

Schedule 1

[Heading amended by No. 45 of 1993 s.10.]

[Ss. 13 and 17]

PART A — JURISDICTION TO GRANT BAIL

<u>First Column</u>	<u>Second Column</u>
<i>Appearances in court referred to in section 13</i>	<i>By whom bail may be granted</i>
1. Initial appearance	In any case –
The initial appearance in court by a defendant in, or in connection with, proceedings for an offence.	(a) a justice; or (b) an authorized police officer; and in addition, in the case of a child – (ba) a member of the Children’s Court; and (c) an authorized community services officer.
2. Appearance after adjournment	The judicial officer who orders the adjournment.
Appearance in any court or before a judicial officer by a defendant after any adjournment of proceedings for an offence, not being a committal under clause 3.	
3. Appearance on committal to Supreme Court or District Court	The judicial officer who orders the committal.
The initial appearance by a defendant in the Supreme Court or District Court after he has been committed thereto under any Act to be tried or sentenced or otherwise dealt with.	
4. Appearance in connection with appeal or rehearing	
Appearance in court in connection with any appeal, rehearing, or reconsideration as follows –	
(a) for the determination	A Judge of the Supreme

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| | under section 199 of the <i>Justices Act 1902</i> of an appeal under Part VIII of that Act; | Court; in the case of an appeal under section 189 of the <i>Justices Act 1902</i> , the Full Court; |
| (b) | for the determination under section 206A of the <i>Justices Act 1902</i> of an appeal under that section; | A Judge of the Supreme Court; in the case where the application for leave to appeal is made to the Full Court, the Full Court; |
| [(c) | <i>deleted</i>] | |
| (d) | for the determination of an appeal under section 688 of <i>The Criminal Code</i> ; | The Court of Criminal Appeal or a Judge of the Supreme Court acting under section 702 of <i>The Criminal Code</i> ; |
| (e) | after the hearing of an appeal, for the initial appearance in court required by an order made pursuant to – | |
| | (i) section 199 of the <i>Justices Act 1902</i> ; or | A Judge of the Supreme Court; in a case where the appeal is heard by the Full Court or section 206A of the <i>Justices Act 1902</i> applies, the Full Court; |
| | (ii) section 691 or 692 of <i>The Criminal Code</i> ; | The Court of Criminal Appeal or a Judge of the Supreme Court acting under section 702 of <i>The Criminal Code</i> ; |
| (f) | for sentence under section 690 (2) of <i>The Criminal Code</i> ; | The Court of Criminal Appeal or a Judge of the Supreme Court acting under section 702 of <i>The Criminal Code</i> ; |
| (g) | for a rehearing of any proceedings under section 28 of the <i>Children's Court of Western Australia Act 1988</i> ; | The Children's Court; |
| (h) | for the reconsideration of an order under section 40 of the <i>Children's Court of Western Australia Act 1988</i> . | The Children's Court constituted by the President. |

5. Appearance prescribed by regulation

Appearance in a court for any other purpose or following any other occurrence prescribed by regulations under this Act.	The judicial or other officer prescribed by such regulations.
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6. Appearances not otherwise provided for

Any appearance in a court not otherwise provided for in this Part or by regulations under this Act.	The judicial officer who, or court which, orders the appearance.
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7. Interpretation of this Part

The following provisions apply to the interpretation of this Part —

- (a) **“proceedings for an offence”** in clause 2 (but not in clause 1) includes any of the following proceedings relating to that offence —
 - (i) appeal proceedings;
 - (ii) proceedings on a writ of *habeas corpus*; and
 - (iii) proceedings on the re-appearance of an offender under section 50 of the *Sentencing Act 1995*;
- (b) where by an Act any provision of the *Justices Act 1902* mentioned in clause 4 is applied to proceedings under the first-mentioned Act, the references in that clause to a provision of the *Justices Act 1902* shall be read, so far as the circumstances will allow, as a reference to that provision as so applied;
- (c) a person who under section 580 or 645 (2) of *The Criminal Code* is required to appear in the Supreme Court or the District Court to be tried is deemed to have been committed thereto for the purposes of clause 3.

PART B — CESSATION OF POWER TO GRANT BAIL

1. Upon decision by Judge, power of other officers ceases

After a Judge of the Supreme Court has granted or refused bail for an appearance by a defendant the power to grant bail for that appearance ceases to be vested in any judicial officer whose jurisdiction is inferior to that of such Judge or in any authorized officer.

2. Upon decision by judicial officer, his power and that of his peers ceases

Except where clause 4 applies, the power to grant bail for an appearance by a defendant ceases to be vested in any judicial officer (including a Judge of the Supreme Court) after he, or another judicial officer whose jurisdiction is co-extensive with his, has granted or refused bail for that appearance.

3. Upon refusal by justice power of authorized officer or justice ceases

After a justice or a member of the Children's Court has refused bail for an initial appearance by a defendant, the power to grant bail for that appearance ceases to be vested in an authorized officer or another justice or another member of the Children's Court, but an authorized officer or a justice or another member of the Children's Court may grant bail for an initial appearance notwithstanding that one or more other authorized officers have previously refused bail for that appearance.

4. Judicial officer's powers where defendant proves new facts or changed circumstances

Notwithstanding clause 2, where a defendant has been refused bail for an appearance or has been granted bail therefor on terms or conditions with which he is unable or unwilling to comply, the judicial officer who granted or refused bail or another judicial officer whose jurisdiction is co-extensive with his has power to grant bail for that appearance or to vary the terms or conditions of bail previously granted therefor if the defendant makes application and satisfies him that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was previously granted or refused for that appearance;
- (b) he failed to adequately present his case for bail on the previous occasion when it was considered; or
- (c) where bail was granted subject to a home detention condition, he has, since the previous occasion when his case for bail was considered, complied with the home detention condition for a period of one month or more.

PART C — MANNER IN WHICH JURISDICTION TO BE EXERCISED

PRINCIPLES GOVERNING GRANT OR REFUSAL OF BAIL

1. Bail before conviction to be at discretion of bail authority, except for a child

Subject to clause 3A, the grant or refusal of bail to a defendant, other than a child, who is in custody awaiting an appearance in court before conviction for an offence shall be at the discretion of the judicial officer or authorized officer in whom jurisdiction is vested, and that discretion shall be exercised having regard to the following questions as well as to any others which he considers relevant —

- (a) whether, if the defendant is not kept in custody, he may —
 - (i) fail to appear in court in accordance with his bail undertaking;
 - (ii) commit an offence;
 - (iii) endanger the safety, welfare, or property of any person; or
 - (iv) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) whether the defendant needs to be held in custody for his own protection;
- (c) whether the prosecutor has put forward grounds for opposing the grant of bail;
- (d) whether, as regards the period when the defendant is on trial, there are grounds for believing that, if he is not kept in custody, the proper conduct of the trial may be prejudiced;
- (e) whether there is any condition which could reasonably be imposed under Part D of this Schedule which would —
 - (i) sufficiently remove the possibility referred to in paragraphs (a) and (d);
 - (ii) obviate the need referred to in paragraph (b); or
 - (iii) remove the grounds for opposition referred to in paragraph (c);
- (f) where the defendant is charged with an offence that is alleged to have been committed in respect of a child, whether a condition should be imposed under Part D requiring the defendant to reside at a place other than the place where the child resides.

2. Child to have qualified right to bail

- (1) In this clause —
- “responsible person”** means a parent, relative, employer or other person who, in the opinion of the judicial officer or authorized officer, is in a position to both influence the conduct of the child and provide the child with support and direction.

- (2) Subject to subclause (3), a child defendant who is in custody awaiting an appearance in court before conviction for an offence has a right to be granted bail unless —
- (a) in the opinion of the judicial officer or authorized officer in whom jurisdiction is vested —
 - (i) one or more of the questions set out in clause 1 (a), (b) and (d) must be answered in the affirmative; and
 - (ii) there is no condition which he could reasonably impose under Part D of this Schedule which would satisfy the relevant provision of clause 1 (e);
 - or
 - (b) there is no responsible person willing to enter into an undertaking of the kind described in subclause (3) (c),
- and if the child is refused bail he shall be dealt with in accordance with section 19 (2) of the *Young Offenders Act 1994*.
- (3) The right of a child defendant under subclause (2) is subject to —
- (a) clause 3A;
 - (b) section 28 (2) of the *Child Welfare Act 1947*; and
 - (c) there being imposed as a condition on the grant of bail a requirement that before the release of the child on bail a responsible person undertakes in writing in the prescribed form to ensure that the child complies with any requirement of his bail undertaking mentioned in section 28 (2) (a), (b), (c) and (d).
- (4) Subclauses (2) (b) and (3) (c) do not apply to a child defendant if it appears to the judicial officer or authorized officer that the defendant —
- (a) is over the age of 17 years; and
 - (b) has sufficient maturity to live independently without the guidance or control of a parent or guardian.
- (5) For the purposes of this clause, the provisions of sections 46, 47, 48, 54, 55 (2), 60 and 67 (2) (a) (iv) apply with all necessary changes as if —
- (a) references in those provisions to a surety and a surety undertaking were references to a responsible person and to an undertaking referred to in subclause (3) (c) respectively; and
 - (b) section 54 (1) (b) (i) read as follows —
 - (i) a person who has entered into an undertaking referred to in subclause (3) (c) of clause 2 of Part C of Schedule 1 should no longer be regarded as a responsible person for the purposes of that clause, or is dead;

- (6) Where a child defendant is released on bail his right to be at liberty is subject to the exercise of the powers in section 17A.

3. Matters relevant to consideration of clause 1 (a)

In considering whether a defendant may do any of the things mentioned in clause 1 (a), the judicial officer or authorized officer shall have regard to the following matters, as well as to any others which he considers relevant —

- (a) the nature and seriousness of the offence or offences (including any other offence or offences for which he is awaiting trial) and the probable method of dealing with the defendant for it or them, if he is convicted;
- (b) the character, previous convictions, antecedents, associations, home environment, background, place of residence, and financial position of the defendant;
- (c) the history of any previous grants of bail to him; and
- (d) the strength of the evidence against him.

3A. Bail where serious offence committed while defendant on bail for another serious offence

- (1) Notwithstanding clause 1 or 2 or any other provision of this Act, where —

- (a) a defendant is in custody awaiting an appearance in court before conviction for a serious offence; and
- (b) the serious offence is alleged to have been committed while the defendant was on bail for another serious offence or for a group of offences which includes a serious offence,

the judicial officer or authorized officer in whom jurisdiction is vested shall refuse to grant bail for the serious offence referred to in paragraph (a) unless he is satisfied that —

- (c) there are exceptional reasons why the defendant should not be kept in custody; and
- (d) he may properly grant bail having regard to the provisions of clauses 1 and 3 or, in the case of a child defendant, clauses 2 and 3.

- (2) Notwithstanding subsection (1) of section 7, where a defendant is refused bail under subclause (1) for an appearance for a serious offence his case for bail need not be considered again under that subsection for an appearance for that offence unless he satisfies the judicial officer who may order his detention that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or

- (b) he failed to adequately present his case for bail on the occasion of that refusal.
- (3) Where a child defendant is refused bail under subclause (1) he shall be dealt with in accordance with section 19 (2) of the *Young Offenders Act 1994*.

4. When bail to be granted after conviction

In deciding whether or not to grant bail to a defendant who is in custody waiting to be sentenced or otherwise dealt with for an offence of which he has been convicted or awaiting the disposal of appeal proceedings, the judicial officer shall, subject to clauses 5 and 6, consider whether —

- (a) in the case of a defendant waiting to be sentenced, there is a strong likelihood that he will impose a non-custodial sentence; or
- (b) in either case, there are exceptional reasons why the defendant should not be kept in custody,

and shall only grant bail to him if he is satisfied that —

- (c) in the case of a defendant waiting to be sentenced, at least one of those reasons exists and, in the case of an appellant, the reason mentioned in paragraph (b) exists; and
- (d) he may properly do so having regard to the provisions of clauses 1 and 3 or, in the case of a child, clauses 2 and 3.

5. Exception for bail for an appeal under the *Justices Act 1902*

Clause 4 does not apply to the bail of a person who is awaiting the disposal of appeal proceedings under Part VIII of the *Justices Act 1902*; such a person shall be deemed for the purposes of this Part to be awaiting an appearance in court before conviction for an offence.

6. Bail of people on community orders, etc.

For the purpose of determining whether clause 4 applies, a person in custody —

- (a) under section 50, 79, 128, 129 or 132 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment or a community order imposed under that Act; or
- (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,

is to be taken as not having been convicted of the offence for which the sentence was imposed.

LIMITATION ON PERIOD OF BAIL

7. Bail for initial appearance to be for not more than 7 days

In fixing the terms of bail of a defendant for his initial appearance in court for an offence, a justice or an authorized officer shall require him to make the appearance within the period of 7 days commencing on and including the day on which the defendant was arrested for the offence.

8. Bail on adjournment in petty sessions to be for not more than 30 days except by consent

In fixing the terms of bail of a defendant for an appearance in court after an adjournment of proceedings for an offence, a judicial officer sitting as a court of petty sessions or as a member of the Children's Court shall require him to make the appearance within the period of 30 days commencing on and including the day on which the proceedings are adjourned, unless the defendant consents to appear on a later day.

9. Provision as to calculation of time

The periods specified in clauses 7 and 8 shall be calculated to include any Sunday or public holiday.

PART D — CONDITIONS WHICH MAY BE IMPOSED ON A GRANT OF BAIL

1. Conditions as to forfeiture and giving security may be imposed on the defendant and sureties

- (1) A judicial officer or authorized officer, on a grant of bail, may impose conditions under this clause if he considers that it is desirable to do so to ensure the performance of the defendant's bail undertaking.
- (2) If a judicial officer or authorized officer considers that it is desirable as mentioned in subclause (1), he may in addition to releasing the defendant on his bail undertaking impose any one or more of the following conditions —
 - (a) that the defendant in his bail undertaking agree to forfeit a specified amount of money if he fails to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) or (b) (ii);

- (b) that a surety or a specified number of sureties enter into a surety undertaking or surety undertakings whereby he or they agree to forfeit a specified amount or specified amounts of money if the defendant fails to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) or (b) (ii);
 - (c) that any of them the defendant and the surety or sureties give security of a specified value, including the deposit of a specified amount of cash, for the performance of their respective obligations;
 - (d) that any of them the defendant and the surety or sureties deposit with a specified officer any specified passbook or document relating to the title to, or ownership of, any account or other asset offered as security for the performance of their respective obligations; or
 - (e) that any of them the defendant and the surety or sureties, at his or their own expense or otherwise, enter into such mortgage, charge, assignment or other transaction, or take such other step, as may be required, including completion of the necessary documents, to render any security effective and enforceable by the Crown.
- (3) The nature and sufficiency of any security, and the documentation therefor, required under subclause (2) shall be determined by the judicial officer or authorized officer who imposed the condition or, if no determination is so made —
- (a) by the person before whom the bail undertaking is entered into, where the security is to be given by the defendant; and
 - (b) where the security is to be given by a surety, by any person authorized under section 36 to approve the surety or before whom the surety undertaking is entered into.
- (4) When a bail undertaking ceases to have effect as provided in section 34 (a) to (d), or upon a defendant being acquitted of a charge under section 51 (1) or (2) or discharged from further proceedings therefor, each of them the defendant, or where section 34 (b) applies his personal representative, and any surety is entitled to have returned to him any security given under subclause (2).
- (5) When a surety undertaking ceases to have effect as provided in section 47 (a) to (f), a surety is entitled to have returned to him any security given under subclause (2).

2. Other conditions which may be imposed

- (1) A judicial officer or authorized officer, on a grant of bail, may impose conditions —
- (a) to be complied with before the defendant is released on bail;

- (b) as to the defendant's conduct while on bail; or
- (c) as to where the defendant shall reside while on bail,

if he considers that it is desirable for any purpose mentioned in subclause (2), (3) or (4).

(1a) Without limiting subclause (1), a judicial officer or authorized officer shall, on a grant of bail to a child defendant, consider whether it is desirable for any purpose mentioned in subclause (2) to impose a condition as to —

- (a) any period in each day during which the child is to remain at a particular place;
- (b) any person with whom the child is not to associate or communicate;
- (c) any place that the child is not to frequent;
- (d) the attendance by the child at a school or other educational institution; or
- (e) any other matter,

and the judicial officer or authorized officer may impose any such condition.

(2) Any condition may be imposed under subclause (1) or (1a) to ensure that a defendant —

- (a) appears in court in accordance with his bail undertaking;
- (b) does not while on bail commit an offence;
- (c) does not endanger the safety, welfare or property of any person;
- (d) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or
- (e) as regards the period when the defendant is on trial, does not prejudice the proper conduct of the trial.

(3) Where a judicial officer who grants bail to a defendant is of the opinion that the defendant's physical condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the defendant is examined by a medical practitioner.

(3a) Where a judicial officer who grants bail to a defendant is of the opinion that the defendant's mental condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the defendant's mental condition is examined including a condition —

- (a) that the defendant be examined by a medical practitioner or an authorized mental health practitioner (as defined in the *Mental Health Act 1996*) for the purpose of deciding whether to make a referral under section 29 of that Act;
 - (b) that the defendant be admitted to an authorized hospital (as defined in the *Mental Health Act 1996*);
 - (c) that the defendant be examined by a psychiatrist
- (4) Where a judicial officer is of the opinion that a defendant is suffering from alcohol or drug abuse and is in need of care or treatment either on that account, or to enable him to be prepared for his trial, the judicial officer may, under subclause (1), impose any condition which he considers desirable for the purpose of ensuring that the defendant receives such care or treatment, including that he lives in, or from time to time attends at, a specified institution or place in order to receive such care or treatment.
- (5) Where a judicial officer imposes any condition for a purpose mentioned in subclause (3), (3a) or (4), he shall cause to be sent to the medical practitioner, psychiatrist, institution, or place a statement of the reasons for the imposition of the condition.
- (6) Where a condition is imposed under this clause that a defendant shall reside in premises established for the accommodation of persons to whom bail has been granted, that condition shall be deemed to include a further condition that the defendant shall comply with such rules as are for the time being laid down for the maintenance of the good order of those premises, whether such rules are made under section 67 or by the authority responsible for the good order of the premises.
- (7) In this clause —
- “**medical practitioner**” means a medical practitioner within the meaning of the *Medical Act 1894*; and
- “**psychiatrist**” has the same meaning as it has in the *Mental Health Act 1996*.

3. **Home detention condition may be imposed**

- (1) A judicial officer may, subject to this clause, impose a home detention condition as a condition on a grant of bail.
- (2) A home detention condition shall not be imposed unless the defendant is over the age of 17 years and the judicial officer is satisfied —
- (a) after considering a report from a community corrections officer about the defendant and his circumstances, that the defendant is suitable to be subject to a home detention condition;

- (b) that the place where it is proposed the defendant will remain while subject to the home detention condition is a suitable place; and
 - (c) that unless a home detention condition is imposed, the defendant will not be released on bail.
- (3) A home detention condition is a condition that while the defendant is on bail the defendant shall —
- (a) remain at and not leave the place specified in the bail record form and in the bail undertaking (or in a notice under section 50E) until the time specified, or deemed by section 31 (3) to be specified, in the bail undertaking except —
 - (i) to work in gainful employment approved by a community corrections officer;
 - (ii) with the approval of a community corrections officer, to seek gainful employment;
 - (iii) to obtain urgent medical or dental treatment for the defendant;
 - (iv) for the purpose of averting or minimizing a serious risk of death or injury to the defendant or to another person;
 - (v) to obey an order issued under a written law (such as a summons) requiring the defendant's presence elsewhere;
 - (vi) for a purpose approved of by a community corrections officer; or
 - (vii) on the direction of a community corrections officer;
 - (b) not leave the State;
 - (c) comply with every reasonable direction of a community corrections officer;
 - (d) comply with such of the conditions specified in the list provided under section 24A (4) as may be specified in a notice given under section 50E(b); and
 - (e) when requested to do so, produce a copy of his bail undertaking and any notice by the CEO (Justice) under section 50E for inspection by a community corrections officer or a member of the Police Force.

[Schedule 1 amended by No. 15 of 1988 s.19; No. 49 of 1988 s.90; No. 33 of 1989 s.18; No. 61 of 1990 ss.14 and 15; No. 83 of 1990 s.15; No. 15 of 1991 s.21; No. 14 of 1992 s.11; No. 31 of 1993 s.9; No. 45 of 1993 s.10; No. 78 of 1995 s.8; No. 69 of 1996 s.3; No. 57 of 1997 s.21 (2).]

Schedule 2

[section 3 (1)]

SERIOUS OFFENCES

Enactment

Description of offence

1. *The Criminal Code*

s. 278 (as read with s. 282)	Wilful murder
s. 279 (as read with s. 282)	Murder
s. 280 (as read with s. 287)	Manslaughter
s. 292	Disabling in order to commit indictable offence
s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
s. 296	Intentionally endangering safety of persons travelling by railway
s. 296A	Intentionally endangering safety of persons travelling by aircraft
s. 297	Grievous bodily harm
s. 298	Causing explosion likely to endanger life
s. 299	Attempting to cause explosion likely to endanger life
s. 301	Wounding and similar acts
s. 317	Assault occasioning bodily harm
s. 317A (a)	Assault with intent to commit or facilitate a crime
s. 317A (b)	Assault with intent to do grievous bodily harm
s. 318	Serious assaults
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 338D	Unlawful stalking
s. 378 (2)	Stealing a motor vehicle, aggravated by reckless or dangerous driving
s. 391 (as read with s. 393)	Robbery
s. 394	Assault with intent to commit robbery
s. 401	Burglary, if the defendant is charged

- on indictment
- s. 444 Criminal damage, if the property is destroyed or damaged by fire
- 2. *Bush Fires Act 1954***
- s. 32 Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property
- 2a. *Justices Act 1902***
- s. 173 Breach of order to keep the peace
- 3. *Road Traffic Act 1974***
- s. 59 Dangerous driving causing death, injury, etc.
- s. 59A Dangerous driving causing bodily harm

[Schedule 2 inserted by No. 45 of 1993 s.11; amended by No. 82 of 1994 s.13.]