may issue a warrant to arrest the defendant and bring him or her before a Court.”</p>	5
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6. District Court Judge or Justice may grant a rehearing—Section 75 (4) of the principal Act is hereby amended by omitting the expression “section 319 of the Crimes Act 1961” (as substituted by section 4 (1) (e) of the Summary Proceedings Amendment Act 1961), and substituting the expression “sections 318 and 319 of the Crimes Act 1961”.

7. New sections (relating to appeals from decisions on bail) substituted—The principal Act is hereby amended by repealing section 115D (as inserted by section 5 of the Summary Proceedings Amendment Act (No. 2) 1987), and substituting the following sections:

“115D. **Rights of appeal against decisions relating to bail**—(1) Where a District Court Judge or Justice or Justices refuse to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the High Court against that refusal.

“(2) Where a District Court Judge or Justice or Justices grant bail to any defendant (whether before or after conviction), the informant may appeal to the High Court against that decision.

“(3) Where, in respect of any grant of bail to a defendant (whether before or after conviction),—

“(a) A District Court Judge or Justice or Justices have imposed any condition of bail, or have 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 50A (1) of this Act, 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,—

the defendant or the informant 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 “(4) For the purposes of any appeal under this section, the failure of a District Court Judge or Justice or Justices to impose any condition of bail, or any particular condition of bail, on any occasion on which any such condition could lawfully have been imposed shall be deemed to be a refusal to impose such a
10 condition.

“(5) Nothing in this section shall limit or affect the jurisdiction of the High Court to hear and determine an application for bail by a person who has been refused bail by a District Court Judge or Justice.

15 *Struck Out*

“115E. **Restriction on informant’s rights of appeal under section 115D**—(1) No appeal shall be brought under section 115D of this Act by any informant unless the consent of the Solicitor-General has first been obtained and is lodged with
20 the notice of appeal.

“(2) Any document evidencing the Solicitor-General’s consent for the purposes of **subsection (1)** of this section may be signed on the Solicitor-General’s behalf by a person purporting to be a Crown Counsel.

25 “115F. **Procedural provisions applying to appeals under section 115D**—(1) Subject to **subsections (2) and (4)** of this section, the provisions of sections 116 to 143 of this Act, as far as they are applicable and with all necessary modifications, shall apply to every appeal under **section 115D** of this Act as if
30 the decision of the District Court appealed against were an order.

“(2) Notwithstanding anything in section 119 (2) of this Act, and notwithstanding any other enactment or rule of law, on the hearing of any appeal under **section 115D** of this Act it shall not
35 be necessary to produce—

“(a) Any note or transcript of the evidence adduced to the Court appealed from; or

“(b) Any note of the reasons for the decision appealed against; or

40 “(c) Any copy of any note or transcript referred to in **paragraph (a) or paragraph (b)** of this subsection.

“(3) Nothing in section 144 of this Act shall apply in respect of any appeal under **section 115D** of this Act.

“(4) No decision of any District Court Judge or Justice or Justices appealed against under **section 115D** of this Act shall be suspended merely because notice of that appeal has been given. 5

“(5) Every appeal under **section 115D** of this Act that is not heard before the date on which the decision appealed against ceases to have any effect shall lapse on that date and shall be deemed to have been dismissed by the High Court for non-prosecution.” 10

8. Notice of appeal—Section 116 (1A) of the principal Act (as inserted by section 2 (4) of the Summary Proceedings Amendment Act (No. 5) 1985) is hereby amended by omitting the words “or section 115D” (as inserted by section 8 (2) of the Summary Proceedings Amendment Act (No. 2) 1987). 15

9. Setting down appeal for hearing—Section 118 of the principal Act is hereby amended by inserting, after the word “notify”, the words “or cause to be notified”.

10. Granting of bail to appellant who is in custody—(1) Section 125 (1) of the principal Act is hereby amended by inserting, after the expression “Misuse of Drugs Amendment Act 1978” (as inserted by section 2 (2) of the Summary Proceedings Amendment Act 1978), the expression “and to section 318 of the Crimes Act 1961”. 20

(2) Section 125 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection: 25

“(4) Where an appellant is granted or refused bail under this section, or any decision is made under section 50A (1) of this Act (as applied by subsection (3) of this section) in respect of any appellant, the provisions of **sections 115D to 115F** of this Act, as far as they are applicable and with all necessary modifications, shall apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail.” 30

11. Execution of decision of High Court—(1) Section 135 (3) of the principal Act is hereby amended by adding the following proviso: 35

“Provided also that, where the High Court, on an appeal under **section 115D** of this Act, 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 shall be 40

issued out of the High Court and signed by a Judge; and the person who executes that warrant shall 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
5 warrant is executed.”

(2) Section 135 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections:

“(3A) Where, on any appeal in respect of any condition of bail, the High Court varies or revokes any condition of bail or
10 substitutes or imposes any other condition of bail, the following provisions shall apply:

“(a) If the defendant is present at the Court, the Registrar of the High Court shall forthwith prepare a new notice of bail setting out the conditions of bail as so
15 amended (if any), satisfy himself or herself that the defendant understands the conditions of bail, and require the defendant to sign the notice of bail:

“(b) If the defendant is not present at the Court, the Registrar of the Court appealed from shall send
20 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.

“(3B) If, in any case to which subsection (3A) of this section
25 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 as aforesaid, the Registrar shall refer the matter to a District Court Judge, who may issue a warrant for the
30 arrest of the defendant.”

12. Custody of person after determination of appeal—

Section 136 (1) of the principal Act is hereby amended by inserting, after the word “detention”, the words “or to be detained in custody”.

35 **13. Application of provisions of Part II—**(1) Section 153 of the principal Act is hereby amended by inserting, after paragraph (h) (as substituted by section 8 (2) of the Summary Proceedings Amendment Act (No. 2) 1987), the following
40 paragraph:

“(ha) Section 55 (which relates to the arrest of a defendant released on bail who does not attend the hearing):”.

(2) Section 153 of the principal Act is hereby amended by adding the following subsection:

“(2) Where, by virtue of any of the provisions applied by subsection (1) of this section with respect to proceedings to which this Part of this Act applies, a defendant is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of **sections 115D to 115F** of this Act, as far as they are applicable and all necessary modifications, shall apply accordingly.”

14. Defendant may plead guilty before or during preliminary hearing—Section 153A of the principal Act (as inserted by section 15 (1) of the Summary Proceedings Amendment Act 1976) is hereby amended by inserting, after subsection (6A) (as inserted by section 10 of the Summary Proceedings Amendment Act 1980), the following subsection:

“(6B) Where, by virtue of subsection (6A) of this section or of any of the provisions of Part II of this Act (as applied by that subsection), a defendant is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of **sections 115D to 115F** of this Act, as far as they are applicable and with all necessary modifications, shall apply accordingly.”

15. If evidence sufficient defendant may be committed for trial or for sentence—Section 168 of the principal Act is hereby amended by inserting, after subsection (1A) (as inserted by section 11 (5) of the Summary Proceedings Amendment Act 1980), the following subsection:

“(1B) Where, by virtue of subsection (1A) of this section or of any of the provisions of Part II of this Act (as applied by that subsection), a defendant is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of **sections 115D to 115F** of this Act, as far as they are applicable and with all necessary modifications, shall apply accordingly.”

16. Release on bail of defendant committed for trial or for sentence—(1) Section 171 of the principal Act is hereby amended by omitting from paragraph (b) of subsection (1) (as substituted by section 8(2) of the Summary Proceedings Amendment Act (No. 2) 1987) the words “during the sittings” where they last appear, and substituting the words “(being a

day or days that occur during the then current sittings of the Court or during the next or any subsequent such sittings”.

(2) Section 171 of the principal Act is hereby amended by adding the following subsection:

5 “(5) Where, by virtue of any of the provisions of this section or of Part II of this Act (as applied by this section), a defendant who has been committed for trial or for sentence is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of sections 115D to 115F of this Act, as far as they are applicable and with all necessary modifications, shall apply accordingly.”

15 **17. Consequential repeals**—(1) Section 4 (1) (e) of the Summary Proceedings Amendment Act 1961 is hereby consequentially repealed.

(2) The Summary Proceedings Amendment Act (No. 2) 1987 is hereby consequentially amended—

(a) By repealing section 5:

20 *Struck Out*

(b) By repealing so much of the Schedule to that Act as relates to section 116 of the principal Act.

New

25 (b) By repealing so much of the Schedule to that Act as relates to—
(i) Section 55 of the principal Act; and
(ii) Section 116 of the principal Act.

PART II

AMENDMENTS TO CRIMES ACT 1961

30 **18. Part to be read with Crimes Act 1961**—This Part of this Act shall be read together with and deemed part of the Crimes Act 1961* (in this Part referred to as the principal Act).

*R.S. Vol. 1, p. 635

Amendments: 1979, No. 5; 1979, No. 127; 1980, No. 63; 1980, No. 85; 1982, No. 46; 1982, No. 157; 1985, No. 82; 1985, No. 121; 1985, No. 160; 1985, No. 171; 1986, No. 4; 1986, No. 33; 1986, No. 71; 1986, No. 75; 1986, No. 82; 1987, No. 1; 1987, No. 167; 1988, No. 114; 1989, Nos. 22, 103

19. When bail not allowable—The principal Act is hereby amended by repealing section 318, and substituting the following section:

“318. (1) No one who is charged with any crime against section 73 or section 76 of this Act (which relate to treason) or against section 78 of this Act (which relates to espionage) shall be granted bail except by order of the Governor-General or a Judge of the High Court. 5

Struck Out

“(2) No person to whom this subsection applies shall be granted bail or allowed to go at large unless that person satisfies the Court on the balance of probabilities that bail should be granted, and, in particular (but without limiting any other matters in respect of which that person must satisfy the Court under this subsection), that the person will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person. 10 15

New

“(2) No person to whom this subsection applies shall be granted bail, or allowed to go at large, except by order of a Judge of the High Court. 20

“(2A) No person to whom **subsection (2)** of this section applies shall be granted bail or allowed to go at large unless the person satisfies the Judge on the balance of probabilities that bail should be granted, and, in particular (but without limiting any other matters in respect of which that person must satisfy the Judge under this subsection), that the person will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person. 25

“(3) In deciding, in relation to any person to whom **subsection (2)** of this section applies, whether or not to grant bail to that person or allow that person to go at large, the *(Court shall have regard, among other matters, to the need to protect the public)* need to protect the public shall be the paramount consideration. 30

“(4) **Subsection (2)** of this section applies to any person (being a person who is of or over the age of 17 years) who is charged with *(or convicted of)* any specified offence (as defined in **subsection (5)** of this section) and who has **(2) 1** or more previous convictions for any specified offence (whether those convictions 35

were for the same specified offence or for different specified offences).

New

5 “(4A) No person (being a person who is of or over the age of
17 years) who is found guilty of, or pleads guilty to, any
specified offence (as defined in **subsection (5)** of this section) and
who has 1 or more previous convictions for any specified
10 offence (whether those convictions were for the same specified
offence or for different specified offences) shall, while waiting to
be sentenced or otherwise dealt with for the first-mentioned
specified offence, be granted bail or allowed to go at large.

15 “(5) In (**subsection (4) of**) this section, the term ‘specified
offence’ means any offence against any of the following
provisions of this Act:
“Section 128 (sexual violation);
“Section 167 (murder);
“Section 168 (murder);
“Section 171 (manslaughter);
20 “Section 173 (attempt to murder);
“Section 188 (1) (wounding with intent to cause grievous
bodily harm);
“Section 188 (2) (wounding with intent to injure);
25 “Section 189 (1) (injuring with intent to cause grievous bodily
harm);
“Section 189 (2) (injuring with intent to injure);
“Section 198A (as inserted by section 3 of the Crimes
Amendment Act (No. 2) 1986) (using any firearm against
law enforcement officer, etc.);
30 “Section 198B (as so inserted) (commission of crime with
firearm);
“Section 234 (robbery);
“Section 235 (aggravated robbery).”

New

35 **19A. Two new sections (relating to bail) inserted**—The
principal Act is hereby amended by inserting, after section 319,
the following sections:

“319A. **Detention while bail bond prepared and
signed**—Where any person is granted bail by the High Court

New

or a District Court, a Judge or District Court Judge (as the case may require) may direct that the person be detained in the custody of the Court,—

“(a) For such time, not exceeding 2 hours, as may be necessary to enable the bail bond to be prepared and signed; and 5

“(b) If, within that period of 2 hours, the person is not released (whether by reason of having refused to sign the bail bond or for any other reason), for such time as may be necessary to enable the issue of a warrant for the detention of the person in custody. 10

“**319B. Variation of conditions of bail**—(1) Subject to subsection (3) of this section, where any person is granted bail by the High Court, any Judge of the High Court may, on the application of the prosecutor or the person granted bail, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail. 15

“(2) Subject to subsection (3) of this section, where the High Court has, in granting bail to any person, imposed the condition that the person report to the police at such time or times and at such place or places as the Court orders, any Registrar of the High Court or of a District Court may, on the application of the person granted bail, make an order varying the time or times or the place or places at which the person granted bail is required to so report. 20 25

“(3) No application shall be made under subsection (1) or subsection (2) of this section in respect of any bail bond that has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented in writing to the making of the application. 30

“(4) Where, pursuant to subsection (1) of this section, any Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply: 35

“(a) If the person granted bail is present at the Court, the Registrar shall forthwith prepare a new bail bond setting out the conditions of bail as so amended (if any), satisfy himself or herself that the person granted bail understands the conditions of bail, and require that person to sign the bail bond: 40

New

5 “(b) If the person granted bail is not present at the Court, the Registrar of the Court that varied or revoked or substituted or imposed the condition shall send written notice to the person granted bail 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 so amended (if any).

10 “(5) If, in any case to which **subsection (4)** of this section applies, the person granted bail fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person granted bail.”

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Struck Out

20. Arrest of absconder—Section 320 of the principal Act is hereby amended by inserting, after the word “or” where it appears in that section for the last time, the words “, subject to section 318 of this Act,”.

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New

20. Arrest of absconder—Section 320 of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979 and by section 4 of the Crimes Amendment Act (No. 2) 1980) is hereby amended—

25 (a) By inserting in the first sentence of that section, immediately before the words “High Court”, the words “Court of Appeal or the”:

30 (b) By inserting in the second sentence of that section, after the words “bail, or”, the words “, subject to section 318 of this Act,”.

Struck Out

21. Variation of conditions of bail—The principal Act is hereby amended by inserting, after section 320, the following section:

“320A. (1) Subject to **subsection (3)** of this section, where any person is granted bail by the High Court, any Judge of the High Court may, on the application of the prosecutor or the person granted bail, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail. 5

“(2) Subject to **subsection (3)** of this section, where the High Court has, in granting bail to any person, imposed the condition that the person report to the police at such time or times and at such place or places as the Court orders, any Registrar of the High Court or of a District Court may, on the application of the person granted bail, make an order varying the time or times or the place or places at which the person granted bail is required to so report. 10 15

“(3) No application shall be made under **subsection (1)** or **subsection (2)** of this section in respect of any bail bond that has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented in writing to the making of the application. 20

“(4) Where, pursuant to **subsection (1)** of this section, any Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply: 25

“(a) If the person granted bail is present at the Court, the Registrar shall forthwith prepare a new bail bond setting out the conditions of bail as so amended (if any), satisfy himself or herself that the person granted bail understands the conditions of bail, and require that person to sign the bail bond: 30

“(b) If the person granted bail is not present at the Court, the Registrar of the Court that varied or revoked or substituted or imposed the condition shall send written notice to the person granted bail 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 so amended (if any). 35 40

Struck Out

5 “(5) If, in any case to which **subsection (3)** of this section applies, the person granted bail fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person granted bail.”

New

10 **21. Three new sections (relating to breach of bail) inserted**—The principal Act is hereby amended by inserting, after section 320, the following sections:

15 “320A. **Person on bail may be arrested without warrant in certain circumstances**—(1) Where, in respect of any person who has been released on bail by the Court of Appeal or the High Court or a District Court, any member of the Police believes on reasonable grounds that—

20 “(a) The person has absconded or is about to abscond for the purpose of evading any appearance or further appearance in Court; or

“(b) The person has contravened or failed to comply with any condition of bail,—

the member of the Police may arrest the person without warrant.

25 “(2) Every person who is arrested under **subsection (1)** of this section shall be brought before a High Court Judge or a District Court Judge as soon as possible.

30 “(3) In any such case, the Judge or District Court Judge, on being satisfied that the person had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, shall reconsider the question of bail; and, subject to **section 318** of this Act but notwithstanding any other provision of this Act, the person shall thereafter be bailable only at the discretion of the Judge or District Court Judge, as the case may require.

35 “320B. **Failure to answer bail**—Every person commits an offence and is liable on summary conviction to imprisonment for a term of 1 year or a fine not exceeding \$2,000 who, having

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been released on bail by the Court of Appeal or the High Court or a District Court,—

“(a) Fails without reasonable excuse to attend personally at the time and the Court specified in the bail bond or, as the case may require, the notice of bail; or 5

“(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.

“320c. **Non-performance of condition of bail bond to be certified by Judge**—(1) Where any person who has been released on bail at any time fails to comply with any condition of bail, any judge or District Court Judge may certify on the back of the bail bond or, as the case may require, the notice of bail the non-performance of that condition. 10 15

“(2) Every certificate given by a Judge or District Court Judge under subsection (1) of this section shall be prima facie evidence, for the purposes of section 320b of this Act, that the person has failed to comply with the condition of the bail bond or, as the case may require, the notice of bail specified in the certificate.” 20

22. Powers of Court of committal as to custody or bail of accused—Section 323 of the principal Act is hereby amended by inserting, after the word “may”, the expression “, subject to sections 318 and 319 of this Act,”.

23. Bench warrant—Section 350 (2) of the principal Act is hereby amended by inserting, after the words “sittings or”, the words “, subject to section 318 of this Act,”. 25

24. Motion in arrest of judgment. Sentence—Section 371 (6) of the principal Act is hereby amended by inserting, immediately before the word “If”, the words “Subject to section 318 of this Act,”. 30

25. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 379A, the following heading and sections:

“Appeal on Question of Bail

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“379B. **Appeal from decision of High Court relating to bail**—(1) Subject to subsections (4) and (5) of this section, this

section applies to any decision made (whether pursuant to any enactment or rule of law or otherwise) by any Judge of the High Court whereby—

- 5 “(a) Any person is granted or refused bail; or
 “(b) Any condition of bail is imposed or substituted or
 revoked or varied; or
 “(c) The imposition of any condition of bail, or any particular
 condition of bail, is refused; or
10 “(d) The variation or revocation of any condition of bail is
 refused.
 “(2) Either the prosecutor or the (*accused person*) person to
whom the decision relates may appeal to the Court of Appeal
against any decision to which this section applies.
15 “(3) For the purposes of this section, the failure of a Judge of
the High Court to impose any condition of bail, or any
particular condition of bail, on any occasion on which any such
condition could lawfully have been imposed shall be deemed to
be a refusal to impose such a condition.
20 “(4) Nothing in this section applies in respect of any decision
made in any proceedings for a drug-dealing offence within the
meaning of Part II of the Misuse of Drugs Amendment Act
1978.
 “(5) Nothing in this section applies in respect of any decision
made by a Judge of the High Court if that decision was made
25 on appeal from any decision of a District Court Judge or Justice
or Justices.
 “379c. **Procedural provisions relating to appeal on
question of bail**—(1) Every person wishing to appeal under
30 **section 379b** of this Act shall file notice of that person's intention
to appeal with the Registrar of the Court of Appeal within 10
days after the date of the decision to be appealed against.
 “(2) Every appeal under **section 379b** of this Act that is not
heard before the date on which the decision appealed against
35 ceases to be of any effect shall lapse on that date, and shall be
deemed to have been dismissed by the Court of Appeal for non-
prosecution.
 “(3) No decision of a Judge appealed against under **section
379b** of this Act shall be suspended merely because notice of
that appeal has been given.
40 “(4) On any appeal under **section 379b** of this Act 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.

“379D. Execution of decision of Court of Appeal—

(1) Where, on any appeal under **section 379b** of this Act against a refusal to grant bail to any person, the Court of Appeal determines that bail shall be granted, the Court of Appeal shall order that the person be released on bail, subject to such conditions as the Court of Appeal thinks fit. 5

“(2) Where, on an appeal under **section 379b** of this Act in respect of any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the person bailed 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. 10 15

“(3) If, in any case to which **subsection (2)** of this section applies, the person bailed fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person bailed. 20

“(4) If, on an appeal under **section 379b** of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted or, as the case may be, should not be continued, a warrant for the detention in custody of the person to whom the determination relates shall be issued out of the Court and signed by a Judge; and the person who executes that warrant shall ensure that a copy of the notice of the result of the appeal is given to the person arrested when the warrant is executed or as soon as practicable after the warrant is executed. 25 30

“(5) Any person to whom **subsection (4)** of this section applies and who is not in custody may be arrested without warrant by any constable or any officer of a penal institution.”

Struck Out

“(6) For the purposes of giving full effect to any decision of the Court of Appeal under **section 379c** of this Act, the provisions of section 320 of this Act, so far as they are applicable and with all necessary modifications, shall apply.” 35

26. Reserving question of the law—Section 380 (5) of the principal Act is hereby amended by inserting, after the word “shall”, the words “, subject to section 318 of this Act,”. 40

5 **27. Powers of Court of Appeal where appeal is on question of law**—Section 382 (2) of the principal Act is hereby amended by inserting, after the expression “section 379A” (as inserted by section 8 (4) of the Crimes Amendment Act 1966), the expression “or section 379B”.

10 **28. Granting of bail to appellant, and custody pending appeal**—Section 397 (2) of the principal Act is hereby amended by inserting, immediately before the words “The Court of Appeal”, the words “Subject to section 318 of this Act,”.

29. Intermediate effects of appeal—Section 399 (6) of the principal Act is hereby amended—
15 (a) By inserting in the first sentence, immediately before the words “the Court may”, the words “, subject to section 318 of this Act,”;
(b) By inserting in the second sentence, immediately after the word “who”, the words “, subject to section 318 of this Act,”.

PART III

20 AMENDMENTS TO DISTRICT COURTS ACT 1947

30. Part to be read with District Courts Act 1947—This Part of this Act shall be read together with and deemed part of the District Courts Act 1947* (in this Part referred to as the principal Act).

*R.S. Vol. 5, p. 1
Amendments: 1980, No. 83; 1981, No. 21; 1982, No. 5; 1982, No. 130; 1983, No. 49; 1985, No. 137; 1986, No. 84; 1987, No. 26; 1988, No. 183; 1989, No. 107

25 **31. Powers of Court**—Section 28E of the principal Act (as inserted by section 9 of the District Courts Amendment Act 1980) is hereby amended by repealing subsection (2), and substituting the following subsections:

30 “(2) Any Court exercising jurisdiction under this Part of this Act may adjourn any trial and grant the accused person bail; and sections 46 to 50A(53, 54, 55, and 57) of the Summary Proceedings Act 1957, with any necessary modifications, shall apply.

35 “(2A) Where, by virtue of subsection (2) of this section or of any of the provisions applied by that subsection, an accused person is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of sections 115D to 115F of the Summary

Proceedings Act 1957, as far as they are applicable and with all necessary modifications, shall apply accordingly.”

32. Consequential repeal—Section 3 of the District Courts Amendment Act (No. 2) 1982 is hereby consequentially repealed.

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