

Notes

¹ This is a compilation of the *Bail Act 1982* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Bail Act 1982</i>	86 of 1982	18 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984 Pt. III</i>	52 of 1984	5 Sep 1984	3 Oct 1984
<i>Bail Amendment Act 1984</i> ²	74 of 1984	29 Nov 1984	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Bail Amendment Act 1988</i>	15 of 1988	6 Sep 1988	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
Reprint of the <i>Bail Act 1982</i> under the Reprints Act 1984 and s. 21 of the Bail Amendment Act 1988 ³ (includes amendments listed above)			
<i>Criminal Law Amendment Act 1988 Pt. 4</i>	70 of 1988	15 Dec 1988	6 Feb 1989 (see s. 2(2)(b) and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 13</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Justices Amendment Act 1989 s. 18</i>	33 of 1989	22 Dec 1989	1 Jun 1991 (see s. 2 and <i>Gazette</i> 17 May 1991 p. 2455)
<i>Community Corrections Legislation Amendment Act 1990 Pt. 2</i>	61 of 1990	17 Dec 1990	3 Apr 1991 (see s. 2 and <i>Gazette</i> 22 Mar 1991 p. 1209)
<i>Child Welfare Amendment Act (No. 2) 1990 s. 15</i>	83 of 1990	22 Dec 1990	1 Aug 1991 (see s. 2 and <i>Gazette</i> 1 Aug 1991 p. 3983)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991 s. 21</i>	15 of 1991	21 Jun 1991	9 Aug 1991 (see s. 2(2) and <i>Gazette</i> 9 Aug 1991 p. 4101)
Reprint of the <i>Bail Act 1982</i> as at 17 Oct 1991 (includes amendments listed above)			
<i>Acts Amendment (Sexual Offences) Act 1992 Pt. 3</i>	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and <i>Gazette</i> 28 Jul 1992 p. 3671)
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 3</i> ⁴	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure Amendment Act 1993</i> Pt. 2 ⁵	45 of 1993	20 Dec 1993	Act other than s. 7-9 and 10(2)(b): 17 Jan 1994 (see s. 2(1)); s. 7-9 and 10(2)(b): 4 Mar 1994 (see s. 2(2) and <i>Gazette</i> 4 Mar 1994 p. 915)
<i>Criminal Law Amendment Act 1994</i> s. 13(1) and (2)	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2(2))
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> Pt. 3	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 5	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Coroners Act 1996</i> s. 61	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)
<i>Mental Health (Consequential Provisions) Act 1996</i> Pt. 2	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
Reprint of the <i>Bail Act 1982</i> as at 13 Mar 1997 (includes amendments listed above except those in the <i>Coroners Act 1996</i> and the <i>Mental Health (Consequential Provisions) Act 1996</i>) (corrections to reprint in <i>Gazette</i> 25 Jul 1997 p. 3909 and 14 Nov 1997 p. 6426)			
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 21	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Criminal Law Amendment Act (No. 1) 1998</i> s. 4(2)	38 of 1998	25 Sep 1998	23 Oct 1998
<i>Bail Amendment Act 1998</i> ⁶	54 of 1998	11 Jan 1999	Pt. 4 and 7: 15 May 1999 (see s. 2 and <i>Gazette</i> 11 May 1999 p. 1905); Pt. 2, 3 and 5 (other than s. 12): 8 Mar 2000 (see s. 2 and <i>Gazette</i> 7 Mar 2000 p. 1039); s. 12: 1 Sep 2000 (see s. 2 and <i>Gazette</i> 29 Aug 2000 p. 4985); Pt. 6: 4 Dec 2000 (see s. 2 and <i>Gazette</i> 4 Dec 2000 p. 6799)
Reprint of the <i>Bail Act 1982</i> as at 27 Aug 1999 (includes amendments listed above)			
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 3	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>Criminal Law Amendment Act 2001</i> s. 10(1)	23 of 2001	26 Nov 2001	24 Dec 2001

Short title	Number and year	Assent	Commencement
<i>Criminal Investigation (Identifying People) Act 2002</i> s. 96	6 of 2002	4 Jun 2002	20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Criminal Law (Procedure) Amendment Act 2002</i> Pt. 4 Div. 1	27 of 2002	25 Sep 2002	27 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4875)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 29(3) and 37	50 of 2003	9 Jul 2003	s. 29(3): 31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); s. 37: 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 88, 97, 121 ⁷	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 29	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 24, 26 and 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Acts Amendment (Family and Domestic Violence) Act 2004</i> Pt. 3	38 of 2004	9 Nov 2004	1 Dec 2004 (see s. 2 and <i>Gazette</i> 26 Nov 2004 p. 5309)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 28(1), (2) and (4)	45 of 2004	9 Nov 2004	s. 28(1), (2) and (4) (other than the amendment to s. 7A(1)): 1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Misuse of Drugs Amendment Act 2004</i> s. 9(1)	62 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 10 Dec 2004 p. 5965)
Reprint 5: The Bail Act 1982 as at 1 Apr 2005 (includes amendments listed above except those in the <i>Courts Legislation Amendment and Repeal Act 2004</i>)			

1a On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment Act 2004</i> s. 13 ⁸	27 of 2004	14 Oct 2004	To be proclaimed (see s. 2)
<i>Children and Community</i>	34 of 2004	20 Oct 2004	To be proclaimed (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Services Act 2004</i> s. 251 ⁹			
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 28 ¹⁰	45 of 2004	9 Nov 2004	s. 28(3) and (4) (the amendment to s. 7A(1)): 2 May 2005 (see. s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 3 and s. 82 and 83 ¹²	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

² The *Bail Amendment Act 1984* s. 10 and 11 were repealed by the *Bail Amendment Act 1988* s. 20.

³ The *Bail Act 1982* was not in operation at the time when the reprint was compiled, but the reprinting was authorised by s. 21 of the *Bail Amendment Act 1988*.

⁴ The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 is a transitional provision that is of no further effect.

⁵ The *Criminal Procedure Amendment Act 1993* s. 13 reads as follows:

“

13. Transitional

- (1) The amendments to the principal Act effected by a provision of this Part apply in relation to —
- (a) a child arrested for any offence; and
 - (b) a person, other than a child, arrested for a serious offence,

on or after the day on which that provision comes into operation.

- (2) In subsection (1) “**child**” and “**serious offence**” have the same meanings as in the principal Act.

”.

⁶ The *Bail Amendment Act 1998* s. 6(2) reads as follows:

“

- (2) Section 16A inserted by subsection (1) applies to persons arrested for an offence referred to in subsection (2)(a) or (3) of that section on or after the day on which this section comes into operation.

”.

⁷ The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 97 reads as follows:

“

97. References to Crown Solicitor

If in a written law or other document or instrument there is a reference to the Crown Solicitor that reference may, where the context so requires, be read as if it had been amended to be a reference to the State Solicitor.

On the date as at which this compilation was prepared, the *Sentencing Legislation Amendment Act 2004* s. 13 had not come into operation. It reads as follows:

“

13. Bail Act 1982 amended

- (1) The amendments in this section are to the *Bail Act 1982*.
- (2) Section 3(4)(a) is amended as follows:
 - (a) by inserting after “79” —
“ , 84E ”;
 - (b) by inserting after “imprisonment” —
“ or conditional suspended imprisonment ”.
- (3) Schedule 1 Part C clause 6(a) is amended as follows:
 - (a) by inserting after “79” —
“ , 84E ”;
 - (b) by inserting after “imprisonment” —
“ or conditional suspended imprisonment ”.

”.

On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 251, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

251. Other Acts amended

Other Acts are amended as set out in Schedule 2.

”.

Schedule 2 cl. 3 reads as follows:

“

Schedule 2 — Amendments to other Acts

[s. 251]

3. Bail Act 1982 amended

- (1) The amendments in this clause are to the *Bail Act 1982*.
- (2) Section 3(1) is amended in the definition of “authorised community services officer” in paragraph (d) by deleting “or departmental facility under the *Child Welfare Act 1947*”.
- (3) Schedule 1 Part C is amended in clause 2(3) as follows:
 - (a) after paragraph (a) by inserting “and”;
 - (b) by deleting paragraph (b) and “and” after it.

”.

On the date as at which this compilation was prepared, the *Acts Amendment (Court of Appeal) Act 2004* s. 28(3) and (4) (the amendment to s. 7A(1)) had not come into operation. They read as follows:

“

28. Bail Act 1982 amended

- (3) Section 53 is repealed and the following section is inserted instead —

“

53. Appeals against decisions made under s. 52

- (1) A person who is dissatisfied with a decision (as defined in section 4 of the *Criminal Procedure (Summary) Act 1902*) made under section 52 may, with the leave of the Court of Appeal, appeal against it.
- (2) For the purposes of subsection (1), Part VIII of the *Criminal Procedure (Summary) Act 1902*, with any necessary changes, applies as if —
- (a) the decision referred to in subsection (1) were a decision of a court of summary jurisdiction;
 - (b) a reference in that Part to a court of summary jurisdiction were a reference to the court that made the decision referred to in subsection (1); and
 - (c) a reference in that Part to commencing an appeal were a reference to applying for leave to appeal.
- (3) Despite section 195A of the *Criminal Procedure (Summary) Act 1902*, the appeal is to be dealt with by the Court of Appeal.
- (4) The Act is amended as set out in the Table to this section.

”

Table

s. 7A(1)	In paragraph (a), delete “Full Court” in the first 3 places where it occurs and in each place insert instead — “ Court of Appeal ”. In paragraph (a), delete “the Full Court” in the fourth place where it occurs and insert instead — “ a judge of appeal ”.
----------	--

”

Footnote no longer applicable.

On the date as at which this compilation was prepared, the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Pt. 3 and s. 82 and 83 had not come into operation. They read as follows:

“

Part 3 — Bail Act 1982 amended

6. The Act amended in this Part

The amendments in this Part are to the *Bail Act 1982*.

7. Section 48 amended

Section 48(5) is repealed and the following subsection is inserted instead —

“

- (5) An application under subsection (1) must be made, and proceedings on it are to be conducted —
- (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;
 - (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.

”

8. Section 49 amended

- (1) If the *Bail Amendment Act 2004* has not come into operation when this subsection comes into operation, section 49(1)(a) of the *Bail Act 1982* is amended by deleting “make application for payment by way of complaint to an appropriate judicial officer” and inserting instead —

“

apply to an appropriate judicial officer for an order that the sum be paid

”

- (2) Section 49(2) is repealed and the following subsection is inserted instead —

“

- (2) An application under subsection (1) must be made, and proceedings on it are to be conducted —
- (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;
 - (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.

”

9. Section 54 amended

- (1) If the *Bail Amendment Act 2004* has not come into operation when this subsection comes into operation, section 54(2)(b) of the *Bail Act 1982* is amended by deleting “make a complaint to an appropriate judicial officer as to” and inserting instead —

“

apply to an appropriate judicial officer for a summons or warrant on

”

- (2) Section 54(3) is repealed and the following subsection is inserted instead —

“

- (3) An application under subsection (2)(b) must be made, and proceedings on it are to be conducted —
- (a) in a court of summary jurisdiction — in accordance with regulations made under the *Criminal Procedure Act 2004*;
 - (b) in the Supreme Court or the District Court — in accordance with rules of court made under the *Criminal Procedure Act 2004*.

”.

10. Schedule 1 Part A amended

- (1) Schedule 1 Part A clause 1 is amended as follows:

- (a) by inserting before “The initial” the subclause designation “ (1) ”;
- (b) by deleting “court” and inserting instead —

“

a court of summary jurisdiction or the Children’s Court

”;

- (c) by inserting at the foot of the clause the following subclause —

“

- (2) The initial appearance in the District Court or the Supreme Court, not being the initial appearance to which clause 3 applies.
- A judge of the District Court or a judge of the Supreme Court, as the case requires.

”.

- (2) Schedule 1 Part A clause 4 is deleted and the following clause is inserted instead —

“

4. Appearance in connection with appeal etc.

- (1) Appearance in connection with an application or appeal made under the *Criminal Appeals Act 2004* or with any order made in determining the application or appeal. If the appeal is being determined by a single judge of the Supreme Court, a single judge of the Supreme Court; If the appeal is being determined by the Court of Appeal, the Court of Appeal or a single judge of appeal.
- (2) Appearance in connection with a rehearing of proceedings ordered under section 28 of the *Children’s Court of Western Australia Act 1988*. The Children’s Court.
- (3) Appearance in connection with the reconsideration of an order under section 40 of the *Children’s Court of Western Australia Act 1988*. The Children’s Court constituted by the President.

- (3) Schedule 1 Part A clause 7 is deleted and the following clause is inserted instead —

7. Interpretation in this Part

In this Part, unless the contrary intention appears —

“**proceedings for an offence**” in clause 2 (but not in clause 1) includes any of the following proceedings relating to that offence —

- (a) appeal proceedings;
- (b) proceedings on a writ of *habeas corpus*; and
- (c) proceedings on the re-appearance of an offender under section 50 of the *Sentencing Act 1995*.

11. Small amendments

The Act is amended as set out in the Table to this section.

Table

s. 3(1)	In the definition of “prosecutor”, delete “complaint, the complainant” and insert instead — “ prosecution notice, the prosecutor ”. In the definition of “trial”, delete “complaint” and insert instead — “ prosecution notice ”.
s. 7A(1) s. 21(2)(a) s. 53(2) Sch. 1 — Pt. C cl. 5	In each provision, delete “Part VIII of the <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ Part 2 of the <i>Criminal Appeals Act 2004</i> ”.
s. 16(2)(b) s. 54(5)	In each provision, delete “ <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ <i>Criminal Procedure Act 2004</i> ”.
s. 20(3)(b)	Delete “complaint” and insert instead — “ prosecution notice ”.
s. 49(1)(c)	Delete “complaint” and insert instead — “ application ”.
s. 51(3)	Delete “Notwithstanding section 140 of the <i>Criminal Procedure (Summary) Act 1902</i> , a defendant” and insert instead — “ An accused ”.
s. 52(1)	Delete “bringing proceedings for” and insert instead — “ prosecuting ”.
s. 52(3)	Delete “Proceedings for an offence which is to be dealt with under this section shall be commenced by a complaint made in writing to a justice, and lodged —” and insert instead — “ A prosecution for an offence which is to be dealt with under this section shall be commenced by the authorised officer (as defined in section 80 of the <i>Criminal Procedure Act 2004</i>) who was conducting the proceedings in which the accused failed to comply with his bail undertaking —”.

s. 52(4)	Repeal the subsection and insert instead — “ (4) Subject to section 51(3) and (5), a prosecution for an offence which is to be dealt with under this section is to be commenced and conducted under the <i>Criminal Procedure Act 2004</i> as if it were a prosecution of a simple offence in a court of summary jurisdiction. ”.
s. 53(1)	Delete “(as defined in section 4 of the <i>Criminal Procedure (Summary) Act 1902</i>)” and insert instead — “ (as defined in section 6 of the <i>Criminal Appeals Act 2004</i>) ”.
s. 53(3)	Delete “section 195A of the <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ section 13(1) of the <i>Criminal Appeals Act 2004</i> ”.
s. 54(5)	Repeal the subsection.
Sch. 1 Pt. C cl. 3B(2)(b) cl. 3B(2)(c)	In each provision, delete “complaint under the <i>Criminal Procedure (Summary) Act 1902</i> ” and insert instead — “ prosecution ”.

82. References to “defendant” changed to “accused”

Each provision listed in Table 2, 3 or 4 to this section is amended by deleting any expression listed in Table 1 column 1 in each place it occurs (whether in ordinary type, italics, bold or capitals) and in each place inserting instead (in corresponding type) the expression opposite the deleted expression in Table 1 column 2.

Table 1

Delete	Insert instead
A defendant	An accused
a defendant	an accused
a defendant’s	an accused’s
defendant	accused
defendants	accused
Defendants’	Accused’s
Defendants	Accused
the defendant	the accused
the defendant’s	the accused’s

Table 3 — Provisions of the *Bail Act 1982*

s. 3(3)	s. 35(1)
s. 4	s. 36(2)
Part II heading	s. 37(1)
s. 5(1) & (2)	s. 39
s. 6(2), (3) & (3a)	s. 40(2)
s. 7(1), (2), (3) & (4)	s. 42
s. 8(1), (2), (3a) & (4)	s. 44(1) & (2)
s. 9(2)	s. 46(1) & (2)
s. 10	s. 47
s. 11(1), (2) & (3)	s. 48(2), (3) & (4)
s. 12	s. 49(1)
s. 14(2), (2a) & (3)	s. 50C(1) & (2)

s. 15(1)	s. 50D(1) & (2)
s. 16(1) & (2)	s. 50E
s. 16A(2)	s. 50F(1), (2), (4) & (5)
s. 17(2)	s. 50G(1) & (2)
s. 17A(1), (3), (4) & (5)	s. 50K
s. 18(1), (2) & (3)	s. 51(1), (2), (2a), (4) & (7)
s. 19(1), (2), (3) & (4)	s. 52(1) & (2)
s. 20(1) & (3)	s. 54(1), (2) & (4)
s. 21(1)	s. 55(1) & (2)
s. 23	s. 56
s. 24(1) & (2)	s. 57(1), (2) & (4)
s. 24A(2), (3) & (4)	s. 58(1) & (2)
s. 25	s. 59
s. 26(1), (2), (3) & (4)	s. 60
s. 27(1)	s. 64
s. 28(2)	s. 66(1)
s. 29	Sch. 1 Pt. A
s. 30(1), (2) & (3)	Sch. 1 Pt. B
s. 31(2), (3) & (4)	Sch. 1 Pt. C
s. 32(1) & (4)	Sch. 1 Pt. D
s. 33(1), (2) & (3)	Sch. 2
s. 34	

83. *Bail Act 1982* amended

(1) The amendments in this section are to the *Bail Act 1982*.

(2) Section 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical position the following definition —

“

“**accused**” includes —

- (a) a person charged with, convicted of, or found guilty of an offence;
- (b) a person whose conviction for an offence is stayed;
- (c) a person in respect of whom an appeal relating to an offence is pending;
- (d) a person in respect of whom a new trial for an offence has been ordered;

”;

- (b) in the definitions of “adjournment”, “appropriate judicial officer” and “trial” by deleting “defendant” and inserting instead —

“ accused ”;

- (c) by deleting the definition of “defendant”.

(3) Sections 50C(4)(a), 50L(1) and 67(2)(a)(iii) are each amended by deleting “defendants” in each place it occurs and inserting instead —

“ accused persons ”.

”.