

COURTS AND CRIMINAL PROCEDURE (MISCELLANEOUS PROVISIONS) BILL

EXPLANATORY NOTE

THIS Bill amends various enactments and relates to courts and criminal procedure.

Clause by Clause Analysis

Clause 1 relates to the Short Title of the Bill.

PART I

AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

Clause 2 provides that this Part of the Bill is to be read with the Summary Proceedings Act 1957.

Clause 3 amends section 29(1) of the principal Act. Section 29(1) presently provides that a person referred to in section 25(1)(c) (a person authorised by a Judge or Registrar) or section 25(1)(e) (an officer or employee of the informant) must prove service of any document by making an affidavit as to service. The amendment relaxes that provision by enabling such persons to prove service by—

- (a) Endorsing a copy of the document showing the fact of service and the time and mode of service; and
- (b) Providing proof that he or she is authorised or entitled to serve documents on defendants.

Clause 4 amends section 36 of the principal Act and enables a Registrar to grant leave to withdraw an information where the defendant has successfully completed the Police programme known as diversion.

Clause 5 amends section 44(2)(a) of the principal Act to remove an inconsistency between that Act and section 3 of the Crimes Act 1961. Section 3 deems a person to have been convicted on indictment if committed to the High Court for sentence under section 44 of the principal Act. However, section 44 provides for a conviction in the District Court to be entered before the case is referred to the High Court. The amendment removes any suggestion of a summary conviction being entered in the District Court in such cases.

Clause 6 inserts into the principal Act new section 44A. The new section deals with the situation where the District Court transfers a case to the High Court for sentencing and there are related offences against the defendant that presently

cannot be dealt with in the High Court either because they are purely summary offences or indictable offences triable summarily in the District Court. *Section 44A* enables the High Court to deal with such related offences.

Clause 7 amends section 45A of the principal Act to make it clear that the provision (which enables Registrars to grant adjournments) relates not only to summons cases but also to the situation where a defendant is released on bail by the Police under section 51 of the Act.

Clause 8 amends section 46 of the principal Act to enable a Registrar to grant bail and to remand defendants in certain cases.

A Registrar will be able to grant bail where—

- (a) Bail is not opposed; and
- (b) The offence concerned carries a maximum sentence of imprisonment of less than 10 years and does not involve violence.

A Registrar will be able to remand a defendant in custody only where—

- (a) Both the defendant and the informant agree to the remand; and
- (b) The defendant has been given an opportunity to be legally represented.

A single period of remand imposed by a Registrar must not exceed 8 days although 2 consecutive 8-day periods may be imposed. The defendant must be brought before the court at the earliest opportunity (which will be after the expiration of 16 days commencing on the date of the imposition of the remand unless the offender sooner withdraws his or her agreement to the remand).

Clause 9 amends section 50A of the principal Act—

- (a) To enable a Justice to vary or revoke or substitute a condition of bail;
- (b) To enable a Registrar to vary or revoke or substitute a condition of bail where the informant does not object and a Registrar imposed the original conditions of bail;
- (c) To enable a Registrar to issue a warrant to arrest where the defendant fails to attend at court at the appointed time.

Clause 10 repeals and replaces section 56 of the principal Act. The existing provision does not link well with section 45A which allows a Registrar to adjourn a hearing in certain cases. As it stands, section 56 allows the court to certify the non-performance of a bail bond in any case where the defendant fails to attend the court at the time and place specified in the bond. The existing provision does not deal with the situation where a Registrar has adjourned the hearing under section 45A. Accordingly the existing section is recast to deal with cases where an adjournment has been granted under that section.

Clause 11 inserts into the principal Act new *section 61A*, which enables a Registrar—

- (a) In certain cases where the Registrar may adjourn the hearing under section 45A and is satisfied that the defendant had been informed of the obligation to attend and had no reasonable excuse for failing to attend, to issue a warrant for the arrest of a defendant;
- (b) In certain cases where the Registrar lacks the power to adjourn the hearing but considers that arrest is appropriate, to refer the matter to a District Court Judge who shall consider whether to issue a warrant for the arrest of the defendant or to adjourn the hearing.

The section applies if—

- (a) The defendant is entitled to elect trial by jury (section 61 (1));
- (b) The defendant is represented at the hearing but is not personally present (section 65);

(c) The offence is punishable by more than 3 months imprisonment, and the defendant is not personally present at the hearing and does not elect trial by jury (section 66).

Clause 12 updates the definition of the term “salary or wages” in section 79 of the principal Act by including a reference to earnings related compensation under the Accident Rehabilitation and Compensation Insurance Act 1992.

Clause 13 inserts into the principal Act new *section 87A*, which provides a formal basis for the publication of names of fines defaulters as a means to locate the defaulters.

Clause 14 authorises arrest warrants in the form of computer printouts.

Clause 15 rectifies an omission in section 94B of the principal Act.

Clause 16 inserts into the principal Act new *section 102A* which protects Registrars from liability for acts done or omitted in good faith in relation to the new power under *clause 13* to publish the names of fines defaulters.

Clause 17 corrects an incorrect cross-reference in section 106E of the principal Act.

Clause 18 amends section 168 of the principal Act to cure a difficulty that arises in relation to indictable offences referred to in Part I of Schedule 1A to the District Courts Act 1947. Section 28A of that Act gives certain District Courts jurisdiction over such offences. Section 168 (1) (b) (i) of the principal Act allows the court to adjourn the proceedings for sentencing in accordance with the District Courts Act 1947 where the defendant pleads guilty and either the offence is an indictable one triable summarily or the defendant has elected trial by jury. Unlike section 153A (6) of the principal Act (which is a similar provision relating to a guilty plea entered before or during the preliminary hearing), section 168 (1) (b) (i) makes no mention of the indictable offences referred to Part I of Schedule 1A to the District Courts Act 1947. Accordingly there is some uncertainty as to the efficacy of sentences imposed in respect of any of those offences in a case adjourned for sentence under section 168 (1) (b) (i).

The clause makes section 168 (1) (b) (i) consistent with section 153A (6) and preserves the effect of any sentences affected by the omission in section 168 (1) (b) (i).

Clause 19 repeals and replaces Part VII of the principal Act and relates to the protection of District Court Judges and Justices.

New *section 193* is a reformulation of the existing provision and protects District Court Judges and Justices against actions for acts or omissions if—

- (a) The act or omission occurs in excess of or without jurisdiction; but
- (b) The Judge or Justice does not act in bad faith.

At present, a civil action could be brought against a Judge or Justice who acts in excess of or without jurisdiction. In the 1994 case of *Derrick*, the Court of Appeal considered the present section 193 in relation to a District Court Judge. The majority’s opinion is that a Judge who is grossly negligent or acts in bad faith (per Cooke P) or who acts in bad faith or is grossly careless or indifferent to the performance of his or her responsibilities (per Richardson J) can be taken to have acted without jurisdiction or in excess of jurisdiction.

The amendment requires that bad faith be proved in every case. If bad faith is not proved, the action will not lie even though the Judge or Justice may have acted negligently in the way referred to by Cooke P or Richardson J in *Derrick*.

New sections 194 to 197 substantially carry over the existing corresponding provisions but are recast to reflect the changes made by new section 193.

PART II

AMENDMENTS TO DISTRICT COURTS ACT 1947

Clause 20 provides that this Part of the Bill is to be read with the District Courts Act 1947.

Clause 21 amends section 28A of the principal Act to expressly confer on the District Court jurisdiction in cases where the defendant is charged with the offence of conspiring to commit, attempting to commit, or being an accessory after the fact of an offence referred to in Part I or Part II of Schedule 1A to the Act.

At present, the court has jurisdiction *in respect of* the indictable offences referred to in that Schedule and this clearly applies where the charge is that the defendant actually committed such an offence. The difficulty is that—

- (a) Schedule 1A does not refer to the offence of conspiring to commit, attempting to commit, or being an accessory after the fact of any of the specified offences; and
- (b) Section 6 of the Summary Proceedings Act 1957 distinguishes between offences simpliciter on the one hand and the offences of conspiring to commit, attempting to commit, or being an accessory after the fact of a particular offence on the other hand.

It seems unlikely that Parliament could have intended that a District Court may exercise jurisdiction in cases involving an offence referred to in Schedule 1A but not in cases involving an offence of conspiring to commit, attempting to commit, or being an accessory after the fact of one of the offences referred to in that Schedule. Nevertheless it is desirable to remove the uncertainty.

A savings provision is included to preserve the effect of decisions made between the time Schedule 1A took effect and the commencement of this clause.

Clause 22 updates the definition of the term “salary or wages” in section 79 of the principal Act by including a reference to earnings related compensation under the Accident Rehabilitation and Compensation Insurance Act 1992.

PART III

AMENDMENTS TO POLICE ACT 1958

Clause 23 provides that this Part of the Bill is to be read with the Police Act 1958.

Clause 24 amends section 39 of the principal Act.

Subclause (1) makes it clear that the protection afforded by the section to members of the Police when executing any process issued by a court applies where the process has been issued by a Registrar or Deputy Registrar of any court.

Subclause (2) makes it clear that the term “process” includes a computer printout referred to in *clause 14*.

PART IV

AMENDMENTS TO MISUSE OF DRUGS ACT 1975

Clause 25 provides that this Part of the Bill is to be read with the Misuse of Drugs Act 1975.

Clauses 26 and 27 update references to the Summary Proceedings Act 1957 in sections 43 and 44 of the Misuse of Drugs Amendment Act 1978.

PART V
AMENDMENTS TO CRIMES ACT 1961

Clause 28 provides that this Part of the Bill is to be read with the Crimes Act 1961.

Clause 29 defines certain terms used in this Part of the Bill and, in particular, inserts into the principal Act a definition of the term "Trial Judge".

Clause 30 relates to indictments and repeals section 346, and substitutes new sections 345A to 346.

Section 345A establishes a new rule that indictments must be filed within 42 days after the date on which the accused is committed for trial.

Section 345B provides for the extension of the 42-day period in appropriate cases.

Section 345C relates to cases where the prosecutor has applied for an extension under *section 345B* on the ground that further investigations are necessary and does not wish to disclose the investigations because disclosure may prejudice the investigations. In such cases, the court is empowered to order that the prosecutor be excused from disclosing information concerning the investigations.

Section 345D provides for the amendment of indictments.

Section 346 relates to the failure of a prosecutor to file an indictment and the changes are consequential upon the earlier sections in this clause.

Clause 31 and the *First* and *Second* Schedules contain other miscellaneous amendments to various Acts. Attention is drawn to the provision in the *First* Schedule that amends section 379A of the principal Act to add new rights of appeal and the provisions in the *Second* Schedule which empower warranted District Court Judges to order trial by Judge alone.

Clauses 32 and 33 contain savings and transitional provisions.

PART VI
AMENDMENTS TO CRIMINAL JUSTICE ACT 1985

Clause 34 provides that this Part of the Bill is to be read with the Criminal Justice Act 1985.

Clause 35 amends section 80 of the principal Act by replacing subsection (1) of that section. At present, section 80 (1) enables a court to make an order fixing a minimum period of imprisonment (a non-parole period) if an offender is sentenced to an indeterminate sentence of imprisonment. The provision requires that the order be made when the offender is sentenced. This causes some difficulty in the case of murder because Judges prefer to pass the mandatory sentence of life imprisonment quickly and adjourn the court. If an order under section 80 (1) seems likely, the Judge has to adjourn the sentencing to obtain the necessary reports. The amendment enables the court, in the case of murder, to make an order under section 80 (1) at any time after the sentence is imposed so long as an application for the order is made within 14 days after the verdict is delivered. In all other cases, any order under section 80 (1) must be made when the offender is sentenced.

Clause 36 amends section 81 of the principal Act to count as time served under a sentence any time spent on remand in a police jail or in a hospital under section 121 of the Act or section 45 or section 46 of the Mental Health

(Compulsory Assessment and Treatment) Act 1992. The amendment does not apply in respect of sentences imposed before the clause comes into force or sentences substituted for such earlier sentences.

Clause 37 amends section 97 of the principal Act—

- (a) To clarify that a recalled offender is entitled without application to have his or her case for parole considered by the appropriate Board at 12-monthly intervals:
- (b) To provide that where a recalled offender applies to have his or her case for parole considered by the appropriate Board, the Board must consider the case as soon as practicable on the first occasion and thereafter the offender can apply to have his or her case for parole considered by the Board at six-monthly or longer intervals.

Clause 38 replaces section 105 (7) of the principal Act to cure a difficulty with its relationship to section 99. The provision enables the Parole Board to revoke an order that the offender serve the full term of his or her sentence and further provides for the nature and duration of the conditions of the offender's release to be determined at the same time under section 99 of the Act. The problem is that section 99 applies only to offenders who are serving a sentence of 7 years or more. The clause enables the Parole Board to determine release conditions for offenders who are subject to a term of imprisonment of less than 7 years also.

Clause 39 replaces section 107 (5) of the principal Act with an expanded provision that requires reports prepared in respect of an offender's suitability for release to a habilitation centre or an offender's suitability for release to home detention to be made available to an offender for the purpose of assisting the offender to comment to the Parole Board or District Prisons Board about such reports.

Clause 40 amends section 107₁ of the principal Act. The principal amendment is to add a new subsection (9).

The present effect of section 107₁ (8) is that an offender's sentence will cease to run if an application for the recall of the offender is made, except that any period during which the offender is held in custody will count towards the sentence. When an order for the recall of the offender is made, the sentence begins to run again whether or not the offender is in custody. Accordingly an offender may be subject to an order for his or her recall but could avoid recapture until the sentence ends.

The amendment ensures that the sentence begins to run again only when the offender is taken into custody.

Clause 41 amends section 107₁ of the principal Act in 2 respects. First, to require the Parole Board to make an interim order recalling an offender where the application for recall is in order and the offender is subject to a sentence of life imprisonment for murder or manslaughter or to a sentence of preventive detention. Secondly, to ensure that where the Chairperson of the Parole Board or District Prisons Board is considering an application for such an order on the ground that the offender poses an immediate risk to the safety of the public or of any person or class of person or is likely to abscond, the order may not be refused merely because the offender is for the time being in custody.

Clause 42 effects miscellaneous and consequential amendments to the principal Act.

Clause 43 amends the Armed Forces Discipline Act 1971 to update a cross-reference to various provisions of the Criminal Justice Act 1985.

PART VII

AMENDMENTS TO JUDICATURE ACT 1908

Clause 44 provides that this Part of the Bill is to be read with the Judicature Act 1908.

Clause 45 increases from 32 to 36 the number of Judges who, together with the Chief Justice, constitute the High Court.

**COURTS AND CRIMINAL PROCEDURE
(MISCELLANEOUS PROVISIONS)**

ANALYSIS

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PART VII			
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<p>346. Failure of prosecutor to file indictment</p> <p>31. Further amendments to principal Act and amendments to other enactments</p> <p>32. Savings provision relating to indictments</p> <p>33. Transitional and savings provisions relating to power of District Court to order trial by Trial Judge alone</p> <p style="text-align: center;">PART VI</p> <p>AMENDMENTS TO CRIMINAL JUSTICE ACT 1985</p> <p>34. This Part to be read with Criminal Justice Act 1985</p> <p>35. Minimum periods of imprisonment</p> <p>36. Period on remand to be taken as time served</p> <p>37. Jurisdiction of Parole Board to release offenders on parole</p>	<p>38. Offender may be required to serve full term</p> <p>39. Rights of offender whose case is to be considered by Parole Board or District Prisons Board</p> <p>40. Application for recall</p> <p>41. Interim order for recall</p> <p>42. Further amendments to principal Act</p> <p>43. Amendment to Armed Forces Discipline Act 1971</p> <p style="text-align: center;">PART VII</p> <p>AMENDMENTS TO JUDICATURE ACT 1908</p> <p>44. This Part to be read with Judicature Act 1908</p> <p>45. Number of Judges increased Schedules</p>
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A BILL INTITULED

An Act—

- (a) **To amend various enactments relating to courts or criminal procedure; and**
- (b) **To provide for related matters**

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

1. Short Title—This Act may be cited as the Courts and Criminal Procedure (Miscellaneous Provisions) Act 1995.

PART I

AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

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2. This 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 of this Act referred to as the principal Act).

*1957, No. 87 (R.S. Vol. 9, p. 583)

Amendments: 1982, No. 47; 1982, No. 131; 1982, No. 158; 1985, No. 51; 1985, No. 55; 1985, No. 162; 1985, No. 191; 1986, No. 73; 1986, No. 76; 1987, No. 165; 1987, No. 172; 1989, No. 21; 1989, No. 105; 1991, No. 62; 1991, No. 105; 1992, No. 82; 1993, No. 47; 1994, No. 161

3. Proof of service—(1) Section 29 (1) of the principal Act (as amended by section 2 (2) of the Summary Proceedings Amendment Act 1970 and section 6 of the Summary Proceedings Amendment Act 1993) is hereby amended by omitting the words “or, where service is effected by an officer of the Court or a sworn or non-sworn member of the Police or a traffic officer within the meaning of the Transport Act 1962,” and substituting the word “, or”.

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(2) Section 29 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

5 “(1A) If, pursuant to subsection (1) of this section, any person referred to in paragraph (c) or paragraph (e) of section 25 (1) of this Act proves service of any document by endorsement on a copy of the document, that person shall, when returning the endorsed copy to the Court, provide proof that he or she is a person referred to in either of those paragraphs.”

(3) The following enactments are hereby consequentially repealed:

10 (a) Section 2 (2) of the Summary Proceedings Amendment Act 1970:

(b) Section 6 of the Summary Proceedings Amendment Act 1993.

15 **4. Withdrawal of information by informant**—Section 36 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

20 “(1A) A Registrar may exercise the power conferred by subsection (1) of this section to grant leave if the informant is a sworn or non-sworn member of the Police and has notified the Registrar in writing that the defendant has successfully completed a programme of diversion (being a programme conducted by the Police).”

25 **5. Power of Court to decline summary jurisdiction**—Section 44 (2) (a) of the principal Act is hereby amended by omitting the word “convicted”, and substituting the words “found guilty”.

6. Power of Court to decline summary jurisdiction in case of certain summary offences—The principal Act is hereby amended by inserting, after section 44, the following section:

30 “44A. (1) Whenever the Court commits a defendant to the High Court for sentence in respect of any offence, the Court may also commit the defendant to the High Court for sentence in respect of any other offence that—

35 “(a) Is related to the first-mentioned offence or arises from the same course of conduct as that offence; and

“(b) Either—

“(i) Would, but for this subsection, be required to be dealt with summarily; or

“(ii) Is one where the Court may—

40 “(A) Pursuant to section 44 of this Act, decline to deal summarily with the offence; or

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“(B) Pursuant to section 28G of the District Courts Act 1947, decline to sentence the defendant,—

but has not declined such jurisdiction.

“(2) Except as provided in **subsection (3)** of this section, the sentence that may be imposed by the High Court in any case referred under **subsection (1)** of this section shall not exceed the sentence that could have been imposed in that case by the District Court. 5

“(3) Where the High Court is satisfied that the District Court would have declined jurisdiction to sentence the defendant, the High Court may impose any sentence that it could impose in that case if the District Court had declined such jurisdiction.” 10

7. Power of Registrar to adjourn—(1) Section 45A of the principal Act (as inserted by section 3 of the Summary Proceedings Amendment Act 1991) is hereby amended by adding the following subsection: 15

“(4) For the avoidance of doubt, it is hereby declared that a Registrar may, upon application, grant an adjournment under subsection (1) of this section if— 20

“(a) The defendant has been released on bail under section 51 of this Act; and

“(b) The application is made before the commencement of the hearing.”

(2) Section 152A of the principal Act (as inserted by section 5 of the Summary Proceedings Amendment Act 1991) is hereby consequentially amended by adding the following subsection: 25

“(4) For the avoidance of doubt, it is hereby declared that a Registrar may, upon application and with the consent of each party, grant an adjournment under subsection (1) of this section if— 30

“(a) The defendant has been released on bail under section 51 of this Act; and

“(b) The application is made before the commencement of the preliminary hearing; and 35

“(c) It is necessary or desirable to do so for any reasonable cause.”

8. Dealing with defendant on adjournment—
(1) Section 46 of the principal Act (as substituted by section 2 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended by inserting, after subsection (1), the following subsections: 40

“(1A) A Registrar may exercise the power conferred by subsection (1) (b) of this section to grant bail if—

“(a) Bail is not opposed by the informant; and

5 “(b) The maximum sentence of imprisonment that may be imposed for the offence with which the defendant has been charged is less than 10 years; and

“(c) The offence does not involve violence.

10 “(1B) A Registrar may exercise the power conferred by subsection (1) (c) of this section to remand a defendant in custody if—

“(a) Both the defendant and the informant agree to the remand; and

“(b) The defendant—

15 “(i) Is legally represented or has indicated that he or she has received legal advice; or

“(ii) Has had an opportunity to obtain such advice and has declined to do so.

“(1c) The following provisions shall apply to every remand imposed by a Registrar under **subsection (1B)** of this section:

20 “(a) A single period of remand shall not exceed 8 days:

“(b) Not more than 2 consecutive periods of remand may be imposed and neither of those periods shall exceed 8 days:

25 “(c) The defendant shall be brought before a Court or Justice—

“(i) At the earliest opportunity if, at any time during the period of remand, the defendant withdraws his or her agreement under **subsection (1B) (a)** of this section; or

30 “(ii) At the earliest opportunity after the expiration of 16 days commencing on the date of the imposition of the remand;—

and the Court or Justice shall determine what action (if any) under subsection (1) of this section should be taken in respect
35 of the defendant.”

(2) Section 46 (2) of the principal Act (as so substituted) is hereby amended by omitting the expression “Subsection (1)”, and substituting the expression “Subsections (1) to **(1B)**”.

40 (3) The principal Act is hereby consequentially amended by inserting in sections 47, 49, 50 (2A), 53 (1), 54 (1), 55, and 57 (1), after the words “or Justice” wherever they occur, the words “or Registrar”.

(4) Section 57 (2) of the principal Act (as added by section 8 (2) of the Summary Proceedings Amendment Act

(No. 2) 1987) is hereby consequentially amended by inserting, after the word “Judge”, the words “or Justice or Registrar”.

9. Variation of conditions of bail—(1) Section 50A of the principal Act (as substituted by section 6 of the Summary Proceedings Amendment Act (No. 2) 1991) is hereby amended 5
by inserting, after subsection (1), the following subsection:

“(1A) A Registrar may exercise the power conferred by subsection (1) of this section to make an order if—

“(a) The informant does not object; and

“(b) A Registrar imposed the original conditions of bail.” 10

(2) Section 50A of the principal Act (as so substituted) is hereby amended—

(a) By inserting in subsection (1), after the words “District Court Judge”, the words “or Justice”:

(b) By inserting in subsection (2), after the words “or Justice” 15
in both places where they occur, the words “or Registrar”:

(c) By inserting in subsection (3), after the words “any Court”, the words “or Justice or Registrar”:

(d) By omitting from subsection (4) the words “shall refer the 20
matter to a District Court Judge, who”, and substituting the words “or a District Court Judge”.

10. Effect on bond of attendance or non-attendance of person bailed by constable—The principal Act is hereby amended by repealing section 56, and substituting the 25
following section:

“56. (1) If the defendant attends personally at the time and place—

“(a) Specified in any bail bond taken by a constable; or

“(b) To which the hearing has been adjourned under 30
section 45A of this Act—

to answer the charge brought against him or her, the bond shall be void.

“(2) If—

“(a) The hearing has not been adjourned under section 45A 35
of this Act and the defendant does not attend personally at the time and place specified in the bond; or

“(b) The hearing has been so adjourned, but the defendant 40
does not attend personally at the time and place to which the hearing has been adjourned,—

the presiding District Court Judge or Justice or Justices or any Registrar may certify on the back of the bond or of a copy of

the bond drawn up and certified by a constable the non-performance of the condition of the bond.”

5 **11. Powers of Registrar to adjourn hearing or issue warrant to arrest defendant**—(1) The principal Act is hereby amended by inserting, after section 61, the following section:

“61A. (1) If the Registrar has the power to adjourn the hearing of any charge under section 45A of this Act, the Registrar may either—

“*(a)* Adjourn the hearing; or

10 “*(b)* Exercise the power conferred by section 61 (a) or section 65 or section 66 of this Act to issue a warrant to arrest the defendant.

“*(2)* If the Registrar does not have power to adjourn the hearing of any charge under section 45A of this Act, but
15 considers that a warrant to arrest the defendant should be issued under section 61 (a) or section 65 or section 66 (7) of this Act, the Registrar shall refer the matter to a District Court Judge who may direct the Registrar to issue a warrant to arrest the defendant.

20 “*(3)* A Registrar shall not exercise any of the powers referred to in **subsection (1) (b)** of this section unless he or she is satisfied that the defendant—

“*(a)* Was informed of the defendant’s obligation to attend at the specified time and place; and

25 “*(b)* Failed without reasonable excuse to so attend.”

(2) Section 61 (a) of the principal Act is hereby consequentially amended by inserting, after the word “Court” where it fourthly occurs, the words “or any Registrar”.

30 **12. Interpretation**—Section 79 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by adding to paragraph (b) of the definition of the term “salary or wages” the words “or the Accident Rehabilitation and Compensation Insurance Act 1992”.

35 **13. Publication of name of fines defaulter**—The principal Act is hereby amended by inserting, after section 87 (as substituted by section 14 of the Summary Proceedings Amendment Act 1987), the following section:

“87A. (1) This section applies if—

40 “*(a)* A defendant has been ordered by a Court (other than a Youth Court) to pay any fine; and

- “(b) The defendant has not made any payment in respect of the fine for at least 3 months before the date on which the Registrar proposes to arrange the publication of a notice under **subsection (2)** of this section relating to the defendant; and 5
- “(c) The defendant owes not less than \$500 in unpaid fines; and
- “(d) Either the fine is not subject to any arrangement under section 81 or section 86 of this Act allowing payment of the fine over a specified period or the fine is subject to such an arrangement but the defendant is not for the time being observing the terms of the arrangement; and 10
- “(e) No name suppression order was made in respect of the defendant in the proceedings in which the fine was imposed; and 15
- “(f) The Registrar has been unable to locate the defendant after using reasonably available sources of information; and
- “(g) The Registrar has confirmed the identity of the defendant by checking information held in relation to the defendant on any database accessible to the Registrar; and 20
- “(h) The Registrar has no reason to suspect that the defendant has died. 25
- “(2) If this section applies, the Registrar may cause notice of the fines defaulter to be published in a newspaper circulating in the area where the Court is located and the notice may include one or more of the following details:
- “(a) The name of the defendant: 30
- “(b) The defendant’s current or last known address:
- “(c) The defendant’s date of birth.
- “(3) A Registrar who causes the publication under **subsection (2)** of this section of any particulars relating to a defendant shall take all reasonable steps to ensure that the particulars published are accurate and current.” 35

14. Action where fine remains unpaid—Section 88 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by inserting, after subsection (1), the following subsection: 40

“(1A) Without limiting any other provision of this Act, a warrant for the defendant’s arrest under subsection (1)(d) of this section may be in the form of a computer printout of information entered by a Registrar into any computer system

accessible to the Police, and the following provisions shall apply in relation to every such warrant:

5 “(a) Information about any defendant that is so entered by the Registrar may be printed out by any sworn member of the Police and shall for all purposes constitute a warrant for the arrest of the defendant:

“(b) The absence of any signature on the printout does not affect its validity as a warrant:

10 “(c) The warrant is valid for a period of 7 days beginning on the date of its printing and shall then lapse:

“(d) At any time and from time to time after a warrant lapses under **paragraph (c)** of this subsection,—

15 “(i) The Registrar may re-enter the particulars into the same computer system or enter the particulars into any other computer system accessible to the Police:

20 “(ii) Any sworn member of the Police may obtain a further printout of the original information entered by the Registrar or obtain a printout of the re-entered information or of the information entered into the other computer system, and every such printout shall constitute a fresh warrant for the arrest of the defendant.”

25 **15. Immobilisation of motor vehicles**—Section 94B (2)(b) of the principal Act (as inserted by section 18 of the Summary Proceedings Amendment Act 1993) is hereby amended by inserting, after the word “bailiff”, the words “or constable”.

30 **16. Further protection of Registrar**—The principal Act is hereby amended by inserting, after section 102, the following section:

“102A. No Registrar shall be personally liable for any act done or omitted in good faith in relation to the publication of a notice under **section 87A** of this Act.”

35 **17. Restriction on imprisonment**—Section 106E(4) of the principal Act (as substituted by section 20(1) of the Summary Proceedings Amendment Act 1993) is hereby amended by omitting the expression “subsection (2)”, and substituting the expression “subsection (3)”.

40 **18. If evidence sufficient defendant may be committed for trial or for sentence**—(1) Section 168(1)(b)(i) of the

principal Act (as substituted by section 11 (3) of the Summary Proceedings Amendment Act 1980) is hereby amended by inserting, after the word “jury”, the words “or where the offence is an indictable offence referred to in Part I of Schedule IA to the District Courts Act 1947”.

5

(2) Every sentence imposed in accordance with section 28F of the District Courts Act 1947 that—

(a) Was imposed on or after the 1st day of October 1991 but before the commencement of this section; and

(b) Relates to proceedings dealt with by the Court under section 168 (1) (b) (i) of the principal Act,—

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shall be as valid and effectual as it would have been if **subsection (1)** of this section had been in force when the sentence was imposed.

19. New Part VII substituted—(1) The principal Act is hereby amended by repealing Part VII (comprising sections 193 to 197), and substituting the following Part:

15

“PART VII

PROTECTION OF DISTRICT COURT JUDGES AND JUSTICES

“**193. No action against District Court Judge or Justice unless act in excess of or without jurisdiction and bad faith proved—**(1) No action shall be brought against any District Court Judge or Justice for any act done or omitted by him or her within jurisdiction.

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“(2) No action shall be brought against any District Court Judge or Justice for any act done or omitted by him or her in excess of or without jurisdiction, unless he or she has acted in bad faith.

25

“(3) If a conviction or order is entered or made by a District Court Judge or by one or more Justices and a warrant of distress or of commitment is granted in that case in good faith by some other District Court Judge or Justice, no action shall be brought against the District Court Judge or Justice who granted the warrant by reason of any defect in the conviction or order or of any want of jurisdiction in the District Court Judge or Justice or Justices who entered or made it.

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35

Cf. 1957, No. 87, s. 193; 1980, No. 84, s. 21

“**194. No action against District Court Judge or Justice to be brought in District Court—**No action against any District Court Judge or Justice by any person claiming to have been injured by an act done or omitted by the Judge or Justice

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in excess of or without jurisdiction, and in bad faith, shall be brought in a District Court.

Cf. 1957, No. 87, s. 194

5 “195. **Onus of proof**—In any action brought against any District Court Judge or Justice by any person claiming to have been injured by an act done or omitted by the Judge or Justice in excess of or without jurisdiction, and in bad faith, the onus of proving both—

“(a) The excess or want of jurisdiction; and

10 “(b) The bad faith—

shall lie upon the person alleging it.

Cf. 1957, No. 87, s. 195

“196. **Plaintiff may be ordered to give security for costs**—(1) In any action brought against any District Court Judge or Justice by any person claiming to have been injured by any act done or omitted by the Judge or Justice in excess of or without jurisdiction, and in bad faith, the High Court or any Judge of that Court, upon application by the District Court Judge or Justice at any time before the day fixed for the trial of the action, may order the plaintiff to give security for the costs of the action to the satisfaction of the Registrar of the High Court in a sum not exceeding \$1,000.

20 “(2) If security is ordered to be given, the Court or Judge may direct that in the meantime all proceedings shall be stayed.

Cf. 1957, No. 87, s. 196

“196A. **Indemnity to District Court Judge**—(1) Any District Court Judge against whom a judgment has been entered to pay damages or costs to any person injured as a result of any act done or omitted by the Judge in excess of or without jurisdiction, and in bad faith, shall be indemnified by the Crown to the full amount of the judgment.

30 “(2) If a claim against a District Court Judge is settled with the agreement of the Attorney-General by the payment by the Judge of, or an agreement by the Judge to pay, an agreed amount for damages or costs before action is commenced against the Judge or before or during trial of the action, the Judge shall be indemnified by the Crown to the full amount paid or agreed to be paid by him or her.

40 “(3) A District Court Judge shall be entitled to any costs reasonably incurred in connection with any action brought against the Judge by any person claiming to have been injured

as a result of any act done or omitted by the Judge in excess of or without jurisdiction, and in bad faith.

Cf. 1957, No. 87, s. 196A; 1979, No. 126, s. 3 (1)

“197. **Indemnity to Justice**—(1) Any Justice against whom an action has been brought by any person claiming to have been injured as a result of any act done or omitted by the Justice in excess of or without jurisdiction, and in bad faith, is entitled to be indemnified by the Crown in respect of— 5

“(a) Any costs reasonably incurred in connection with the action: 10

“(b) Any damages awarded or costs ordered to be paid as a result of the action:

“(c) Any amount agreed as settlement for damages or costs before the commencement of the action or before or during the trial of the action— 15

if a Judge of the High Court issues a certificate under **subsection (2)** of this section.

“(2) Any Justice against whom such an action has been commenced shall be required to produce a certificate signed by a Judge of the High Court stating that he or she is satisfied that— 20

“(a) The Justice acted under the belief that he or she did have jurisdiction; and

“(b) The Justice acted in good faith; and

“(c) It is appropriate, in all the circumstances of the case, that the Justice be indemnified by the Crown; and 25

“(d) If any amount referred to in **subsection (1) (c)** of this section has been paid or agreed to be paid, the amount is fair and reasonable.

“(3) If he or she is not satisfied that any amount referred to in **subsection (1) (c)** of this section that has been paid or agreed to be paid is fair and reasonable, the Judge may issue the certificate in respect of such lesser sum as in his or her opinion would have been or would be adequate to settle the plaintiff’s claim; and, in that case, the Justice shall be indemnified by the Crown to the amount specified in the certificate. 30 35

“(4) Application for such a certificate may be made by the Justice at any time to a Judge in Chambers, and the Judge has power to grant the certificate after considering such evidence as may be given before him or her either orally or in the form of affidavits. 40

“(5) A copy of the application shall be served by the Justice on the Attorney-General, who is entitled to appear and oppose it.

‘Cf. 1957, No. 87, s. 197”

5 (2) The following enactments are hereby consequentially repealed:

(a) Section 3 (1) of the Summary Proceedings Amendment Act 1979:

10 (b) Sections 21 and 22 of the Summary Proceedings Amendment Act 1980.

PART II

AMENDMENTS TO DISTRICT COURTS ACT 1947

15 **20. This 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 of this Act referred to as the principal Act).

*1947, No. 16 (R.S. Vol. 28, p. 57)

Amendments: 1992, No. 138; 1994, No. 29; 1994, No. 147

21. Extent of jurisdiction under Part II A of this Act—
20 (1) Section 28A (1) of the principal Act (as substituted by section 4 of the District Courts Amendment Act 1991) is hereby amended by adding the following paragraphs:

“(f) Conspiring to commit any indictable offence referred to in Part I or Part II of Schedule IA to this Act:

25 “(g) Attempting to commit any indictable offence referred to in Part I or Part II of Schedule IA to this Act, or inciting or counselling or attempting to procure any person to commit any such offence which is not committed:

30 “(h) Being an accessory after the fact to any indictable offence referred to in Part I or Part II of Schedule IA to this Act.”

(2) Section 28A (2) of the principal Act (as so substituted) is hereby amended by omitting the expression “subsection (1) (d)”, and substituting the expression “any of paragraphs (d), (f), (g), and (h) of subsection (1)”.

35 (3) Every determination or order of a District Court—

(a) Made on or after the 1st day of October 1991 but before the commencement of this section; and

40 (b) Made in respect of an offence referred to in any of paragraphs (f), (g), and (h) of section 28A (1) of the principal Act (as added by subsection (1) of this section),—

shall be as valid and effectual as it would have been if subsection (1) of this section had been in force when the determination or order was made.

22. Interpretation—Section 84F of the principal Act (as inserted by section 9 of the Districts Courts Amendment Act 1989) is hereby amended by adding to paragraph (b) of the definition of the term “salary or wages” the words “or the Accident Rehabilitation and Compensation Insurance Act 1992”.

PART III

AMENDMENTS TO POLICE ACT 1958

23. This Part to be read with Police Act 1958—This Part of this Act shall be read together with and deemed part of the Police Act 1958* (in this Part of this Act referred to as the principal Act).

*1958, No. 109 (R.S. Vol. 26, p. 669)

Amendments: 1991, No. 29; 1992, No. 63; 1992, No. 68; 1994, No. 157

24. Protection of members for acts pursuant to process—(1) Section 39 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2), the words “or Justice”, and substituting in each case the words “Justice, or Registrar or Deputy Registrar of any Court”.

(2) Section 39 of the principal Act is hereby amended by adding the following subsection:

“(3) For the purposes of this section, the term ‘process’ includes any computer printout to which section 88 (1A) of the Summary Proceedings Act 1957 applies.”

PART IV

AMENDMENTS TO MISUSE OF DRUGS ACT 1975

25. This Part to be read with Misuse of Drugs Act 1975—This Part of this Act shall be read together with and deemed part of the Misuse of Drugs Act 1975* (in this Part of this Act referred to as the principal Act).

*1975, No. 116 (R.S. Vol. 26, p. 567)

Amendment: 1992, No. 49

26. Enforcement of fines imposed in High Court—Section 43 of the Misuse of Drugs Amendment Act 1978 is hereby amended—

(a) By omitting from paragraph (a) (ii) the words “in the form prescribed for the purpose of section 89 (1) (a) of the

Summary Proceedings Act 1957 (with any necessary modifications)”:

(b) By repealing paragraph (b):

5 (c) By omitting from paragraph (c) the words “subsection (4) of section 89 of the Summary Proceedings Act 1957”, and substituting the words “this section”.

27. Enforcement of fines imposed in District Court—

10 (1) Section 44 of the Misuse of Drugs Amendment Act 1978 is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Part III of the Summary Proceedings Act 1957 (with any necessary modifications):”.

15 (2) Section 44 (b) of the Misuse of Drugs Amendment Act 1978 is hereby amended by omitting the words “subsection (4) of section 89”, and substituting the expression “Part III”.

PART V

AMENDMENTS TO CRIMES ACT 1961

20 **28. This Part to be read with Crimes Act 1961—**This Part of this Act and the First Schedule to this Act shall be read together with and deemed part of the Crimes Act 1961*.

*1961, No. 43 (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, No. 22; 1989, No. 103; 1991, No. 63; 1991, No. 106; 1993, No. 33; 1993, No. 46; 1993, No. 62; 1994, No. 27

29. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “property”, the following definition:

“ ‘Prosecutor’ means—

25 “(a) A Crown Solicitor:

“(b) In relation to a Crown prosecution, the Attorney-General:

“(c) In relation to a private prosecution, the private prosecutor.”.

30 (2) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Registrar” (as inserted by section 2 (2) of the Crimes Amendment Act (No. 2) 1980), and substituting the following definition:

“ ‘Registrar’—

35 “(a) For the purposes of Part XII of this Act, means any Registrar of the trial Court; and includes any Deputy Registrar of that Court:

“(b) For any other purpose, means any Registrar of the High Court or of a District Court, as the case may require; and includes any Deputy Registrar.”

(3) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “territorial waters”, the following definition: 5

“ ‘Trial Judge’ means—

“(a) If the accused has been committed to the High Court for trial and the case has not been transferred to the District Court for trial pursuant to section 168AA of the Summary Proceedings Act 1957, a High Court Judge: 10

“(b) If the accused has been committed to the District Court for trial or the case has been transferred to that Court for trial pursuant to section 168AA of the Summary Proceedings Act 1957, and the Court has jurisdiction in the matter under section 28AA of that Act, a District Court Judge.” 15

(4) Section 2 (2) of the Crimes Amendment Act (No. 2) 1980 is hereby consequentially repealed. 20

30. New sections substituted—The principal Act is hereby amended by repealing section 346, and substituting the following sections:

“**345A. Time for filing indictment**—(1) Unless an extension is obtained under **section 345B** of this Act, an indictment shall be filed not later than 42 days after the date on which the accused is committed for trial. 25

“(2) In reckoning the period referred to in **subsection (1)** of this section, the period commencing on the 24th day of December and ending with the close of the 15th day of January shall be disregarded. 30

“(3) If the time for filing an indictment expires on any day on which the office of the Court is closed and it is not possible for the indictment to be filed on that day by reason of that closure, the indictment shall be filed on the next day on which that office is open if it has not already been filed. 35

“(4) If an indictment is filed, the prosecutor shall forthwith forward a copy of the indictment—

“(a) If the accused is known by the prosecutor to be represented by counsel or a solicitor, to that counsel or solicitor; or 40

“(b) In any other case, to the accused at his or her last known address.

“(5) The accused is entitled to uplift a copy of the indictment from the Registrar at any time after it has been filed.

5 “345B. **Extension of time for filing indictment**—(1) If, upon application, it appears to a Trial Judge that it is in the interests of justice to extend the 42-day period referred to in **section 345A** of this Act for filing an indictment, he or she may order that the time be extended for such further period or periods as he or she thinks fit.

10 “(2) Without limiting the generality of **subsection (1)** of this section, in considering an application under this section, the Trial Judge may have regard to the following matters:

“(a) The number of offences which will or may be counts in the indictment:

15 “(b) The nature of the offence or offences which will or may be counts in the indictment:

“(c) The complexity of the issues likely to arise in the proceedings:

“(d) Whether the accused is charged jointly with any other person:

20 “(e) Whether further or ongoing inquiries are being conducted by or for the prosecution in relation to the subject-matter of the trial.

25 “(3) An application under this section may be made before or on or after the expiration of the period allowed for filing the indictment, and any period extended under this section may, in like manner, be further extended.

“(4) An application under this section shall, unless a Trial Judge otherwise directs,—

“(a) Be in writing; and

30 “(b) Include a statement of the reasons for seeking an extension; and

“(c) Specify the period for which the extension is sought; and

“(d) Give notice of intention (if any) to apply for an order under **section 345c (1)** of this Act.

35 “(5) An application under this section shall, unless a Trial Judge otherwise directs, be served by the prosecutor on the accused at least 4 working days before the date fixed for the hearing of the application—

40 “(a) If the accused was represented by counsel at the preliminary hearing of the charge or charges, or is known by the prosecutor to be represented by counsel or a solicitor, by leaving a copy of the application at the office of the counsel or solicitor or

sending a registered letter addressed to the counsel or solicitor at his or her office:

“(b) In any other case, by delivering a copy of the application personally to the accused or in such other manner as a Trial Judge may direct. 5

“(6) Any application under this section may be made to a Trial Judge when sitting in Court or in Chambers, and if the accused is represented by counsel, it is not necessary for the accused to be brought or appear before the Trial Judge on the hearing of the application. 10

“(7) A Registrar may exercise the power conferred by **subsection (1)** of this section if—

“(a) The period of extension sought does not exceed 1 month; and

“(b) The accused has consented to the extension, whether personally or by his or her counsel or solicitor. 15

“**345c. Trial Judge may excuse disclosure of information relating to Police investigations**—(1) A Trial Judge may, upon application, order that the prosecution be excused from disclosing to the accused any details relating to the nature or the purpose of investigations referred to in the application. 20

“(2) An order shall not be made under this section in any case unless—

“(a) An application has been made under **section 345b** of this Act in relation to the same case; and 25

“(b) The reason for that application is that further or continuing investigations in respect of the subject-matter of the trial in that case or any other matter that may affect the trial are being or are to be made by or for the prosecutor; and 30

“(c) The disclosure of the information will or may prejudice the investigations referred to in the application under this section; and

“(d) It is not contrary to the interests of justice to withhold the information. 35

“(3) At the hearing of an application under this section, any evidence to be adduced by the prosecutor shall be tendered to the Trial Judge in affidavit form and shall not be disclosed to the accused or to his or her counsel or solicitor unless the Trial Judge otherwise directs after considering the evidence and hearing from the prosecutor. 40

“(4) If an order is made under **subsection (1)** of this section, the Registrar shall, at the conclusion of the hearing, hold all

evidence adduced by the prosecutor secure against search until the order is discharged by the Court.

5 “(5) A Trial Judge may, at any time after an order under **subsection (1)** of this section has been made, either of his or her own motion or upon application by the accused or the prosecutor, discharge the order if the Trial Judge is satisfied, after hearing from the prosecutor, that—

“(a) The investigations which were the subject of the order have been completed; or

10 “(b) Disclosure of the information referred to in the order is necessary in the interests of justice.

“345D. **Leave to file amended indictments**—(1) A Trial Judge may, at any time before the commencement of the trial, upon application by the prosecutor, grant leave to allow the prosecutor to file an amended indictment if it appears to the Trial Judge that the filing of an amended indictment would be conducive to the ends of justice.

15 “(2) Without limiting the generality of **subsection (1)** of this section, leave may be granted under that subsection to allow the filed indictment to be amended by—

“(a) Amending any particulars; or

“(b) Removing or adding or substituting charges; or

“(c) Adding or removing the name of any accused.

25 “(3) An application under this section shall, unless a Trial Judge otherwise directs,—

“(a) Be in writing; and

“(b) Include a statement of the reasons why an amendment to the filed indictment is necessary or be accompanied by a copy of the amended indictment in respect of which leave is sought.

30 “(4) An application under this section shall, unless a Trial Judge otherwise directs, be served by the prosecutor on the accused at least 4 working days before the date fixed for the hearing of the application—

35 “(a) If the accused was represented by counsel at the preliminary hearing of the charge or charges, or is known by the prosecutor to be represented by counsel or a solicitor, by leaving a copy of the application at the office of the counsel or solicitor or sending a registered letter addressed to the counsel or solicitor at his or her office:

40 “(b) In any other case, by delivering a copy of the application personally to the accused or in such other manner as a Trial Judge may direct.

“(5) Any application under this section may be made to a Trial Judge when sitting in Court or in Chambers, and if the accused is represented by counsel, it is not necessary for the accused to be brought or appear before the Trial Judge on the hearing of the application. 5

“(6) A Registrar may exercise the power conferred by subsection (1) of this section if the accused has consented to the filing of an amended indictment, whether personally or by his or her counsel or solicitor.

“346. **Failure of prosecutor to file indictment**—(1) If the prosecutor does not file an indictment within the 42-day period referred to in section 345A of this Act or within such further time as may be allowed under section 345B of this Act, the Court may direct that the accused be discharged. 10

“(2) A discharge under this section shall be deemed to be an acquittal. 15

“(3) In such a case involving a private prosecution, the Court may order the prosecution to pay the costs of the accused.”

31. Further amendments to principal Act and amendments to other enactments—(1) The principal Act is hereby amended in the manner indicated in the First Schedule to this Act. 20

(2) The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule. 25

(3) The principal Act is hereby consequentially amended by omitting from the heading immediately above section 345 the word “*Presenting*”, and substituting the word “*Filing*”.

32. Savings provision relating to indictments—Nothing in section 30 of this Act applies to any indictment in respect of an accused committed for trial before the commencement of that section. 30

33. Transitional and savings provisions relating to power of District Court to order trial by Trial Judge alone—(1) Nothing effected by section 31 of this Act in relation to section 28D(1) of the District Courts Act 1947 or section 168c of the Summary Proceedings Act 1957 or section 361B(1) or section 361c(2)(a) of the Crimes Act 1961 applies in relation to any accused committed for trial before the date of commencement of that section if the trial of the accused has commenced before that date. 35 40

(2) Where the accused has been committed for trial before the date of commencement of the **section 31** of this Act, but the trial of the accused has not commenced before that date, section 361B(1) of the Crimes Act 1961 (as amended by **section 31** of this Act) shall, so far as it is applicable, apply as if for the words “date on which he is so committed” there were substituted the words “commencement of **section 31** of the Crimes Amendment Act 1995”.

PART VI

10 AMENDMENTS TO CRIMINAL JUSTICE ACT 1985

34. This Part to be read with Criminal Justice Act 1985—This Part of this Act shall be read together with and be deemed part of the Summary Proceedings Act 1957* (in this Part of this Act referred to as the principal Act).

*1985, No. 120

Amendments: 1986, No. 83; 1987, No. 25; 1987, No. 95; 1987, No. 168; 1989, No. 20; 1989, No. 91; 1993, No. 43; 1993, No. 93; 1994, No. 28

15 **35. Minimum periods of imprisonment**—Section 80 of the principal Act (as substituted by section 39(1) of the Criminal Justice Amendment Act 1993) is hereby amended by repealing subsection (1), and substituting the following subsection:

20 “(1) Subject to subsections (2) and (3) of this section, if a court sentences an offender to an indeterminate sentence, it may also order—

25 “(a) In the case of murder, upon application made within 14 days after the date of the delivery of the verdict; and

“(b) In any other case, at the same time as it sentences the offender—

that the offender serve a minimum period of imprisonment of more than 10 years.”

30 **36. Period on remand to be taken as time served**—(1) Section 81 of the principal Act (as substituted by section 40(1) of the Criminal Justice Amendment Act 1993) is hereby amended by repealing subsection (1), and substituting the following subsection:

35 “(1) The superintendent of any penal institution or the person in charge of any hospital, as the case may require, shall for the purposes of this section cause a record to be kept of—

40 “(a) The date on which any person is admitted to the institution on remand or to the hospital for detention under section 121 of this Act or section 45

or section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; and

“(b) The total period during which that person is detained in the institution on remand or detained in the hospital—

5

at any stage of the proceedings leading to the person’s conviction or pending sentence, whether that period or any part of it relates to any charge on which the person was eventually convicted or any other charge on which the person was originally arrested or that the person faced at any time subsequent to his or her arrest and prior to conviction.”

10

(2) Section 81 of the principal Act (as so substituted) is hereby amended by inserting in subsections (2), (3), and (8), after the words “on remand”, the words “or in a hospital”.

(3) **Subsection (1)** of this section shall not apply in respect of any sentences imposed before the commencement of this section or any sentences imposed in substitution for any such sentences.

15

37. Jurisdiction of Parole Board to release offenders on parole—(1) Section 97 of the principal Act (as substituted by section 43 (1) of the Criminal Justice Amendment Act 1993) is hereby amended by omitting from subsection (2), and also from subsection (3), the expression “subsection (8)”, and substituting in each case the expression “subsections (4), (4A), and (8)”.

20

(2) Section 97 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (4), the following subsection:

25

“(4A) An offender referred to in subsection (4) of this section who has been recalled or returned to a penal institution may,—

“(a) At any time after his or her recall or return, apply to the Parole Board to have his or her case considered for parole; and

30

“(b) From time to time thereafter, apply to the Board to have his or her case considered again;—

and the Board shall consider the case as soon as practicable after an application is made under **paragraph (a)** of this subsection, and shall consider the case again as soon as practicable after each subsequent application under **paragraph (b)** of this subsection unless the application is made within 6 months after a previous application by the offender under this subsection, when it may refuse to consider the case.”

35

40

(3) Section 97 (9) of the principal Act (as so substituted) is hereby amended by inserting, after the expression “or subsection (4)”, the expression “or **subsection (4A)**”.

38. Offender may be required to serve full term— Section 105 of the principal Act (as substituted by section 43 (1) of the Criminal Justice Amendment Act 1993) is hereby amended by repealing subsection (7), and substituting the following section:

5

“(7) On any such review, the Parole Board may—

10

“(a) Revoke the order if no longer satisfied that the offender would commit a specified offence between the date of release and the applicable release date if the offender were released before his or her applicable release date; and

15

“(b) At the same time, determine, pursuant to section 99 of this Act, the nature and duration of the conditions to which the offender shall be subject on release; and, if the offender is subject to a sentence of imprisonment of less than 7 years, that section shall apply as if the offender were subject to a sentence of imprisonment of 7 years or more.”

20

39. Rights of offender whose case is to be considered by Parole Board or District Prisons Board— Section 107 of the principal Act (as substituted by section 43 (1) of the Criminal Justice Amendment Act 1993) is hereby amended by repealing subsection (5), and substituting the following section:

25

“(5) Subject to subsection (6) of this section, whenever any case is to be considered under any of sections 97, 99, 100, and 101 of this Act, a copy of—

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“(a) Any report to be submitted to the Parole Board or the appropriate District Prisons Board pursuant to section 106 of this Act; and

“(b) Any report referred to in section 102 (4) of this Act that has been prepared in relation to the offender; and

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“(c) Any report referred to in section 103 (4) of this Act that has been prepared in relation to the offender— shall be given to the offender in sufficient time to enable the offender to submit any comments he or she may wish to make on the report or reports for consideration by the Board.”

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40. Application for recall—(1) Section 107¹ of the principal Act (as substituted by section 43 (1) of the Criminal Justice Amendment Act 1993) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsections (2) and (6) of this section, the Secretary may apply to the Parole Board for an order that any offender who is subject to an indeterminate sentence and has

been released under this Part of this Act be recalled to a penal institution to continue serving his or her sentence.”

(2) Section 107I of the principal Act (as so substituted) is hereby amended—

(a) By omitting the word “psychiatric”: 5

(b) By omitting the words “any such institution”, and substituting the words “any such hospital”.

(3) Section 107I of the principal Act (as so substituted) is hereby amended by adding the following subsection:

“(9) If an order recalling an offender is made under section 107L or section 107M of this Act and the sentence to which the order relates had ceased to run by virtue of subsection (8) of this section, that sentence shall begin to run again only when the offender is taken into custody.” 10

41. Interim order for recall—(1) Section 107J (2) of the principal Act (as substituted by section 43 (1) of the Criminal Justice Amendment Act 1993) is hereby amended by inserting, after paragraph (a), the following paragraph: 15

“(aa) The offender is subject to a sentence of life imprisonment for murder or manslaughter or to a sentence of preventive detention; or” 20

(2) Section 107J of the principal Act (as so substituted) is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) In determining an application under subsection (2) (b) of this section, the Chairperson shall disregard the fact that the offender is or is not for the time being in custody” 25

42. Further amendments to principal Act—The principal Act is hereby amended in the manner indicated in the Third Schedule to this Act. 30

43. Amendment to Armed Forces Discipline Act 1971—Section 168 (2) of the Armed Forces Discipline Act 1971 is hereby amended by omitting the expression “section 80 or section 90 or section 91 or sections 93 to 95” (as substituted by section 150 (1) of the principal Act), and substituting the expression “any of sections 89, 90, 91, 94, 97, 99, 100, and 101”. 35

PART VII

AMENDMENTS TO JUDICATURE ACT 1908

44. This Part to be read with Judicature Act 1908—This Part of this Act shall be read together with and deemed part of 40

the Judicature Act 1908* (in this Part of this Act referred to as the principal Act).

*1908, No. 89 (R.S. Vol. 22, p. 107)

Amendments: 1988, No. 194; 1990, No. 44; 1991, No. 60; 1994, No. 42

5 **45. Number of Judges increased**—(1) Section 4 (1) of the principal Act (as inserted by section 4 (1) of the Judicature Amendment Act 1957 and amended by section 2 (1) of the Judicature Amendment Act (No. 2) 1988) is hereby amended by omitting the expression “32”, and substituting the expression “36”.

10 (2) The Judicature Amendment Act (No. 2) 1988 is hereby consequentially repealed.

SCHEDULES

Section 31 (1)

FIRST SCHEDULE

FURTHER AMENDMENTS TO PRINCIPAL ACT

Provision of Principal Act	Amendment
Section 258 (2) (b) ...	By omitting from the proviso the word "presented", and substituting the word "filed".
Section 321 (4) ...	By omitting the word "presented", and substituting the word "filed".
Section 322 ...	By omitting the word "presented" wherever it occurs, and substituting in each case the word "filed".
Section 325 (1) ...	By omitting the word "presented", and substituting the word "filed".
Section 326 (1) ...	By omitting the word "presented" in both places where it occurs, and substituting in each case the word "filed".
Section 335 ...	By omitting the word "presented" wherever it occurs, and substituting in each case the word "filed".
Section 336 ...	By inserting in subsection (2), after the words "amend an indictment", the words "under section 335 of this Act". By adding the following subsection: "(3) Nothing in subsection (2) of this section limits anything in section 345c of this Act."
Section 340 (5) ...	By omitting the word "presented", and substituting the word "filed".
Section 345 ...	By omitting the word "presented" wherever it occurs, and substituting in each case the word "filed". By omitting from subsection (3) the word "present", and substituting the word "file".
Section 347 ...	By omitting the word "presented" wherever it occurs, and substituting in each case the word "filed".
Section 348 ...	By omitting the word "presented", and substituting the word "filed".
Section 350 ...	By omitting the word "presented" wherever it occurs, and substituting in each case the word "filed".
Section 353 ...	By omitting the word "presented" wherever it occurs, and substituting in each case the word "filed".
Section 361 (1) ...	By omitting the word "presented", and substituting the word "filed".

FIRST SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision of Principal Act	Amendment
Section 361B (1) ...	By inserting, before the words “for trial for any offence”, the words “or to a District Court Judge exercising jurisdiction under section 28A of the District Courts Act 1947”.
Section 361C (2) (a) ...	By inserting, before the words “at the place”, the words “or of the District Court, as the case may require,”.
Section 378 ...	By omitting the expression “section 168B”, and substituting the expression “section 168C”.
Section 379A (1) ...	<p>By omitting the word “presented”, and substituting the word “filed”.</p> <p>By inserting, after paragraph (c), the following paragraphs:</p> <p>“(ca) Against an order under section 345B of this Act extending the period allowed for filing an indictment or refusing to do so:</p> <p>“(cb) Against an order under section 345C of this Act excusing the prosecution from the obligation to disclose certain information:</p> <p>“(cc) Against an order under section 345D of this Act granting or refusing leave to file an amended indictment:</p> <p>“(cd) Against an order under section 346 of this Act discharging or refusing to discharge an accused:”.</p>
Section 411 (3) ...	By omitting the word “presenting” wherever it occurs, and substituting in each case the word “filing”.
Second Schedule ...	<p>By omitting the word “presented”, and substituting the word “filed”.</p> <p>By omitting from Form 4 the word “presented”, and substituting the word “filed”.</p>

28 *Courts and Criminal Procedure (Miscellaneous Provisions)*

Section 31 (2)

SECOND SCHEDULE
AMENDMENTS TO OTHER ENACTMENTS

Enactment	Amendment
1947, No. 16—The District Courts Act 1957 (R.S. Vol. 28, p. 57)	By omitting from section 28D(1) (as inserted by section 9 of the District Courts Amendment Act 1980) the word “Every”, and substituting the words “Subject to sections 361B and 361c of the Crimes Act 1961, every”.
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)	By inserting in section 168c (as inserted by section 2 of the Summary Proceedings Amendment Act 1979 and renumbered by section 12 of the Summary Proceedings Amendment Act 1980), before the words “for an order”, the words “or a trial Judge of the District Court, as the case may require,”.

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THIRD SCHEDULE

Section 42

FURTHER AMENDMENTS TO PRINCIPAL ACT

Provision	Amendment
Section 2 (1)	By omitting from the definition of the term "hospital" the words " , other than a security institution,".
Section 21A (4)	By inserting, after the words "the court", the words "sentencing the offender for the further offence".
Section 36 (1) (c)	By omitting the expression "subsections (1) and (2)", and substituting the expression "subsection (1) or subsection (2) or subsection (2A)".
Section 66 (4) (d)	By omitting the expression "section 88 (3) (c)" (as substituted by section 31 (2) of the Criminal Justice Act 1993), and substituting the expression "section 88 (3) (d)".
Section 75 (3)	By omitting from subsection (3) the words "as if there were added to subsection (1) of that section the words 'and a statement that the court has declined jurisdiction upon the ground that the court has reason to believe that the offender is liable to preventive detention' ", and substituting the words "and the court shall endorse on the relevant information a statement to the effect that the court has declined jurisdiction upon the ground that it has reason to believe that the offender is liable to preventive detention".
Section 93	By omitting the expression "7 days", and substituting the expression "14 days".
Section 95 (4) (a)	By omitting the words "subject to an order made under section 45 of that Act or to arrangements made under section 46 of that Act", and substituting the words "detained under section 45 or section 46 of that Act".
Section 100	By omitting from subsection (2), and also from subsection (3), the expression "subsection (8)", and substituting in each case the expression "subsections (4), (4A), and (8)". By inserting, after subsection (4), the following subsection: "(4A) An offender referred to in subsection (4) of this section who has been recalled or returned to a penal institution may,—

THIRD SCHEDULE—*continued*FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 100— <i>continued</i>	<p>“(a) At any time after his or her recall or return, apply to the Parole Board to have his or her case considered for parole; and</p> <p>“(b) From time to time thereafter, apply to the Board to have his or her case considered again;—</p> <p>and the Board shall consider the case as soon as practicable after an application is made under paragraph (a) of this subsection, and shall consider the case again as soon as practicable after each subsequent application under paragraph (b) of this subsection unless the application is made within 6 months after a previous application by the offender under this subsection, when it may refuse to consider the case.”</p>
Section 103 (1) (b) ...	By adding the words “or on the revocation of an order made under that section”.
Section 105 ...	<p>By omitting from subsection (8) the words “3 months before the sentence expiry date”, and substituting the words “on the applicable release date”.</p> <p>By repealing subparagraph (i) of subsection (9)(a), and substituting the following subparagraph:</p>
Section 107 ...	<p>“(i) In the case of an offender who is subject to a sentence of imprisonment imposed in respect of a specified offence, 3 months before the sentence expiry date of that sentence.”</p> <p>By inserting in subsection (1), and also in subsection (2), after the words “An offender”, the words “(including an offender who has been recalled to serve a sentence)”.</p> <p>By omitting from subsection (1) the words “an indeterminate sentence or to a sentence”, and substituting the words “one or more indeterminate sentences or to one or more sentences”.</p>
Section 107L (7) ...	By omitting the words “to whom subsection (1) (b) of this section relates”.

THIRD SCHEDULE—*continued*

FURTHER AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 115 (1) ...	By omitting the words “Mental Health Act 1969”, and substituting the words “Mental Health (Compulsory Assessment and Treatment) Act 1992”.
Section 116 (2) (b) ...	By omitting the word “committed”.