

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 20 August 1991.

Words struck out are shown 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.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 10 October 1991.

Words struck out are shown with double black rule at beginning and after last line; words inserted are shown with double rule before first line and after last line.

[Clauses 2A to 17 of this Bill were formerly clauses 2A to 17 of the Bail (Miscellaneous Provisions) Bill: 12-2]

Hon. D. A. M. Graham

SUMMARY PROCEEDINGS AMENDMENT (NO. 2)

ANALYSIS

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No. 12—3A

*Price
incl. GST \$2.30*

A BILL INTITULED

An Act to amend the Summary Proceedings Act 1957

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

1. Short Title and commencement—(1) This Act may be cited as the Summary Proceedings Amendment Act (No. 2) 1991, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

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

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”.

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

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 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.”.

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:

New

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

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

10 “(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.”

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:

20 “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.

25 “(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.

30 “(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:

35 “(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:

40 “(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).

“(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.”

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”.

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

“(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—

“(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.”

(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

New

“subject to section 318 of the Crimes Act 1961 but notwithstanding any other provision of that Act”.

5A. Failure to answer bail—

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Struck Out

(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”.

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New

(1) Section 54 of the principal Act (as substituted by section 3 of the Summary Proceedings Amendment Act (No. 2) 1987) is hereby amended—
(a) By omitting the words “term of”, and substituting the words “term not exceeding”; and
(b) By inserting, after the word “bail” where it first appears, the words “by a Court or Justice”.

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

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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:

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New

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

“(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 5

“(b) Does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned,—

any District Court Judge or Justice may issue a warrant to arrest the defendant and bring him or her before a Court.” 10

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”. 15

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: 20

“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. 25

“(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. 30

“(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 35

“(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
5 may be, against that refusal or against the decision in respect of
that application.

“(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
10 occasion on which any such condition could lawfully have been
imposed shall be deemed to be a refusal to impose such a
condition.

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

Struck Out

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

“115F. **Procedural provisions applying to appeals
under section 115D**—(1) Subject to **subsections (2) and (4)** of this
30 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
the decision of the District Court appealed against were an
order.

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

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

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

“(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”. 20

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”. 25

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

“(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 35

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

“Provided also that, where the High Court, on an appeal under section 115D of this Act, determines that bail should not be 40

granted or, as the case may be, should not be continued, a warrant for the detention of the defendant in custody shall be 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 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 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 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 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 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.”

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”.

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 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)”.

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

10 “(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
15 accordingly.”

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

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

(a) By repealing section 5:

Struck Out

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

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New

(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.