

Reprinted under the
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at 17 October 1991

WESTERN AUSTRALIA

BAIL ACT 1982

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WESTERN AUSTRALIA

BAIL ACT 1982

AN ACT to make better provision for bail in criminal proceedings.

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PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Bail Act 1982*¹.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation¹.

Interpretation

3. (1) In this Act, unless a contrary intention appears —

“adjournment” —

- (a) means any order of a court by which proceedings for an offence are postponed or interrupted or are to be held at a different time or place before the same court; and
- (b) is deemed to include any order of a court, other than a committal to the Supreme Court or District Court, by which the venue of any proceedings for an offence is changed to another court or a court at another place whether by way of a remand, referral, or recommittal of the defendant or otherwise;

“appeal” includes an application for leave to appeal;

“appropriate judicial officer” —

- (a) subject to paragraphs (b) and (c), means a judicial officer who is empowered to exercise jurisdiction in the court before which the defendant is required to appear pursuant to his bail undertaking;

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- (b) where that court is the Full Court of the Supreme Court or the Court of Criminal Appeal, means a Judge of the Supreme Court;
- (c) except in section 49, also means a Judge of the Supreme Court or a Judge of the Children's Court in any case where —
 - (i) only a Judge of the Supreme Court or a Judge of the Children's Court has power to grant bail under section 15, or a judicial officer has exercised the power contained in section 31 (2) (d); or
 - (ii) a Judge of the Supreme Court or a Judge of the Children's Court has granted bail under section 14,

for the appearance in question;

“as soon as is practicable” means as soon as is reasonably practicable;

“authorized community services officer” means any of the following persons —

- (a) the Director-General, Assistant Director-General and Directors of the Department for Community Services;
- (b) a clerk of the Children's Court;
- (c) a superintendent of a detention centre under the *Child Welfare Act 1947*;
- (d) the officer for the time being in charge of any detention centre or departmental facility under the *Child Welfare Act 1947*;

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“authorized officer” means an authorized police officer or an authorized community services officer;

“authorized police officer” means a police officer who holds the rank of sergeant, or a higher rank, or is for the time being in charge of a police station or lock-up;

“bail undertaking” means an undertaking described in section 28 (2);

“chief executive officer of corrective services” means the chief executive officer of the department principally assisting the Minister to whom the administration of the *Prisons Act 1981* is for the time being committed by the Governor with that administration;

“child” has the same meaning as in the *Child Welfare Act 1947*;

“community corrections officer” has the same meaning as in the *Offenders Community Corrections Act 1963*;

“court” means each of the following —

- (a) a court of petty sessions whether constituted by a stipendiary magistrate or one or more justices;
- (b) the Children’s Court;
- (c) a Coroner’s Court;
- (d) the District Court;
- (e) the Supreme Court;
- (f) the Full Court of the Supreme Court;
- (g) the Court of Criminal Appeal;

“defendant” 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;

“home detention condition” means a home detention condition imposed under clause 3 of Part D of the Schedule;

“judicial officer” means any person empowered to exercise jurisdiction in a court whether or not he is sitting as a court, and includes a single justice and a single member of the Children’s Court;

“offence” means any act, omission or conduct which renders the person doing the act, making the omission or engaging in the conduct liable to any punishment, and includes an alleged offence; but nothing in this definition shall limit the operation of subsection (4);

“police officer” means any member of the Police Force of Western Australia;

“prosecutor” includes a complainant and, in the case of an offence not tried in a court of petty sessions, the Crown;

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“surety” and “surety undertaking” have the meanings assigned to them by section 35;

“trial” means all proceedings for an offence between —

(a) the time when a defendant is called upon —

(i) to plead to an indictment or complaint; or

(ii) to admit the convictions referred to in section 19A (2) (a) or (b) of the *Offenders Community Corrections Act 1963*²; and

(b) the time when —

(i) he is found not guilty; or

(ii) sentence is passed on him or he is otherwise dealt with in lieu thereof.

(2) A reference in this Act —

(a) to a power to grant bail includes a reference to a power to refuse bail;

(b) to a grant of bail includes a reference to a grant of bail by the exercise of a power in section 31 (2).

(3) Where in this Act there is a reference to a requirement that a defendant appear in court, the reference is to a requirement, unless a contrary intention appears, that the defendant —

(a) surrender himself into the custody of the court or, in the case of a bail undertaking, of the court specified therein, or of such person as the court may direct, to be dealt with according to law;

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- (b) submit himself to a search of his person and any property then in his possession (which is hereby authorized) and allow to be taken from him, to be dealt with according to the relevant law and procedures, anything so found; and
- (c) remain in custody until authorized to be released therefrom.

(4) Where a person has been arrested under section 17 or 20L of the *Offenders Community Corrections Act 1963*² or section 36 (3)³, 36 (4), 38, 39G or 39K of the *Child Welfare Act 1947* —

- (a) he shall be deemed to have been arrested and to be in custody and awaiting an appearance in court for the offence for which the probation order, or community service order, or order under section 34 or 34B of the *Child Welfare Act 1947* was made or for which the fine was imposed (as the case may be);
- (b) the first appearance in court after the arrest shall be deemed, for the purposes of sections 5 (1) and 8 (1) and clause 1 of Part A and clause 7 of Part C of the Schedule, to be the initial appearance in court for that offence; and
- (c) the proceedings following the arrest shall be deemed to be proceedings for that offence.

[Section 3 amended by No. 74 of 1984 s. 3; No. 15 of 1988 s. 4; No. 49 of 1988 s. 78; No. 61 of 1990 s. 4.]

Application of this Act

4. The operation of this Act extends to any appearance in a court for an offence —

- (a) except to the extent that in this Act, or in the law creating the offence or applicable thereto, express provision is made excluding or limiting the operation of this Act in respect of that appearance;

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- (b) whether or not that law contains a reference to the granting of bail;
- (c) however any reference in that law to the granting of bail may be expressed; and
- (d) as if any reference therein to the taking of a recognizance were to a requirement that, except where bail is dispensed with under this Act, the defendant enter into a bail undertaking.

**PART II — RIGHTS OF DEFENDANT
IN RELATION TO BAIL**

Right of defendant to have bail considered under this Act

5. (1) A defendant who is in custody for an offence awaiting his initial appearance in court therefor is entitled —

- (a) subject to sections 9, 10, 12 and 16 (2), to have his case for bail for that appearance considered under and in accordance with this Act as soon as is practicable;
- (b) if his case is not so considered, or if he is refused bail or is not released on bail, to be brought before a court as soon as is practicable.

(2) A defendant who is in custody awaiting any appearance in court for an offence, other than an initial appearance, is entitled, subject to sections 7 (3), 9 and 10, to have his case for bail for that appearance considered under and in accordance with this Act.

[Section 5 amended by No. 74 of 1984 s. 4.]

Duty imposed on arresting officer or person

6. (1) The police officer or other person who arrests a person for an offence has a duty —

- (a) if he is empowered by this Act to grant bail; and
- (b) unless, as soon as is practicable, he brings the person or causes him to be brought before a court,

to consider that person's case for bail as soon as is practicable, whether or not an application for bail is made by the person or on his behalf.

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(2) If that police officer or that other person is not so empowered he shall, subject to subsection (3) and unless he brings the person or causes him to be brought before a court as soon as is practicable, bring or cause the defendant to be brought before an authorized police officer or a justice or, in the case of a child, any authorized officer or a justice, as soon as is practicable, and thereupon —

- (a) such officer is subject to the duty described in subsection (1); or
- (b) if the defendant is brought before a justice, the justice is under a duty to consider the person's case for bail as soon as is practicable, whether or not an application for bail is made by the person or on his behalf.

(2a) A police officer or other person who arrests a person for an offence may, notwithstanding that he is empowered by this Act to grant bail, instead of complying with subsection (1) comply with subsection (2) as if he were not so empowered.

(3) Where under section 15 or 16 only a Judge of the Supreme Court, a Judge of the Children's Court or a justice has power to grant bail for an offence, the police officer or other person who arrests a person for an offence shall —

- (a) unless, as soon as is practicable, he brings the person or causes him to be brought before a court; and
- (b) whether or not an application for bail is made by the person or on his behalf,

bring or cause the defendant to be brought as soon as is practicable —

- (c) where section 15 applies, before a Judge of the Supreme Court or a Judge of the Children's Court, as the case may require; or

(d) where section 16 applies, before a justice, for the purpose of having the defendant's case for bail considered by the Judge, or the justice acting in terms of subsection (2) (b), as the case may be.

(4) The operation of this section is subject to the exercise of the power conferred by section 9 and to the provisions of sections 10, 12 and 16(2).

[Section 6 amended by No. 15 of 1988 s. 5; No. 49 of 1988 s. 79.]

Duty imposed on judicial officers in respect of unconvicted defendants

7. (1) Upon and following a defendant's initial appearance in court for an offence every judicial officer who may thereafter order his detention or continued detention in custody before conviction for the offence (including detention during the period of his trial) is under a duty, unless subsection (2) applies, to consider the defendant's case for bail, whether or not an application for bail is made by the defendant or on his behalf.

(2) Where under section 15 only a Judge of the Supreme Court or a Judge of the Children's Court has power to grant bail for an offence, the judicial officer referred to in subsection (1), other than a Judge of the Supreme Court or a Judge of the Children's Court, shall, whether or not an application for bail is made by the person or on his behalf, cause the defendant to be taken as soon as is practicable before a Judge of the Supreme Court or a Judge of the Children's Court, as the case may require for the purpose of having the defendant's case for bail considered by the Judge.

(3) Notwithstanding subsection (2), where —

(a) the duty described in that subsection or in section 6 (3) has been discharged once in relation to a defendant's case for bail; and

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- (b) bail has on that occasion been refused by a Judge of the Supreme Court or a Judge of the Children's Court,

the defendant's case for bail need not be considered on any subsequent occasion in the same case when the defendant's continued detention may be ordered unless the defendant satisfies the judicial officer who may order his detention that —

- (c) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused on the occasion mentioned in paragraph (b); or
- (d) he failed to adequately present his case for bail on that occasion,

but if the judicial officer is so satisfied he shall cause the defendant to be taken as soon as is practicable before a Judge of the Supreme Court or a Judge of the Children's Court as the case may require for the purpose of having the defendant's case for bail considered by the Judge.

(4) Notwithstanding subsection (1), after the duty described in that subsection has been discharged once in relation to a defendant's case for bail or after a Judge of the Supreme Court or a Judge of the Children's Court has considered the case under section 15, it is sufficient on any subsequent consideration of bail in the same case for a judicial officer, including a Judge of the Supreme Court or a Judge of the Children's Court acting under section 15 —

- (a) to inquire whether any new fact has been discovered or new circumstance has arisen, or whether the circumstances have changed, since bail was previously granted or refused and whether the defendant considers that he failed to adequately present his case for bail on a previous occasion; and

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- (b) unless he is satisfied that there is any reason of the kind mentioned in paragraph (a) for not doing so, to adopt the decision previously made in the case, but with power to make such variations of the terms and conditions of bail as he thinks fit.

(5) The operation of this section is subject to the exercise of the power conferred by section 9 and to the provisions of sections 10, 12 and 16 (2).

[Section 7 amended by No. 74 of 1984 s. 5; No. 49 of 1988 s. 80.]

Bail for appeal under *Justices Act 1902*

- 7A.** (1) A person who is in custody may apply for bail —
- (a) to a Judge of the Supreme Court, where an application for leave to appeal has been made to, or has been granted by, a Judge; or
 - (b) to the Full Court of the Supreme Court, where an appeal is made to, or an application for leave to appeal has been made to, or has been granted by, that Court,

under Part VIII of the *Justices Act 1902* and the appeal is in connection with the decision by virtue of which the person is in custody.

(2) Bail shall not be granted to an applicant for bail under subsection (1) until he has given notice of his application for bail to —

- (a) the State Crown Solicitor; or

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- (b) the Deputy Director of Public Prosecutions (Commonwealth) in Perth,

as the case may require, and that official has been given an opportunity to be heard on the application.

[Section 7A inserted by No. 33 of 1989 s. 18.]

Defendant to be given prescribed forms

8. (1) Subject to subsection (4), a judicial officer or authorized officer who is called upon to consider a defendant's case for bail, on the first occasion when it arises in relation to an offence or group of offences for which a defendant is required to appear, shall ensure that the defendant is, or has been, given —

- (a) such information in writing as to the effect of this Act as is prescribed for the purposes of this paragraph;
- (b) a prescribed form for completion, designed to disclose to the judicial officer or authorized officer all information relevant to the decision; and
- (c) where the defendant is unable or insufficiently able, to read, speak or write English, such assistance as he may reasonably require in order to have communicated to him the information mentioned in paragraph (a) and complete the form referred to in paragraph (b).

(2) After a defendant's case for bail has been considered once, a judicial officer or authorized officer on any subsequent consideration of bail in the same case shall —

- (a) comply with paragraph (a) of subsection (1); and

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- (b) either comply with paragraph (b) of subsection (1) or obtain the form previously completed for the purposes of that paragraph, if any, and ensure that —
 - (i) the form is revised in order to show any changes which he is informed have occurred since it was completed; and
 - (ii) any assistance, of the kind referred to in subsection (1) (c) is given to the defendant for the purpose of completing or revising the form, as the case may be.

(3) Nothing in this section shall be read as limiting section 23.

(3a) Notwithstanding paragraph (a) of subsection (1) or (2) a judicial officer or authorized officer need not comply with that paragraph if it appears to him that the defendant's case for bail is such that bail is likely to be granted to him in accordance with this Act; but if it subsequently appears to him that bail will not be granted or that the defendant is dissatisfied with any condition imposed on the grant of bail he shall then comply with that paragraph.

(4) Notwithstanding paragraph (b) of subsection (1) or (2), a judicial officer or an authorized officer may dispense with completion or revision of the form referred to in those paragraphs if it appears to him that —

- (a) the defendant's case for bail is such that bail is likely to be granted to him in accordance with this Act; and
- (b) the information in the possession of the judicial officer or authorized officer is sufficient for his consideration of the case.

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(5) Where a person has applied for bail for an appeal as mentioned in section 7A (1), this section applies as if the consideration of bail for the appeal were a first consideration of bail for an offence.

[Section 8 amended by No. 74 of 1984 s. 6; No. 15 of 1988 s. 6; No. 33 of 1989 s. 18.]

Bail decision may be deferred until further information obtained

9. (1) Subject to section 73 (6) of the *Child Welfare Act 1947*, a judicial officer or authorized officer who is called upon to consider a case for bail may defer consideration of the case for a period not exceeding 30 days if he thinks it is necessary —

- (a) to obtain more information for the purpose of making a decision in accordance with this Act; or
- (b) to take any step authorized by section 24 (1).

(2) Nothing in this section shall be taken to limit the right of a defendant to be brought before a court as soon as is practicable if he is not released on bail.

Sections 5, 6 and 7 do not apply where defendant imprisoned for other cause

10. Notwithstanding sections 5, 6 and 7, the rights conferred on a defendant and the duties imposed on police officers, authorized officers and judicial officers by those sections in respect of an appearance in court for an offence do not arise where —

- (a) the defendant is in custody for some other offence or reason (including the non-payment of a sum of money); and

- (b) the police officer, authorized officer or judicial officer is satisfied that the defendant is likely to remain in custody for that other offence or reason until or beyond the time for the appearance for the first-mentioned offence.

Rights following grant of bail

11. (1) When —

- (a) bail has been granted to a defendant for an appearance in court;
- (b) all conditions which are to be complied with before the release of the defendant have been complied with; and
- (c) he has entered into a bail undertaking for that appearance or his bail undertaking is deemed to be amended under section 31 (3),

the defendant has a right to be at liberty until he is required to appear, or to next appear, before a court, but subject to —

- (d) any requirement that he be in custody for some other reason;
- (e) the exercise of the powers in sections 14 (3), 46, 54 and 55; and
- (f) the limitation mentioned in section 12.

(2) As soon as is practicable after a defendant becomes entitled to be at liberty as provided in subsection (1) —

- (a) an authorized officer, where bail was granted by an authorized officer;
- (b) a justice who has granted bail otherwise than while sitting as a court;

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- (c) a Judge's associate, where bail was granted by a Judge of the District Court or the Supreme Court or the Children's Court; and
- (d) in any other case, the clerk or registrar of the court where the judicial officer who granted bail exercises jurisdiction or a justice,

shall, where the defendant is in custody in a lock-up or prison, forthwith deliver or cause to be delivered a certificate to that effect in the prescribed form to the officer in charge of the lock-up or prison, and that officer shall release the defendant from custody as soon as is practicable after he receives the certificate.

(3) In subsection (2) (a) "authorized officer" does not include an authorized officer who is also the officer in charge of the lock-up in which the defendant is in custody.

[Section 11 amended by No. 74 of 1984 s. 7; No. 15 of 1988 s. 7; No. 49 of 1988 s. 81.]

Further limitation on rights in sections 5 and 11

12. The right of a defendant to have his case for bail considered as soon as is practicable, his right to be at liberty as mentioned in section 11 (1), and the corresponding duties created by this Part, are limited so far as is reasonably necessary for the exercise or performance by a person of any statutory power or function vested in him which requires the continued custody of the defendant, including the exercise of the powers set out in section 236 of *The Criminal Code* and section 50AA of the *Police Act 1892*.

PART III — JURISDICTION TO GRANT BAIL

Jurisdiction to grant bail and how jurisdiction to be exercised

13. (1) Jurisdiction to grant bail for any appearance described in the first column of Part A of the Schedule is vested in the judicial officer or authorized officer specified in the second column of that Part opposite thereto and shall be exercised subject to and in accordance with this Part and the further provisions in Parts B, C and D of the Schedule.

(2) A home detention condition shall not be imposed as a condition of bail except by a judicial officer.

[Section 13 amended by No. 61 of 1990 s. 5.]

Supreme Court Judge has jurisdiction in all cases

14. (1) A Judge of the Supreme Court may, in accordance with this Act —

- (a) exercise a power to grant bail which is conferred upon any other judicial officer or any authorized officer by this Act; and
- (b) revoke or vary any bail previously granted by any other such officer.

(2) Subject to subsection (2a), the jurisdiction of a Judge of the Supreme Court under subsection (1) in respect of an appearance by a defendant may be invoked by application made by either the prosecutor or the defendant, and whether or not any other judicial officer has —

- (a) previously granted or refused bail; or
- (b) exercised any power conferred on him by section 55,

in respect of that appearance.

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(2a) After the jurisdiction under subsection (1) has been invoked once by a defendant in relation to an offence or group of offences for which he is required to appear, it may not be further invoked by that defendant in relation to that offence or group of offences unless the defendant satisfies a Judge of the Supreme Court that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since the occasion when the jurisdiction was invoked; or
- (b) he failed to adequately present his case for bail on that occasion.

(3) Where under subsection (1) a Judge of the Supreme Court —

- (a) revokes the bail of a defendant who is at liberty, he may order that the defendant be returned to custody to await the appearance for which the bail was granted;
- (b) varies the bail of such a defendant, he may order that the defendant be returned to custody until he becomes entitled to be at liberty pursuant to section 11,

and the Judge may issue any warrant which may be necessary to carry such an order into effect.

(4) In this section “**any other judicial officer**” means any judicial officer whose jurisdiction is inferior to that of a Judge of the Supreme Court.

(5) The powers and duties conferred on a Judge of the Supreme Court by this section may in the case of a child charged with an offence before the Children’s Court also be exercised by a Judge of the Children’s Court.

[Section 14 amended by No. 74 of 1984 s. 8; No. 49 of 1988 s. 82.]

Exclusive jurisdiction of Supreme Court Judge for serious offences

15. (1) Where a defendant is in custody for wilful murder or murder, the power to grant bail shall be exercised only by a Judge of the Supreme Court, or in the case of a defendant who is a child by a Judge of the Children's Court, except —

- (a) where section 31 (2) (d) applies; or
- (b) to the extent that the Full Court or the Court of Criminal Appeal exercises its powers under Part A of the Schedule.

[(2) repealed]

[Section 15 amended by No. 52 of 1984 s. 35; No. 74 of 1984 s. 9; No. 70 of 1988 s. 45; No. 49 of 1988 s. 83.]

Bail of person arrested on warrant

16. (1) Subject to sections 14 and 15 where the arrest of a defendant for an offence is made pursuant to a warrant he shall not be granted bail before he is brought before a court or judicial officer as commanded by the warrant, except by a justice acting in terms of section 6 (2) (b).

(2) Notwithstanding subsection (1) or any other provision of this Act, a defendant who has been arrested pursuant to a warrant —

- (a) issued under section 56; or
- (b) issued under the *Justices Act 1902* for an offence against section 51 (1) or (2),

shall not have a right to have his case for bail considered, and shall not be granted bail, before he is brought before the court as commanded by the warrant.

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Conditions which may be imposed

17. (1) A judicial officer or authorized officer may impose conditions on a grant of bail only to the extent that he is authorized to do so by Part D of the Schedule.

(2) Conditions imposed on a grant of bail shall not be any more onerous on the defendant than the judicial officer or authorized officer considers is required in the public interest having regard to the nature of the offence for which the defendant is in custody and the circumstances of the defendant.

Police officer may dispense with bail in certain cases upon deposit of cash

18. (1) Except where section 16 applies, an authorized police officer may, in accordance with this section, dispense with the requirement for bail for an appearance in court by a defendant for a prescribed simple offence.

(2) Before an authorized police officer dispenses with the requirement for bail under this section, he shall —

- (a) give to the defendant a notice in the prescribed form specifying the time and place at which he is to appear to be dealt with for the offence and setting out the effect of section 19 (1) and (2);
- (b) fix an amount in cash, not exceeding the amount prescribed for that offence, which the defendant shall deposit as security for his appearance at that time and place; and
- (c) receive the amount of such deposit and an acknowledgment from the defendant that he has been given the notice provided for by paragraph (a).

(3) Where the requirement for bail is dispensed with under this section, the defendant has a right to be at liberty, subject to any requirement that he be in custody for some other offence or reason, until he is required to appear before a court for the offence.

(4) In any proceedings production of a document purporting to be the acknowledgment referred to in subsection (2) (c) and of a copy of the notice referred to in subsection (2) (a) shall be evidence that subsection (2) has been complied with and of the contents of such notice.

[Section 18 amended by No. 15 of 1988 s. 8.]

Disposal of deposit where bail dispensed with

19. (1) If a defendant appears at the time and place notified to him under section 18 (2) (a), or at a time to which the proceedings are adjourned as mentioned in subsection (3), he is entitled to have his deposit refunded to him, but, notwithstanding the foregoing, the court may order that the deposit be applied wholly or partly in or towards payment of any sum of money ordered to be paid in respect of the commission of the offence, or may direct that it be retained as mentioned in subsection (3).

(2) If a defendant fails to appear as mentioned in subsection (1), he does not commit an offence against section 51 but the court shall, if it is satisfied that section 18 (2) (a) has been complied with, and whether or not the defendant is convicted of the offence for which the appearance was required, order —

- (a) that the deposit be applied wholly or partly in or towards payment of any sum of money ordered to be paid in respect of the commission of that offence (but without prejudice to the recovery of any balance remaining unpaid); and

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- (b) subject to subsection (3), that so much (if any) of the deposit as is not thereby disposed of be paid to the Crown.

(3) If at the time notified to the defendant under section 18 (2) (a) the proceedings are adjourned or are thereafter further adjourned, whether or not the defendant appears, the court may, instead of granting bail to him, from time to time so long as the defendant remains unconvicted dispense with the requirement for bail as provided in section 18 (1) and (2) and, notwithstanding section 18 (2) (c) or subsection (2) (b) of this section, direct that the amount already deposited be retained as security for any further appearance.

(4) Where under subsection (3) proceedings are adjourned in the absence of the defendant, the notice required by paragraph (a) of section 18 (2) may, notwithstanding that paragraph, be sent to the defendant by the clerk of petty sessions, and section 32 (1), (2) and (3) shall apply to the notice and proof of receipt thereof.

**PART IV — HEARING OF CASE FOR BAIL, PARTIES,
AND EVIDENCE**

**Power to consider bail *in camera* and to prohibit
publication**

20. (1) On the consideration by a judicial officer of a case for bail of a defendant who is charged with an offence triable by jury, the judicial officer may, to avoid prejudice to either party, exercise the powers described in subsection (2), but shall only exercise the power in paragraph (b) thereof if he considers that the exercise of the power in paragraph (a) is not, on its own, likely to be sufficient to avoid prejudice.

(2) The powers referred to in subsection (1) are to order —

- (a) that no report, or summary, of any statement, or of any specified statement, made or furnished at the hearing shall be published by any means;
- (b) that the bail application be heard *in camera*.

(3) Where an order is made under paragraph (a) of subsection (2), no report, or summary, of any statement referred to in that paragraph shall be published by any means —

- (a) if the defendant elects to be dealt with summarily for the offence, before he so elects;
- (b) if the defendant is discharged from further proceedings upon the complaint or indictment brought against him for the offence, before he is so discharged;
or
- (c) if the defendant is tried on indictment for the offence, before the trial is ended.

(4) A person who, except with lawful excuse, fails to comply with an order made under this section commits an offence.

Penalty: \$500 or imprisonment for 6 months or both.

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Parties

21. (1) The parties to proceedings on a case for bail are the prosecutor and the defendant and, subject to subsection (2), no other person shall be a party to, or be represented at, the proceedings.

(2) Nothing in subsection (1) affects the right of —

- (a) the Attorney General to apply for leave, or be an appellant, under Part VIII of the *Justices Act 1902*;
- (b) the State Crown Solicitor or the Deputy Director of Public Prosecutions (Commonwealth) to receive notice and be heard under section 7A (2); or
- (c) the Director-General of the Department of Community Services or other officer of that Department to be present at and participate in proceedings concerning a child pursuant to section 34 of the *Children's Court of Western Australia Act 1988*.

[Section 21 amended by No. 15 of 1988 s. 9; No. 49 of 1988 s. 84; No. 33 of 1989 s. 18.]

Evidence

22. A judicial officer or authorized person may in considering any case for bail receive and take into account such information as he thinks fit whether or not the same would normally be admissible in a court of law.

Defendant not bound to supply information

23. A defendant is not obliged to complete, or furnish information for, the prescribed form referred to in section 8 (1) (b), or for any revision thereof, or to furnish any information, whether on oath or otherwise, for the purpose of having his case for bail considered.

Information may be referred to police officer for verification or for report

24. (1) A judicial officer or authorized officer who is called upon to consider a case for bail may —

- (a) request that any information placed before the judicial officer or authorized officer by the defendant for the purposes of the case be verified by a police officer, and to that end may refer to a police officer the prescribed form mentioned in section 8 (1) (b), after it has been completed or revised;
- (b) request that a report on any matter mentioned in Part C of the Schedule, so far as it applies to a defendant whose case is being or to be considered, be made by a police officer.

(2) Where a reference or request is made under subsection (1) a police officer shall, as soon as is practicable —

- (a) make a report to the judicial officer or the authorized officer accordingly; and
- (b) furnish a copy of the report to the defendant or his solicitor or counsel.

[Section 24 inserted by No. 61 of 1990 s. 6.]

Information may be referred to community corrections officer for verification or for report

24A. (1) A judicial officer who is called upon to consider a case for bail may refer to a community corrections officer any matter referred to in section 24 (1) and may request a community corrections officer to do any matter referred to in that section.

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(2) A judicial officer who is called upon to consider a case for bail and who desires to impose a home detention condition as a condition on a grant of bail, shall request that a report be made by a community corrections officer about the suitability of the defendant to be subject to a home detention condition.

(3) Where a reference or a request is made under subsection (1) or a report is requested under subsection (2) a community corrections officer shall, as soon as is practicable, make a report to the judicial officer and, at the discretion of the judicial officer, copies may be made available to the prosecution or to the defendant or his solicitor or counsel.

(4) Where a community corrections officer makes a report that a defendant is suitable to be subject to a home detention condition, the officer shall annex to the report and provide to the defendant or his solicitor or counsel, a list of those conditions in rules made under section 50L that may be applied to the defendant by the chief executive officer of corrective services while the defendant is subject to the home detention condition.

[Section 24A inserted by No. 61 of 1990 s. 7.]

Protection of defendant as to information given for bail purposes

25. A statement made by a defendant to a judicial officer or authorized officer for the purpose of a decision whether bail should be granted to him for any appearance in court for an offence shall not be admissible in evidence against him at his trial for that offence.

Record of decision and reasons

26. (1) A bail record form shall be completed by an authorized officer or a justice or a member of the Children's Court if he —

- (a) refuses to grant bail to a defendant;

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- (b) grants bail to a defendant in the circumstances referred to in clause 3 of Part B of the Schedule; or
- (c) imposes any condition on a grant of bail and it appears to him that the defendant is dissatisfied with the condition.

(2) Where a judicial officer, other than a justice or a member of the Children's Court —

- (a) refuses to grant bail to a defendant; or
- (b) imposes any condition on a grant of bail and it appears to him that the defendant is dissatisfied with the condition,

a record of the decision and of the reasons therefor shall be made.

(3) The defendant, the prosecutor or an intending prosecutor shall be entitled, upon request, to be furnished with a copy of the bail record form or, where subsection (2) applies, of the record made.

(4) For the purposes of this section —

- (a) references to a justice do not include a magistrate or a Judge of the District Court or the Supreme Court or the Children's Court who is a justice; and
- (b) a bail record form is a prescribed form designed to contain a summary of the matters relevant to the decision as to the bail of a defendant, including those matters set out in Part C of the Schedule, the decision made, and the reasons for the decision.

[Section 26 inserted by No. 15 of 1988 s. 10; amended by No. 49 of 1988 s. 85.]

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Transmission of relevant papers to court

27. (1) An authorized officer and a judicial officer who consider a defendant's case for bail for an appearance for an offence, an authorized police officer who dispenses with bail under section 18, and a person before whom a bail undertaking or a surety undertaking is entered into shall ensure that the relevant papers are sent as soon as is practicable, to the court before which the defendant is required to appear.

(2) In subsection (1) "**the relevant papers**" in relation to any particular officer or person means such papers as are prescribed to be sent by that officer or person.

Transmission of papers to chief executive officer of corrective services

27A. A judicial officer who grants bail subject to a home detention condition shall ensure that a copy of the bail record form and of the bail undertaking are sent as soon as is practicable to the chief executive officer of corrective services.

[Section 27A inserted by No. 61 of 1990 s. 8.]

PART V — BAIL UNDERTAKINGS

Bail undertaking

28. (1) A person shall not be released on bail for an appearance in court unless he has entered into a bail undertaking for that appearance or is deemed to have done so under section 31 (3).

(2) A bail undertaking is an undertaking in writing by a defendant in the prescribed form —

- (a) that he will appear at a time and place specified, or deemed by section 31 (3) to be specified, in the undertaking;
- (b) that if he fails to appear at that time and place he will as soon as is practicable —
 - (i) notify the clerk or registrar of the court at which he is required to appear of the cause of his failure;
 - and
 - (ii) appear at that court when the court is sitting;
- (c) that he will comply with such conditions as may be imposed on him under clause 2 of Part D of the Schedule;
- (d) that he will comply with any home detention condition which may be imposed as a condition on a grant of bail to him pursuant to clause 3 of Part D of the Schedule,

and containing any agreement as to forfeiture of money by the defendant which may be required pursuant to clause 1 of that Part.

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(3) A bail undertaking for any appearance may be entered into in respect of more than one offence.

(4) The undertakings mentioned in subsection (2) (a) and (b) are, subject to section 34, enforceable under sections 51, 57 and 58.

[Section 28 amended by No. 61 of 1990 s. 9.]

Before whom bail undertaking may be entered into

29. A bail undertaking need not be entered into before the judicial officer or authorized officer who granted bail but may be entered into before any of the following persons —

- (a) a judicial officer;
- (b) the Principal Registrar or a Registrar of the Supreme Court;
- (c) the Registrar or a Deputy Registrar of the District Court;
- (d) a clerk of petty sessions;
- (da) a clerk of the Children's Court;
- (e) a coroner's clerk under section 4 (2) of the *Coroners Act 1920*;
- (f) an authorized police officer;
- (g) an associate of a Judge of the Supreme Court or of the District Court or of the Children's Court;

- (h) where the defendant is in prison, any person for the time being in charge of the prison;
- (i) where the defendant is a child, any authorized community services officer.

[Section 29 amended by No. 15 of 1988 s. 11; No. 49 of 1988 s. 86.]

Duties of person before whom bail undertaking is entered into

30. (1) The person before whom a bail undertaking is to be entered into by a defendant shall before it is entered into —

- (a) (i) read the undertaking to the defendant; or
- (ii) be informed by the defendant that the defendant has read it; or
- (iii) if necessary, have the undertaking translated to the defendant; and
- (b) ensure that all conditions which are to be complied with before the release of the defendant have been complied with.

(2) The person before whom a bail undertaking is entered into by a defendant shall give to him, or cause to be given to him —

- (a) a copy of the bail undertaking as duly completed; and
- (b) a notice in writing in the prescribed form showing —
 - (i) his obligations pursuant to the undertaking; and
 - (ii) the consequences of his failure to comply with them.

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(3) The person before whom a bail undertaking is entered into by a defendant shall enquire of the defendant whether he requires the notice referred to in subsection (2) (b) to be read or translated to him and shall take such steps as are necessary to comply with any such requirement of the defendant.

[Section 30 inserted by No. 15 of 1988 s. 12.]

Different time and place for appearance may be substituted

31. (1) A different time or a different time and place may be substituted in accordance with this section for the time and place for appearance specified, or deemed by this section to be specified, in a bail undertaking.

(2) A different time, or a different time and place, for the appearance by the defendant may be substituted as mentioned in subsection (1) —

- (a) upon an adjournment of proceedings at which the defendant is present, by the judicial officer, if he has power to grant bail for that appearance, fixing a time and place for the resumed proceedings and notifying the defendant orally thereof;
- (b) upon an adjournment of proceedings from which the defendant is absent for reasonable cause, by the judicial officer, if he had power to grant bail for that appearance, fixing a time and place for the resumed proceedings and directing the clerk or registrar of the court to give written notice thereof to the defendant;
- (c) where —
 - (i) a Judge of the Supreme Court or a Judge of the Children's Court has granted bail to a defendant under section 15; and

- (ii) a judicial officer, other than such a Judge, has committed the defendant to the Supreme Court,

by a Judge of the Supreme Court notifying the defendant orally, or directing the clerk or registrar of the court to give written notice to the defendant of the time or time and place for the proceedings;

- (d) where —

- (i) a Judge of the Supreme Court or a Judge of the Children's Court has granted bail to a defendant under section 15;

- (ii) a judicial officer has subsequently adjourned a preliminary hearing (within the meaning in the *Justices Act 1902*) or proceedings prior to the commencement of a preliminary hearing; and

- (iii) the judicial officer is satisfied that there has been no material change in the facts or circumstances which applied on the grant of bail,

by the judicial officer notifying the defendant orally, or directing the clerk or registrar of the court to give written notice to the defendant, of the time or time and place for the resumed proceedings;

- (e) upon a committal to the Supreme Court or District Court, by a judicial officer, if he has power to grant bail for that appearance, fixing a specified day in a specified sitting or session of that court and directing the clerk or registrar of the court to give written notice thereof to the defendant;

- (f) where a defendant has been committed for trial in the Supreme Court or the District Court in a specified sitting or session thereof or on a specified day in a specified sitting or session thereof, by an officer of the

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court fixing a time for the trial in that sitting or session and giving written notice thereof to the defendant;

- (g) if the parties agree to a different time or a different time and place for the proceedings, by an officer of the court giving written notice thereof to the defendant.

(3) Where a different time or a different time and place is notified to a defendant pursuant to subsection (2) the bail undertaking shall be deemed to be amended to specify that time or that time and place for appearance, and the terms and conditions thereof shall continue to apply as so amended as if the defendant had entered into the bail undertaking in that form.

(4) Where the power in subsection (2) (b) is exercised upon an adjournment of proceedings the right of the defendant to be at liberty under section 11 (1) does not lapse by reason only that there is an interval between the adjournment of the proceedings and the time when he is notified of the time and place for the resumed proceedings.

[Section 31 amended by No. 15 of 1988 s. 13; No. 49 of 1988 s. 87.]

Giving and proof of notices under section 31

32. (1) A written notice to a defendant under section 31 (2), shall be given to him personally or sent to him by registered post or telegram at his address appearing in his bail undertaking or notified under section 60.

(2) Without limiting section 75 (2) of the *Interpretation Act 1984*, “**registered post**” in subsection (1) includes any method of post whereby an acknowledgment of receipt is obtained from the person to whom a letter is addressed; and if a notice is sent to a person by that method, production of an acknowledgment purporting to be signed by that person shall be evidence of his receipt of the same.

(3) If notice is sent by registered post (otherwise than as mentioned in subsection (2)) or by telegram it shall be presumed, unless the contrary is shown, to have been received and at the time when, in the ordinary course of events, the letter or telegram would have been delivered.

(4) The judicial officer who under section 31 (2) (a) notifies a defendant of the time and place for resumed proceedings shall endorse on the defendant's bail undertaking a certificate showing details of such time and place and that he notified the defendant thereof.

(5) In any proceedings —

- (a) a document purporting to be a copy of a notice referred to in subsection (1) shall be evidence of the terms of the notice;
- (b) an endorsement on a bail undertaking purporting to be a certificate referred to in subsection (4) shall be evidence of the matters appearing therein without proof of the signature of the judicial officer who made it.

[Section 32 amended by No. 74 of 1984 s. 12.]

Judicial officer may order defendant to enter into bail undertaking

33. (1) Where bail is granted to a defendant by a judicial officer, whether with or without any condition being attached thereto, and the defendant fails or refuses to enter into a bail undertaking in terms of the grant, the judicial officer who granted bail may, subject to subsection (3), order that the defendant enter into the bail undertaking within such time as he may specify.

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(2) If a defendant does not comply with an order under subsection (1), the judicial officer may, subject to subsection (3), further order that a bail undertaking, in such form as the judicial officer may approve, shall be deemed to have been entered into by the defendant on the date of such further order, and thereupon that undertaking shall be treated as if it had been duly entered into by the defendant for the purposes of this Act.

(3) A judicial officer shall not —

- (a) make an order under subsection (2) unless he has personally informed the defendant of the terms and effect of the order made under subsection (1);
- (b) exercise any of the powers conferred on him by this section unless he is satisfied that the defendant has the capacity to enter into and comply with the undertaking.

Cessation and suspension of bail undertaking

34. A bail undertaking ceases to have effect —

- (a) upon the revocation of bail under section 55;
- (b) upon the death of the defendant, but only if no order has been made under section 57;
- (c) subject to section 31, upon the appearance in court by the defendant as required by his bail undertaking;
- (d) upon the discharge of the defendant according to law from any further proceedings for the offence, or all of the offences, to which the bail undertaking relates;
- (e) during any period before the time at which the defendant is required to appear in court when he is in custody for any other offence or reason.

PART VI — SURETIES AND SURETY UNDERTAKINGS

Meaning of surety and surety undertaking

35. (1) A surety is a person who, as a condition of the grant of bail to a defendant, enters into a surety undertaking, that is to say, undertakes in writing that he will, subject to this Act, forfeit a specified amount of money if the defendant fails to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) and (b) (ii).

(2) A surety is required to be approved under section 40.

(3) A forfeiture of money by a surety as mentioned in subsection (1) is enforceable as provided in section 49 but not otherwise.

Authority to approve sureties

36. (1) The decision whether an applicant should be approved as a surety in any case shall be made, on notice to the prosecutor in the prescribed manner —

- (a) where a judicial officer imposed the requirement for a surety in that case, by that judicial officer or by a judicial officer whose jurisdiction is co-extensive with that judicial officer's;
- (b) where an authorized officer imposed the requirement for a surety in that case, by that or any other authorized officer; or
- (c) where subsection (2) applies, by an officer of the court authorized under that subsection.

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(2) A judicial officer when granting bail to a defendant subject to a requirement for a surety or sureties may authorize a justice, a registrar or clerk of any court or an associate of a Judge of the Supreme Court or of the District Court or of the Children's Court, by name or office, to decide whether any applicant should be approved as a surety in that case.

[Section 36 amended by No. 15 of 1988 s. 14; No. 49 of 1988 s. 88.]

Proposed surety to receive certain information and prescribed form for completion

37. (1) Whenever an officer referred to in section 36 (1) is called upon to decide whether an applicant should be approved as a surety, he shall ensure that the applicant is, or has been, given —

- (a) a duly completed notice in the prescribed form showing details of the terms and conditions on which bail has been granted to the defendant in whose case the surety is required;
- (b) such information in writing as to the effect of this Act in relation to the rights, obligations and liabilities of sureties as is prescribed for the purposes of this paragraph; and
- (c) a prescribed form of declaration for completion designed to disclose to the officer all information relevant to the decision.

(2) Before he makes his decision, the officer shall ensure that the applicant furnishes to him the declaration referred to in subsection (1) (c) duly completed.

Persons disqualified from being sureties

38. (1) A person is not qualified to be approved as a surety if —

- (a) he is under 18 years of age; or
- (b) subject to subsection (2), the value of his assets, after provision is made for his debts and liabilities, is less than the amount which he might become liable to forfeit under his proposed surety undertaking; or
- (c) there are reasonable grounds for believing that he has been, or will be, indemnified by any person against any forfeiture referred to in paragraph (b).

(2) Subsection (1) (b) does not apply where the applicant for approval is required to give security sufficient to cover the amount which he might become liable to forfeit.

Matters relevant to approval of sureties

39. In determining whether an applicant is suitable to be a surety an officer referred to in section 36 (1) shall have regard to all matters which appear to him to be relevant including, as well as any others, the following —

- (a) the character and antecedents of the applicant;
- (b) his proximity to or connection with the defendant, whether by kinship, place of residence or otherwise; and
- (c) his ability to pay, or give security for, the amount which he might become liable to forfeit under his proposed surety undertaking, without excessive hardship to himself or his dependants.

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Decision on application by proposed surety

40. (1) Upon receipt of the duly completed declaration referred to in section 37 (1) (c), the officer shall, after making any enquiries which he thinks desirable, make a decision, as soon as is practicable, either to approve or not to approve of the applicant as a surety in that case.

(2) If the officer does not approve of the applicant as a surety he shall record the reasons for his doing so and inform the applicant and the defendant thereof, or cause them to be so informed.

[Section 40 amended by No. 15 of 1988 s. 15.]

Finality of decision to refuse approval

41. (1) A decision by an officer referred to in section 36 (1) not to approve of the applicant as a surety is final unless the applicant becomes entitled to re-apply under subsection (2).

(2) An applicant who is refused approval as a surety may re-apply for approval to the officer who made that decision, or if he is absent or unavailable to another officer acting in his position, on the ground that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since he was refused approval; or
- (b) he failed to adequately present his case for approval on his previous application,

and the provisions of this Act, except section 37, shall, with necessary modifications, apply to any such further application and the decision thereon.

Before whom surety undertaking may be entered into

42. A surety undertaking need not be entered into before the officer who approved the surety but may be entered into before any person before whom the defendant for whose appearance the surety is approved might enter into his bail undertaking under section 29.

Duties of persons before whom surety undertaking is entered into

43. A person before whom a surety undertaking is to be entered into —

(a) shall —

(i) read to the surety,

(ii) be informed by the surety that he has read, or

(iii) if necessary, have translated to the surety,

the documents described in section 37 (1) (a) and (b), and the surety undertaking, before the surety enters into the undertaking;

(b) shall ensure that all conditions which are to be complied with by the surety have been complied with before the surety enters into his undertaking; and

(c) shall give to the surety a copy of his surety undertaking as duly completed.

[Section 43 amended by No. 74 of 1984 s. 13.]

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Surety undertaking extends to adjourned hearing only by consent

44. (1) A surety undertaking does not extend to the failure by the defendant to appear at a different time or a different time and place pursuant to section 31 unless —

- (a) his surety undertaking contains a provision that it does so extend; and
- (b) where applicable, pursuant to subsection (2), he has received notice as mentioned in that subsection.

(2) A surety undertaking may, at the option of the surety, also contain a provision that, where a different time or a different time and place for the defendant's appearance is substituted pursuant to section 31, the surety's liability shall only arise if he is given notice, as soon as is practicable, of the different time or the different time and place.

[Section 44 amended by No. 74 of 1984 s. 14.]

Giving and proof of notices under section 44

45. (1) For the purposes of section 44 (2) notice to a surety may be given —

- (a) orally to the surety by the judicial officer when he fixes a time and place for the proceedings or the resumed proceedings;
- (b) in the prescribed form to the surety personally; or
- (c) by the clerk or registrar of the court sending the prescribed form by registered post or telegram to him at his address appearing in his undertaking or notified under section 60.

(2) Section 32 (2) and (3) shall apply to the service and proof of service of a notice under subsection (1) (c).

(3) A judicial officer who, under subsection (1) (a), notifies a surety of the time and place for the proceedings or the resumed proceedings shall endorse on the surety's undertaking a certificate showing details of such time and place and that he notified the surety thereof.

(4) In any proceedings —

- (a) a document purporting to be a copy of a notice referred to in section 44 (2) shall be evidence of the terms of the notice;
- (b) an endorsement on a surety undertaking purporting to be a certificate referred to in subsection (3) shall be evidence of the matters appearing therein without proof of the signature of the judicial officer who made it.

[Section 45 amended by No. 74 of 1984 s. 15.]

Power of surety to apprehend defendant

46. (1) A surety may arrest a defendant for whose appearance in court he has entered into a surety undertaking if the surety has reasonable grounds to believe that —

- (a) the defendant —
 - (i) is not likely to comply with the requirements of his bail undertaking mentioned in section 28 (2) (a) or (b);
 - (ii) is, or has been, in breach of any condition of his bail undertaking mentioned in section 28 (2) (c);
or

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(iii) is, or has been, in breach of a home detention condition mentioned in section 28 (2) (d); and

(b) it is not expedient to invoke the assistance of a police officer under section 54 (1) because the delay occasioned by doing so would defeat the purpose of that section.

(2) A surety who arrests a defendant under subsection (1) shall, as soon as is practicable, deliver him into the custody of a police officer and thereafter he shall be dealt with under section 54 (4) and section 55, and those provisions shall apply, as if he had been arrested by a police officer under section 54 (2).

[Section 46 amended by No. 74 of 1984 s. 16; No. 61 of 1990 s. 10.]

Cessation and suspension of surety undertaking

47. A surety undertaking ceases to have effect —

- (a) upon the revocation of bail under section 55 (1);
- (b) upon the release of a defendant under section 55 (2) if the surety does not consent to the continuance in force of his surety undertaking;
- (c) upon its being cancelled under section 48 (4) (and as from the time fixed therefor) by an appropriate judicial officer;
- (d) upon the death of the surety, but only if no order under section 49 (1) has been made before then;
- (e) subject to sections 31 and 44, upon the appearance in court by the defendant as required by his bail undertaking;

- (f) upon the discharge of the defendant according to law from any further proceedings for the offence, or all of the offences, to which the surety undertaking relates; or
- (g) during any period before the time at which the defendant is required to appear in court when he is in custody for any other offence or reason.

Surety may apply for cancellation of his undertaking

48. (1) A surety may apply to an appropriate judicial officer for cancellation of his undertaking.

(2) An application under subsection (1) may be made at any time before that specified, or deemed by section 31 (3) to be specified, in the defendant's bail undertaking for his appearance in court.

(3) Upon an application being made under subsection (1) an appropriate judicial officer shall cause the defendant to appear before him or another such officer and may issue a warrant or summons for that purpose.

(4) Upon the appearance of the defendant before the time mentioned in subsection (2) an appropriate judicial officer shall —

- (a) cancel the surety undertaking; and
- (b) exercise one of the powers set out in section 55 (1) (d) or (e).

(5) The *Justices Act 1902* shall apply, with all necessary modifications, to a summons or warrant issued under subsection (3) as if they were issued on a complaint under that Act.

s. 49

Forfeiture of money under surety's undertaking

49. (1) Where a defendant has failed to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) or (b) (ii) the following provisions of this section apply for the purpose of enforcing payment to the Crown of any sum thereupon payable by a surety in terms of his surety undertaking —

- (a) the clerk or registrar of the court before which the defendant failed to appear may make application for payment by way of complaint to an appropriate judicial officer;
- (b) that judicial officer shall summon the surety to appear before the court in which the judicial officer exercises jurisdiction to show cause why an order of forfeiture should not be made under this section;
- (c) on the hearing of the application and upon proof of the surety's liability in terms of his undertaking, the judicial officer shall order forfeiture of the full amount specified in the undertaking unless the surety attends at the hearing and shows to the satisfaction of the judicial officer that there was reasonable cause for the failure of the defendant to comply with the requirement to which the complaint relates;
- (d) notwithstanding paragraph (c), the judicial officer may decline to make an order under that paragraph or may order forfeiture in part only where the surety attends and shows to the satisfaction of the judicial officer —
 - (i) that, by reason of a change of circumstances since the undertaking was entered into, an order for forfeiture, or for forfeiture in full (as the case may be), would cause excessive hardship to the surety or his dependants; and

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s. 49

(ii) that such hardship would not be relieved by the exercise of one or more of the powers conferred by section 59;

(e) an order may be made under this section whether or not the defendant has been convicted of an offence against section 51 (1) or (2) but if, after an order has been made, the surety satisfies the Governor that new facts have been discovered or new circumstances have arisen which show that there was reasonable cause for the failure of the defendant as mentioned in paragraph (c) (i), the Governor may exercise the power in section 170 of the *Justices Act 1902* as if the forfeiture were one to which that section applied.

(2) The *Justices Act 1902*, except section 51 and Part VIII, shall with all necessary modifications apply —

(a) to a complaint and summons under this section, and any order thereon, as if they were made or issued under that Act; and

(b) for the purpose of enforcing any order made under this section, but without prejudice to the recovery of the money payable thereunder as a civil debt due to the Crown.

(3) The appropriate judicial officer may transmit a certified copy of an order made under this section to a court of petty sessions for enforcement as provided by subsection (2) (b).

[Section 49 amended by No. 74 of 1984 s. 17.]

s. 50

Offence to indemnify surety

50. (1) If a person indemnifies, or agrees to indemnify, a surety or proposed surety against any liability which the surety or proposed surety may incur under this Act (including this section) he and the surety or proposed surety and any person with whom he agrees as aforesaid each commits an offence.

Penalty: \$1 000 or imprisonment for 12 months or both.

(2) An offence is committed under subsection (1) —

- (a) whether the agreement is made before or after the surety undertaking is entered into and whether or not a proposed surety actually becomes a surety; and
- (b) whether the compensation is to be in money or in money's worth.

(3) An offence is not committed under subsection (1) by a surety or proposed surety if he shows —

- (a) that he had no knowledge of an agreement within the meaning of subsection (1) proposed to be entered into between 2 other persons; or
- (b) that having such knowledge he took all steps reasonably available to him to prevent the agreement being entered into.

[Section 50 amended by No. 74 of 1984 s. 18.]

**PART VIA — ADMINISTRATION OF HOME
DETENTION CONDITIONS**

[Heading inserted by No. 61 of 1990 s. 11.]

Powers of chief executive officer of corrective services

50A. The chief executive officer of corrective services has all of the powers conferred under this Act on a community corrections officer and may review, vary, or rescind a direction given by a community corrections officer.

[Section 50A inserted by No. 61 of 1990 s. 11.]

Powers of persons engaged under contract

50B. Subject to the person's contract, a person engaged under section 5F (1) of the *Offenders Community Corrections Act 1963*² has the functions, powers and duties of a community corrections officer under this Act.

[Section 50B inserted by No. 61 of 1990 s. 11.]

Powers and duties of community corrections officers

50C. (1) A community corrections officer may give such reasonable directions to a defendant subject to a home detention condition as are necessary for the proper administration of the condition and any other condition imposed on the grant of bail to the defendant including, without limiting the generality of the foregoing, directions as to —

- (a) when the defendant may leave the place where he is required by the home detention condition to remain;
- (b) the period of any authorized absence from the place where he is required by the home detention condition to remain;

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s. 50C

- (c) when the defendant shall return to the place where he is required by the home detention condition to remain;
 - (d) the method of travel to be used by the defendant during any absence from the place where he is required by the home detention condition to remain;
- and
- (e) the manner in which the defendant shall report his whereabouts.

(2) For the purpose of ascertaining whether or not a defendant is complying with a home detention condition or any direction given pursuant to subsection (1), a community corrections officer may, at any time —

- (a) enter or telephone the place where the defendant is required by a home detention condition to remain;
- (b) enter or telephone the defendant's place of employment or any other place where the defendant is permitted or required to attend; or
- (c) question any person at any place referred to in paragraph (a) or (b).

(3) A person who —

- (a) hinders a person exercising powers under subsection (2); or
- (b) fails to answer a question put pursuant to subsection (2) (c) or gives an answer that the person knows is false or misleading in a material particular,

commits an offence.

Penalty: \$2 000 or imprisonment for 6 months or both.

- (4) A community corrections officer —
- (a) shall keep such records and make such returns and reports in relation to defendants subject to home detention conditions as the chief executive officer of corrective services directs; and
 - (b) shall make any records relating to a defendant subject to a home detention condition available on the request of the chief executive officer of corrective services to him.

[Section 50C inserted by No. 61 of 1990 s. 11.]

Powers of members of the Police Force

50D. (1) For the purpose of ascertaining whether or not a defendant is complying with a home detention condition, a member of the Police Force may —

- (a) require the defendant to produce a copy of his bail undertaking and any notice by the chief executive officer of corrective services under section 50E (a) for inspection; and
- (b) require the defendant to explain why he is absent from the place where he is required by the home detention condition to remain.

(2) A defendant who fails to comply with subsection (1) (a) or who fails to explain when required to do so under subsection (1) (b) or who gives an explanation that the defendant knows is false or misleading in a material particular, commits an offence.

Penalty: \$2 000 or imprisonment for 6 months or both.

[Section 50D inserted by No. 61 of 1990 s. 11.]

s. 50E

Chief executive officer of corrective services may substitute a different place of detention and apply conditions

50E. The chief executive officer of corrective services may, at any time, by notice in writing given to a defendant granted bail subject to a home detention condition —

- (a) substitute a different place for the place where a defendant is required by a home detention condition to remain;
- (b) require the defendant to comply with such of the conditions specified in the list provided to the defendant under section 24A (4) as are specified in the notice.

[Section 50E inserted by No. 61 of 1990 s. 11.]

Chief executive officer of corrective services may revoke bail

50F. (1) Where a home detention condition has been imposed as a condition on a grant of bail to a defendant the chief executive officer of corrective services may, in his absolute discretion, by instrument signed by him and if practicable, given to the defendant, revoke the bail.

(2) Without limiting the generality of subsection (1), the power to revoke bail may be exercised where the defendant —

- (a) is not likely to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) or (b);
or
- (b) is, or has been, or is likely to be in breach of any condition of his bail undertaking mentioned in section 28 (2) (c).

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s. 50G

(3) Subject to subsection (4), where the chief executive officer of corrective services revokes bail he shall include a statement of his reasons for the cancellation in the instrument cancelling the bail.

(4) Where the chief executive officer of corrective services is of the opinion that it would be in the interest of the defendant or any other person, or the public, to withhold from the defendant any or all of the reasons referred to in subsection (3), the chief executive officer of corrective services may so withhold the reason or reasons.

(5) Where the chief executive officer of corrective services revokes bail, he may, whenever necessary, issue a warrant directed to all members of the Police Force to have the defendant arrested and brought before an appropriate judicial officer.

[Section 50F inserted by no. 61 of 1990 s. 11.]

Effect of revocation of bail

50G. (1) A defendant arrested pursuant to a warrant issued under section 50F shall be taken as soon as is practicable before an appropriate judicial officer unless he is arrested less than 24 hours before the time at which he is due to appear in accordance with his bail undertaking, in which case he shall be held in custody and brought before an appropriate judicial officer at that time.

(2) The judicial officer before whom a defendant appears under this section may —

- (a) remand the defendant in custody to appear at the time and place specified, or deemed by section 31 (3) to be specified, in his bail undertaking; or
- (b) grant fresh bail to the defendant in accordance with this Act, other than clause 2 of Part B of the Schedule.

[Section 50G inserted by No. 61 of 1990 s. 11.]

s. 50H

Exclusion of the rules of natural justice

50H. The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under this Part by the chief executive officer of corrective services.

[Section 50H inserted by No. 61 of 1990 s. 11.]

Delegation by chief executive officer of corrective services

50J. The chief executive officer of corrective services may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to any person any power or duty under this Part, other than this power of delegation.

[Section 50J inserted by No. 61 of 1990 s. 11.]

Community corrections officer may enter to retrieve equipment

50K. Where pursuant to rules made under section 50L any device or equipment has been installed at the place where a defendant is required by a home detention condition to remain, a community corrections officer may, at any time, enter that place to retrieve the device or equipment.

[Section 50K inserted by No. 61 of 1990 s. 11.]

Rules

50L. (1) The chief executive officer of corrective services may, with the approval of the Minister, make rules for the purposes of this Part which may provide for the manner of ensuring that

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s. 50L

defendants are complying with home detention conditions and for conditions to be applied to defendants granted bail subject to home detention conditions including conditions —

- (a) requiring a defendant to wear any device;
- (b) requiring a defendant to permit the chief executive officer of corrective services to install any device or equipment at the place where the defendant is required by a home detention condition to remain.

(2) Rules made under this section may confer a discretionary authority on any person or class of persons.

(3) Sections 41 and 42 of the *Interpretation Act 1984* do not apply to rules made under this section.

[*Section 50L inserted by No. 61 of 1990 s. 11.*]

s. 51

PART VII — ENFORCEMENT OF BAIL UNDERTAKINGS

Offence to fail to comply with bail undertaking

51. (1) A defendant who, without reasonable cause, fails to comply with the requirement of his bail undertaking mentioned in section 28 (2) (a) commits an offence.

(2) A defendant who fails to comply with the requirement of his bail undertaking mentioned in section 28 (2) (b) (ii) commits an offence.

(3) Notwithstanding section 140 of the *Justices Act 1902*, a defendant shall not be convicted in his absence of an offence against this section.

(4) A defendant who is charged with an offence against subsection (1) or (2) may be convicted of the other of those offences if that other offence is proved by the evidence.

(5) A prosecution for an offence against subsection (1) or (2) may be brought at any time.

(6) A person who is convicted of an offence against subsection (1) or (2) is liable to a fine not exceeding \$3 000 or imprisonment for a term not exceeding 3 years, or both.

(7) A court which convicts a defendant of an offence against this section may, in addition to any penalty which it may impose, order that the defendant pay such sum as it may fix in or towards defraying the costs and expenses of and consequent upon his apprehension following the failure to comply with his bail undertaking for which he was convicted.

(8) An order made under subsection (7) —

(a) shall specify to whom and in what manner the sum shall be paid; and

(b) may be enforced as though the sum were a penalty imposed under this section.

Provision as to summary proceedings before superior courts for an offence under section 51

52. (1) This section applies, notwithstanding any other Act, for the purpose of bringing proceedings for an offence against section 51 (1) or (2) where the court before which the defendant is bound to appear at the time when he fails to comply with his bail undertaking is the Court of Criminal Appeal, the Full Court of the Supreme Court, the Supreme Court constituted by a single Judge, or the District Court.

(2) Where this section applies, the defendant shall be dealt with summarily for the offence and shall be so dealt with —

- (a) by a Judge of the Supreme Court, in any case where the defendant was bound to appear before the Court of Criminal Appeal or the Full Court of the Supreme Court, or the Supreme Court constituted by a single Judge;
- (b) by a Judge of the District Court in any case where the defendant was bound to appear before that Court.

(3) 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 —

- (a) where subsection (2) (a) applies, in the Supreme Court; and
- (b) where subsection (2) (b) applies, in the District Court.

(4) Subject to section 51 (3) of this Act, the *Justices Act 1902*, except section 51 and Part VIII thereof, shall apply to a complaint under subsection (3) and to the disposal of all proceedings thereon and matters thereto, and to the enforcement of all convictions and orders made in such proceedings.

s. 53

Appeal proceedings under section 52

53. (1) A decision of a Judge of the Supreme Court or of the District Court under section 52 may be the subject of an appeal to the Full Court of the Supreme Court.

(2) For the purposes of subsection (1), Part VIII of the *Justices Act 1902* shall apply as if a decision referred to in that subsection were a decision of justices, and with all necessary modifications including the following —

- (a) references to a justice or to justices shall be read as references to a Judge of the Supreme Court or of the District Court, as the case may require;
- (b) sections 184 and 185 shall be read as if they provided for an application to the Full Court for leave to appeal to that Court;
- (c) in sections 187, 188, 190, 193 and 206, references to “**the Judge**”, “**any Judge**” or “**a Judge in chambers**” shall be read as references to the Full Court;
- (d) references to the clerk of petty sessions shall be read as references to the Registrar of the District Court or of the Supreme Court, as the case may require; and
- (e) section 187 (3) shall not apply.

(3) In subsection (1) “**decision**” has the meaning assigned to it by section 4 of the *Justices Act 1902*.

[Section 53 inserted by No. 33 of 1989 s. 18.]

Defendant on bail may be taken before a judicial officer for variation or revocation of bail

54. (1) A police officer may cause a defendant who has been released on bail to appear before an appropriate judicial officer to

show cause why his bail should not be varied or revoked if the police officer —

- (a) has reasonable grounds to believe, or is notified in writing by a surety for the defendant that the surety has reasonable grounds to believe, that the defendant —
 - (i) is not likely to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) or (b);
 - (ii) is, or has been, or is likely to be in breach of any condition of his bail undertaking mentioned in section 28 (2) (c); or
 - (iii) is, or has been, in breach of a home detention condition mentioned in section 28 (2) (d);
- (b) has reasonable grounds to believe that —
 - (i) any surety for the defendant's appearance is no longer suitable under section 39 to be a surety, or is dead;
 - (ii) for any reason any security required under Part D of the Schedule is no longer sufficient; or
 - (iii) in a case where the defendant has been granted bail for the purposes of an appeal, the defendant has discontinued the appeal or has not prosecuted it with all due diligence.

(2) For the purpose of causing a defendant to appear before an appropriate judicial officer as provided in subsection (1) a police officer may —

- (a) arrest the defendant without warrant and bring him before an appropriate judicial officer; or

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(b) make a complaint to an appropriate judicial officer as to any ground specified in subsection (1).

(3) A judicial officer to whom a complaint is made under subsection (2) (b) may issue a summons to the defendant to appear, or a warrant to have him brought, before the court in which the judicial officer exercises jurisdiction.

(4) A defendant arrested under this section shall be taken as soon as is practicable before an appropriate judicial officer unless he is arrested less than 24 hours before the time at which he is due to appear in accordance with his bail undertaking, in which case he shall be held in custody and brought before an appropriate judicial officer at that time.

(5) The *Justices Act 1902*, shall, with all necessary modifications, apply to a complaint made under this section and a summons or warrant issued thereon as if they were respectively a complaint for an offence and a summons or warrant issued thereon.

[Section 54 amended by No. 33 of 1989 s. 18; No. 61 of 1990 s. 12.]

Powers of appropriate judicial officer to revoke or vary bail

55. (1) If the judicial officer before whom a defendant appears under section 54 is satisfied that —

- (a) the defendant is not likely to comply with any requirement of his bail undertaking mentioned in section 28 (2) (a) or (b);
- (b) he is, or has been, or is likely to be, in breach of any condition of his bail undertaking mentioned in section 28 (2) (c);

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- (ba) he is, or has been, in breach of a home detention condition mentioned in section 28 (2) (d); or
- (c) any of the grounds set out in section 54 (1) (b) has been established,

he may —

- (d) revoke the bail and remand the defendant in custody to appear at the time and place specified, or deemed by section 31 (3) to be specified, in his bail undertaking; or
- (e) revoke the bail and grant fresh bail to the defendant in accordance with this Act, other than clause 2 of Part B of the Schedule.

(2) If the judicial officer before whom the defendant so appears is not satisfied as to any of the matters mentioned in subsection (1) (a), (b), or (c) he shall release the defendant on his existing bail undertaking and, with the consent in writing of the surety, on any existing surety undertaking.

[Section 55 amended by No. 61 of 1990 s. 13.]

Warrant for arrest of absconding defendant

56. Where at any time after that specified in his bail undertaking for his appearance a defendant has failed to comply with the requirements of his bail undertaking mentioned in section 28 (2) (a) or (b), the court before which he was required to appear may issue a warrant to arrest the defendant and bring him before that court or a court of like jurisdiction.

[Section 56 amended by No. 15 of 1988 s. 16.]

s. 57

Forfeiture of money under bail undertaking

57. (1) Where a defendant is convicted of an offence against section 51 (1) or (2), the court by which he is convicted shall, whether or not an application is made therefor by the prosecutor, order that the full amount agreed to be forfeited, in the defendant's bail undertaking, be forfeited to the Crown.

(2) Notwithstanding subsection (1), the court may decline to make an order thereunder or may order forfeiture in part only where the defendant shows to the satisfaction of the judicial officer —

- (a) that, by reason of a change of circumstances since the bail undertaking was entered into, an order for forfeiture, or for forfeiture in full (as the case may be), would cause excessive hardship to the defendant or his dependants; and
- (b) that such hardship would not be relieved by the exercise of one of the powers conferred by section 59.

(3) The *Justices Act 1902*, except Part VIII, shall with all necessary modifications apply to an order made under this section and the enforcement thereof as if it were an order under that Act for payment of a sum of money, but without prejudice to the recovery of the money payable thereunder as a civil debt due to the Crown.

(4) The court may transmit a certified copy of an order made under this section to a court of petty sessions for enforcement as provided in subsection (3).

[Section 57 amended by No. 74 of 1984 s. 19.]

Automatic forfeiture on expiration of one year after absconding

58. (1) If after the expiration of one year from the day on which the defendant is required to appear in court in accordance with the requirement of his bail undertaking mentioned in section 28 (2) (a) he has not —

- (a) been arrested under section 56; or
- (b) appeared in court in accordance with the requirement of his bail undertaking mentioned in section 28 (2) (b) (ii); or
- (c) otherwise surrendered himself or been taken into custody to be dealt with on the charge or charges for which the bail undertaking was entered into,

the full amount specified in the bail undertaking shall, on the expiration of the said period, be forfeited to the Crown by virtue of this section without any order of the court or other formality.

(2) Upon the occurrence of a forfeiture under subsection (1) any security given by the defendant may be resorted to by the Crown as if an order of forfeiture had been made under section 57 (1).

s. 59

PART VIII — MISCELLANEOUS

Further power of judicial officer in relation to enforcement of undertakings

59. A court or an appropriate judicial officer who makes an order for forfeiture under section 49 or 57 may, when doing so, or at any time thereafter, further order —

- (a) that payment of any sum be made by specified instalments or be postponed to a specified date;
- (b) that any security given be applied in or towards payment of the sum forfeited; or
- (c) that the defendant or the surety, as the case may be, do all such things and execute all such documents as may be necessary, or as may be specified in the order, for the purpose of vesting any security in the Crown or enabling the Crown to realize the same or to resort thereto to recover the sum forfeited,

and the court or an appropriate judicial officer may at any time vary or revoke an order made under paragraph (a), (b), or (c).

Defendant and surety to notify any change of address

60. Where —

- (a) a defendant who has been released on bail; or
- (b) a surety,

changes his place of residence, employment, or business from that appearing on his bail undertaking or surety undertaking he shall forthwith, in writing, notify details of the change to the clerk or registrar of the court before which, at the time when the change occurs, the defendant is required to appear, and if without reasonable cause he fails to do so he commits an offence.

Penalty: \$500 or imprisonment for 6 months or both.

Offence of failing to bring arrested person before court or person able to grant bail

61. (1) A person to whom this section applies commits an offence if, having arrested another for an offence, he wilfully and without reasonable excuse fails to take that other person, or cause him to be taken, as soon as is practicable —

- (a) before an authorized officer or judicial officer empowered by this Act to grant bail for that offence; or
- (b) before a court.

Penalty: \$1 000 or imprisonment for 12 months or both.

(2) This section applies to a person who —

- (a) is not empowered by this Act to grant bail for the offence or by reason of section 16; or
- (b) being so empowered, elects to act under section 6(2a).

[Section 61 amended by No. 15 of 1988 s. 17.]

Offence to give false information for bail purposes

62. A person who for the purpose of obtaining —

- (a) a grant of bail for himself or a variation of the terms and conditions thereof; or
- (b) approval of himself as a surety,

makes any statement which he knows is false in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence.

Penalty: \$1 000 or imprisonment for 12 months or both.

s. 63

Protection of persons carrying out this Act

63. A person shall not be liable in civil proceedings on account of anything done, or omitted to be done, by him in good faith in the course of carrying out any provision of this Act, or purporting to be so done or omitted; but the liability (if any) of any other person (including the Crown) as his employer is not affected by this section and shall be determined as if it had not been passed.

Evidence of non-appearance, etc., by a defendant

64. Where it is required for the purposes of this Act to prove —

- (a) that a defendant did not appear before a particular court, at a particular place, on a particular day, at a particular time or during a particular period; or
- (b) the day, time or period when or during which a defendant did appear before a particular court at a particular place,

a certificate as to any such matter, purporting to be signed by a judicial officer or clerk or registrar of the court before which the defendant was required to appear, shall be evidence of the matter so certified.

Bail undertakings by minors

65. A bail undertaking entered into by a person who is under the age of 18 years shall bind him as if he were of full age.

Abolition of other powers to grant bail

66. (1) Any power or duty that, at the commencement of this Act, exists apart from statute to grant bail to a defendant awaiting an appearance in court for an offence, is abolished.

(2) Subsection (1) has effect notwithstanding anything in section 16 of the *Supreme Court Act 1935*.

(3) In subsection (1) “statute” means an Act of the Parliament of Western Australia, other than the *Supreme Court Act 1935*.

Delegation by clerk or registrar

66A. (1) The clerk or registrar of a court may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of that court any function conferred on him by or under this Act other than —

- (a) this power of delegation; or
- (b) any function that a judicial officer has required him to perform personally.

(2) The superintendent of a detention centre may, either generally or as otherwise provided by the instrument of delegation, by instrument signed by him, delegate to an officer of the Department for Community Services any function conferred on him by or under this Act, other than this power of delegation.

[Section 66A inserted by No. 15 of 1988 s. 18; amended by No. 49 of 1988 s. 89.]

Regulations

67. (1) The Governor may make regulations, not inconsistent with this Act, prescribing such things as are required or permitted by this Act to be prescribed or as it is necessary or expedient to prescribe for the purposes thereof.

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(2) Without limiting the generality of subsection (1) regulations may —

- (a) make provision for or with respect to the making of applications —
 - (i) for or in relation to bail;
 - (ii) for the approval of sureties;
 - (iii) for the approval of security to be given by defendants and sureties;
 - (iv) for the cancellation of a surety undertaking,

and for the manner in which such applications are to be made and the procedure to be followed on such applications;

- (b) for the purposes of clause 5 of Part A of the Schedule, prescribe the officer or officers who may grant bail for any prescribed appearance or class of appearance in court by a defendant who is in custody;
- (c) make provision for, or with respect to the management, control, supervision and good order of premises established for the accommodation of persons to whom bail has been granted.

(3) Regulations made under this section may provide that a contravention or failure to comply with a regulation constitutes an offence and may provide for penalties not exceeding a fine of \$500 for offences against the regulations.

Transitional provisions

68. (1) This Act applies to any appearance in court for an offence —

- (a) by a person arrested on or after the day on which this Act comes into operation; and

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- (b) by a person arrested for an offence before the day on which this Act comes into operation where, on or after that day, he may be ordered to be detained in custody for that offence.

(2) A grant or refusal of bail to a person before the day on which this Act comes into operation for an appearance in court for an offence on or after that day is not affected by this Act, and shall continue to be governed (including all matters relating thereto and arising directly or indirectly therefrom) by the law in force immediately before this Act comes into operation; but upon that appearance subsection (1) (b) applies to any further appearance for that offence.

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Sch.

SCHEDULE

[Ss. 13 and 17]

PART A — JURISDICTION TO GRANT BAIL

First column

Second column

*Appearances in court referred
to in section 13*

By whom bail may be granted

Initial appearance

1. The initial appearance in court by a defendant in, or in connection with, proceedings for an offence.

In any case —

- (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.

Appearance after adjournment

2. 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.

The judicial officer who orders the adjournment.

Appearance on committal to Supreme Court or District Court

3. 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.

The judicial officer who orders the committal.

Appearance in connection with appeal or rehearing

4. Appearance in court in connection with any appeal, rehearing, or reconsideration as follows —

- | | | |
|------|---|--|
| (a) | for the determination under section 199 of the <i>Justices Act 1902</i> of an appeal under Part VIII of that Act; | A Judge of the Supreme 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; |

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- | | |
|---|---|
| (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. |

Appearance prescribed by regulation

- | | |
|--|---|
| 5. 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. |
|--|---|

Appearances not otherwise provided for

- | | |
|--|--|
| 6. 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. |
|--|--|

Interpretation of this Part

7. 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 a recognizance under section 19 (8) of *The Criminal Code*;
 - (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 is required under section 580, 645 (2) or 669 (3) (b) of *The Criminal Code* or under section 17 (2a) of the *Offenders Community Corrections Act 1963*² to appear in the Supreme Court or the District Court to be tried or dealt with is deemed to have been committed thereto for the purposes of clause 3.

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PART B — CESSATION OF POWER TO GRANT BAIL

Upon decision by Judge, power of other officers ceases

1. 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.

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

2. 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.

Upon refusal by justice power of authorized officer or justice ceases

3. 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.

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

4. 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

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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.

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PART C — MANNER IN WHICH JURISDICTION TO BE EXERCISED

PRINCIPLES GOVERNING GRANT OR REFUSAL OF BAIL

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

1. 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;

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- (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).

Child to have qualified right to bail

2. Subject to section 28 (2) of the *Child Welfare Act 1947*, a child defendant who is in custody awaiting an appearance in court before conviction for an offence has a right to be released on bail unless —

- (a) one or more of the questions set out in clause 1 (a), (b), and (d) must, in the opinion of the judicial officer or authorized officer, be answered in the affirmative; and
- (b) there is no condition which the judicial officer or authorized officer could reasonably impose under Part D of this Schedule which would satisfy the relevant provision of clause 1 (e),

and if the child is not released on bail or is refused bail he shall be dealt with in accordance with section 33 (3) of the *Child Welfare Act 1947*.

Matters relevant to consideration of clause 1 (a)

3. 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;

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- (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.

When bail to be granted after conviction

4. 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.

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

5. 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.

Bail of probationers, etc.

6. A probationer or offender under the *Offenders Community Corrections Act 1963*² who is in custody under section 16, 17 or 20H of that Act, or a child who is in custody under section 38 of the *Child Welfare Act 1947*, shall be deemed, for the purpose of determining whether clause 4 applies, not to have been convicted of the offence for which the probation order, community service order or order under section 34 or 34B of the *Child Welfare Act 1947* (as the case may be) was made.

LIMITATION ON PERIOD OF BAIL

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

7. 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.

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

8. 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.

Provision as to calculation of time

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

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

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

1. (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.

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(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).

Other conditions which may be imposed

2. (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).

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

- (a) appears in court in accordance with his bail undertaking;
- (b) does not while on bail commit an offence;

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- (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 —
- (a) grants bail upon the adjournment of a hearing or trial or while the defendant is awaiting a hearing or trial and the judicial officer is of the opinion that an examination ought to be made of the physical or mental condition of the defendant; or
 - (b) makes an order in relation to the defendant under section 36 (1) (a) of the *Mental Health Act 1962*,

he may, under subclause (1), impose any condition which he considers to be desirable for the purpose of ensuring that the defendant undergoes such an examination by a medical practitioner or 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) 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

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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**” means a medical practitioner whose name is contained in a register of psychiatrists prepared and maintained under section 89 of the *Mental Health Act 1962*.

Home detention condition may be imposed

3. (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.

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(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

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- (e) when requested to do so, produce a copy of his bail undertaking and any notice by the chief executive officer of corrective services under section 50E for inspection by a community corrections officer or a member of the Police Force.

[Schedule 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.]

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NOTES

1. This reprint is a compilation as at 17 October 1991 of the *Bail Act 1982* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Bail Act 1982</i>	86 of 1982	18 November	6 February 1989 (see <i>Gazette</i> 27 January 1989 p.263)	
<i>Acts Amend- ment (Abolition of Capital Punishment) Act 1984, Part III</i>	52 of 1984	5 September 1984	3 October 1984	
<i>Bail Amend- ment Act 1984</i> (as amended by Act No. 15 of 1988)	74 of 1984	29 November 1984	6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.263)	
<i>Bail Amend- ment Act 1988</i>	15 of 1988	6 September 1988	6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.263)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Criminal Law Amendment Act 1988, Part 4</i>	70 of 1988	15 December 1988	Sections 3, 32, 33, Part 6 (other than section 48(1) and Part 7: 15 December 1988 (see section 2(3)); Part 4: 6 February 1989 (see section 2(a) and (b) and <i>Gazette</i> 27 January 1989 p.263); Balance: 1 February 1989 (see section 2(1) and <i>Gazette</i> 20 January 1989 p.110)	
<i>Acts Amendment (Children's Court) Act 1988 Part 13</i>	49 of 1988	22 December 1988	1 December 1989 (see section 2 and <i>Gazette</i> 24 November 1989 p.4327)	
<i>Community Corrections Legislation Amendment Act 1990, Part 2</i>	61 of 1990	17 December 1990	3 April 1991 (see Section 2 and <i>Gazette</i> 22 March 1991 p.1209)	
<i>Justices Amendment Act 1989, Section 18</i>	33 of 1989	22 December 1989	1 June 1991 (see section 2 and <i>Gazette</i> 17 May 1991 p.2455)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Child Welfare Amendment Act (No.2) 1990, Section 15</i>	83 of 1990	22 December 1990	1 August 1991 (see section 2 and <i>Gazette</i> 1 August 1991 p.3983)	
<i>Children's Court of Western Australia Amendment Act (No.2) 1991, Section 2</i>	15 of 1991	21 June 1991	9 August 1991 (see section 2(2) and <i>Gazette</i> 9 August 1991 p.4101)	

² Short title (as changed by section 18 of the *Community Corrections Legislation Amendment Act 1960*) substituted under section 7 (3) (h) of the *Reprints Act 1984*.

³ Repealed by Act No. 49 of 1988 s. 20.