

Western Australia

# **Bail Amendment Act 1998**

(No. 54 of 1998)

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Western Australia

# **Bail Amendment Act 1998**

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**No. 54 of 1998**

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**An Act to amend the *Bail Act 1982*.**

*[Assented to 11 January 1999.]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Bail Amendment Act 1998*.

**2. Commencement**

This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

**3. The Act amended**

The amendments in this Act are to the *Bail Act 1982*\*

[\* Reprinted as at 13 March 1997.

*Amended by Acts Nos. 2 and 69 of 1996 and 57 of 1997.]*

**Part 2 — Amendments to restrict bail powers to a  
court or a Judge in certain cases**

**4. Section 3 amended**

Section 3(1) is amended by inserting after the definition of  
“defendant” the following definition —

“

“**early release order**” has the meaning given by  
section 4(1) of the *Sentence Administration  
Act 1995*;

”.

**5. Section 6 amended**

- (1) Section 6(2) is amended by deleting “subsection (3)” and  
inserting instead —

“ subsections (3) and (3a) ”.

- (2) After section 6(3) the following subsection is inserted —

“

- (3a) Where section 16A applies, the police officer or other  
person who arrests a person for an offence shall as  
soon as is practicable bring the defendant, or cause the  
defendant to be brought, before a court or Judge  
mentioned in subsection (1) of that section for the  
purpose of having the defendant’s case for bail  
considered by that court or Judge.

”.

**6. Section 16A inserted and transitional provision**

(1) After section 16 the following section is inserted —

“

**16A. Restrictions on powers of authorized officers and justices in certain cases**

- (1) Where this section applies to a person who has been arrested for an offence jurisdiction does not arise under section 13 until the person is brought before —
  - (a) a court constituted by or so as to include a magistrate; or
  - (b) where section 15 applies, a Judge of the Supreme Court or a Judge of the Children’s Court as the case may require.
- (2) This section applies where —
  - (a) a person has been arrested in an urban area for a serious offence; and
  - (b) the serious offence is alleged to have been committed while the defendant was —
    - (i) on bail for; or
    - (ii) at liberty under an early release order made in respect of,  
another serious offence.
- (3) This section also applies where a person has been arrested for an offence against section 61(1) of the *Restraining Orders Act 1997* (which creates offences for breaches of violence restraining orders).

(4) In this section —

“**urban area**” means —

- (a) the region described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* and any prescribed area that adjoins that region; and
- (b) any other prescribed area of the State, being the whole or part of, or an area adjoining, a local government district under the *Local Government Act 1995* that is designated under that Act as a city or a town.

”.

(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.

**Part 3 — Amendment to extend Schedule 1, Part C,  
clause 3A, to persons on parole etc.**

**7. Schedule 1 amended**

Schedule 1, Part C, is amended by deleting clause 3A(1)(b) and inserting instead —

“

- (b) the serious offence is alleged to have been committed while the defendant was —
  - (i) on bail for; or
  - (ii) at liberty under an early release order made in respect of,  
another serious offence,

”.



**Part 4 — Insertion of another matter to be considered  
in making the decision to grant or refuse bail**

**8. Schedule 1 amended**

Schedule 1, Part C, is amended as follows:

- (a) in clause 1(f), by deleting the full stop and substituting a semicolon;
- (b) by inserting after clause 1(f) the following paragraph —  
“
  - (g) whether the alleged circumstances of the offence or offences amount to wrongdoing of such a serious nature as to make a grant of bail inappropriate.”;
- (c) in clause 2(2)(a)(i), by deleting “and (d)” and inserting instead —  
“ , (d) and (g) ”.

**Part 5 — Amendments relating to the imposition of bail conditions**

**9. Section 51 amended**

(1) After section 51(2) the following subsection is inserted —

“

(2a) A defendant —

(a) whose bail undertaking includes any condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D of Schedule 1; and

(b) who fails to comply with the condition,

commits an offence.

”.

(2) Section 51(5) is amended by deleting “or (2)” and inserting instead —

“ , (2) or (2a) ”.

(3) Section 51(6) is amended by deleting “or (2) is liable to a fine not exceeding \$3 000” and inserting instead —

“ , (2) or (2a) is liable to a fine not exceeding \$10 000 ”.

**10. Section 52 amended**

Section 52(1) is amended by deleting “or (2)” and inserting instead —

“ , (2) or (2a) ”.

**11. Section 57 amended**

Section 57(1) is amended by deleting “or (2)” and inserting instead —

“ , (2) or (2a) ”.

**12. Schedule 1, clause 2, amended**

Schedule 1, Part D, is amended as follows:

(a) in clause 2(1)(a), by inserting after “on bail” —

“ or while the defendant is on bail ”;

(b) in clause 2(1), by inserting after “(2),” —

“ (2b), ”;

(c) by inserting after clause 2(2), the following subclauses —

“

(2a) Before imposing a condition on a grant of bail for a purpose mentioned in subclause (2)(c) or (d) a judicial officer or authorized officer is to consider whether that purpose would be better served, or could be better assisted, by a restraining order made under the *Restraining Orders Act 1997* and whether, in the case of a judicial officer, to exercise the power in section 63 of that Act or, in the case of an authorized officer, to make a telephone application under that Act.

(2b) Where a judicial officer is of the opinion that the defendant should while on bail —

(a) be counselled for a behavioural problem; or

(b) attend a course or programme that may assist with such a problem,

the judicial officer may under subclause (1) impose a condition for that purpose that requires the defendant to —

(c) attend a prescribed person to be counselled; or

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(d) attend a prescribed course or programme,  
that is specified by the judicial officer in the condition.

”;

(d) by deleting clause 2(5) and inserting instead —

“

(5) Where a judicial officer imposes a condition for a purpose mentioned in subclause (2b), (3), (3a) or (4), the judicial officer shall cause to be sent to the person who is to counsel or examine the defendant, or the place at which the defendant is to attend, a statement of the reasons for imposing the condition.

”.

**Part 6 — Amendments relating to defendants who, while on bail for a serious offence, commit another serious offence that constitutes a breach of a restraining order or a protective bail condition**

**13. Schedule 1 amended**

- (1) Schedule 1, Part C, is amended in clause 3A(1) by deleting the passage from “the judicial officer” to the end of the subclause and inserting instead —

“

the judicial officer or (if section 16A does not apply) the authorized officer in whom jurisdiction is vested shall refuse to grant bail for the serious offence referred to in paragraph (a) unless the judicial officer or authorized officer —

- (c) is satisfied that there are exceptional reasons why the defendant should not be kept in custody and, if clause 3B applies, is so satisfied only after complying with that clause; and
- (d) is also satisfied that bail may properly be granted having regard to the provisions of clauses 1 and 3 or, in the case of a child defendant, clauses 2 and 3.

”.

- (2) Schedule 1, Part C, is amended by inserting after clause 3A the following clause —

“

**3B. Determination of exceptional reasons under clause 3A(1)**

- (1) This clause applies where it appears to the judicial officer or (if section 16A does not apply) the authorized officer that all or any of the acts alleged to constitute a serious offence

referred to in clause 3A(1)(b) would, if proved in the appropriate proceedings, amount to a breach by the defendant of a protective condition or order.

- (2) The judicial officer or authorized officer shall, before making a decision that there are exceptional reasons for the purposes of clause 3A(1)(c), make enquiry, or cause enquiry to be made, whether there has already been —
  - (a) any breach by the defendant of the protective condition or order that has been proved in proceedings;
  - (b) any alleged breach by the defendant of the protective condition or order that has not been so proved, including an allegation that has not been the subject of a complaint under the *Justices Act 1902* or any other communication to any relevant official; or
  - (c) any alleged breach by the defendant of any other protective condition or order that has been the subject of a complaint under the *Justices Act 1902*.
- (3) On becoming aware of any such alleged breach, the judicial officer or authorized officer shall give each person for whose protection a protective condition or order referred to in subclause (2) was imposed or made (a “**relevant person**”) a reasonable opportunity to give evidence by affidavit on matters relating to that protective condition or order.
- (4) The judicial officer or authorized officer shall in making any decision for the purposes of clause 3A(1)(c) —
  - (a) give due weight to —
    - (i) any evidence given under subclause (3);
    - (ii) any adverse effect that a grant of bail to the defendant would have on a relevant person; and

- (iii) any difficulty that a relevant person might have in proving any future breach of a protective condition or order;
  - (b) consider whether it would be appropriate to refuse bail and make a hospital order under section 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996*;
  - (c) in the case of a condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D, treat any alleged breach of the condition as a serious matter even if the conduct alleged to amount to the breach in itself appears to be trivial; and
  - (d) consider whether any alleged breach of a protective condition or order that has occurred shows that the purpose of the condition or order has not been achieved and that the defendant should be kept in custody.
- (5) The provisions of this clause do not limit the matters that the judicial officer or authorized officer may take into account for the purposes of clause 3A(1)(c).
- (6) In this clause —
- “protective condition or order”** means —
- (a) a condition imposed for a purpose mentioned in clause 2(2)(c) or (d) of Part D;
  - (b) a violence restraining order under the *Restraining Orders Act 1997*; or
  - (c) a Part VII order under the *Justices Act 1902* —
    - (i) that under section 86 of the *Restraining Orders Act 1997* is taken to be a misconduct restraining order under that Act; and

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- (ii) that shows on the face of the order that the causing or threatening of personal injury by the defendant was a ground for the making of the order.

”.



**Part 7 — Amendments to include further offences in  
the definition of serious offence**

**14. Section 3 amended**

Section 3(1) is amended by deleting the definition of “serious offence” and inserting instead —

“

“**serious offence**” means —

- (a) an offence against section 51(2a); and
- (b) an offence described in Schedule 2;

”.

**15. Schedule 2 amended**

Schedule 2 is amended as follows:

- (a) in item 1, by deleting the entry referring to s. 378(2) and inserting instead —

“ s. 378                    Stealing a motor vehicle ”;

- (b) in item 1, in the entry referring to s. 401, by deleting “, if the defendant is charged on indictment”;

- (c) by deleting item 2a and inserting instead —

“

**2a. Misuse of Drugs Act 1981**

- s. 6(1)                    Offences concerned with prohibited drugs generally
- s. 7(1)                    Offences concerned with prohibited plants generally
- s. 33(2)(a)                Conspiracy to commit an offence under s. 6(1) or 7(1)

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**2b. Restraining Orders Act 1997**

s. 61(1) Breach of a violence restraining order

s. 86(2) Breach of a Part VII order under the *Justices Act 1902*—

- (a) that under section 86 of the *Restraining Orders Act 1997* is taken to be a misconduct restraining order under that Act; and
- (b) that shows on the face of the order that the causing or threatening of personal injury by the defendant was a ground for the making of the order.

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