



House of Representatives

Supplementary Order Paper

Tuesday, 30 May 2000

Bail Bill

Proposed amendments

Hon Phil Goff, in Committee, to move the following amendments:

Clause 1

To omit subclauses (2) and (3) (lines 1 to 10 on page 3), and substitute the following subclause:

- (2) This Act comes into force on **1 January 2001**.

New clause 3A

To insert, after line 38 on page 3, the following clause:

3A Purpose

The purpose of this Act is to reform and restate the law relating to bail.

Clause 5(3)

To omit paragraph (f) (line 22 on page 4).

Clause 6(2)

To insert, after line 10 on page 6, the following paragraph:

- (ea) the likely length of time before the matter comes to hearing or trial:

Clause 10

To omit subclause (1) (lines 7 to 20 on page 8), and substitute the following subclauses:

- (1) This section applies to a defendant if—
- (a) the defendant is of or over the age of 17 years and—
 - (i) is charged with an offence under the Crimes Act 1961 that carries a maximum sentence of 3 or more years' imprisonment; and

- (ii) at the time of the alleged commission of the offence was remanded at large or on bail awaiting trial for another offence under the Crimes Act 1961 that carries a maximum sentence of 3 or more years' imprisonment; and
 - (iii) has at any time previously received a full-time custodial sentence (within the meaning of that term in section 2(1) of the Criminal Justice Act 1985); or
- (b) the defendant is of or over the age of 17 years and—
- (i) is charged with an offence that carries a maximum sentence of 3 or more years' imprisonment; and
 - (ii) has previously received 14 or more full-time custodial sentences (within the meaning of that term in section 2(1) of the Criminal Justice Act 1985).
- (1A) For the purposes of **subsection (1)**, a full-time custodial sentence is counted whether or not it was served concurrently with any other 1 or more sentences.

Clause 10A

To omit from the clause heading the word “before” (line 18 on page 9), and substitute the word “pending”.

Clause 10B

To insert in subclause (1), after the word “sentence,” (line 4 on page 10) the words “or both,”.

To insert in subclause (1), after the word “it” where it appears in line 5 on page 10, the word “is”.

To omit from subclause (3)(b) the word “offender” (line 15 on page 10), and substitute the word “appellant”.

Clause 25

To omit from paragraph (a) the words “prescribed form” (line 1 on page 16), and substitute the words “form prescribed under the Summary Proceedings Act 1957”.

New heading inserted

To insert, above clause 35 (after line 24 on page 22), the following heading:

*Bail pending sentencing**Clause 35*

To omit from the clause heading the word “before” (line 25 on page 22), and substitute the word “pending”.

Clause 39

To omit from subclause (3) the word “decision” (line 27 on page 25), and substitute the word “direction”.

To add, after line 29 on page 25, the following subclause:

- (4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

Clause 41

To omit from subclause (4) the word “be” where it appears in line 8 on page 27.

To omit from subclause (5), the expression “27 to 32” (line 11 on page 27), and substitute the expression “27 to 32, 34, and 39”.

Clause 42

To omit the heading to this clause (line 31 on page 27), and substitute the heading “Time on bail pending appeal not to be taken as time served”.

Clause 45(1)

To omit from paragraph (e) (line 29 on page 28) the word “a”.

To omit from paragraph (h) the word “attend”(line 3 on page 29), and substitute the words “answer bail”.

To insert, after line 6 on page 29, the following paragraph:

- (k) **section 39** (appeal against entry of non-performance of condition of bail in Criminal Records).

Clause 46

To omit subclause (3) (lines 31 to 35 on page 29 and lines 1 and 2 on page 30).

To omit from the compare reference (line 3 on page 30) the expression “(6B)”.

Clause 47

To omit subclause (2) (lines 25 and 26 on page 30), and substitute the following subclause:

- (2) If the defendant is granted bail, the provisions of **Part 3** apply.

To omit subclause (3) (lines 27 to 33 on page 30).

To omit from the compare reference (line 34 on page 30) the expression “(1B)”.

Clause 48(1)

To omit the expression “**section 25, section 26(3), and sections 27 to 34**” (line 37 on page 30 and line 1 on page 31), and substitute the expression “**sections 25, 26(3), 27 to 34, and 39**”.

Clause 49(2)

To omit the expression “**section 25 and sections 27 to 34**” (line 5 on page 32), and substitute the expression “**sections 24, 27 to 34, and 39**”.

Clause 52

To omit subclause (2) (lines 16 and 17 on page 33).

New heading inserted

To insert, above line 18 on page 33, the following heading:

General provisions relating to bail in indictable proceedings

Clause 53

To omit from line 19 on page 33 the words “after committal”.

New heading inserted

To insert, after line 8 on page 40, the following heading:

Bail Pending Sentencing

Clause 62

To omit from the clause heading the word “before” (line 9 on page 40), and substitute the word “pending”.

To omit the word “judgement” (line 11 on page 40), and substitute the word “judgment”.

Clause 66

To omit from subclause (3) the word “decision” (line 12 on page 42), and substitute the word “direction”.

To add, after line 15 on page 42, the following subclause:

- (4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.

Clause 71(4)

To omit the expression “**subsection (1)** of this section” (lines 35 and 36 on page 44), and substitute the expression “**subsection (2)**”.

Clause 73

To omit subclause (3) (lines 6 and 7 on page 46).

Schedule 1

To omit from section 39(3) (page 50) the word “decision”, and substitute the word “direction”.

To add to section 39 (page 50) the following subsection:

- “(4) No direction appealed against under this section is suspended merely because notice of that appeal has been given.”

Schedule 2

To omit from the new section 88(2)(e) of the Summary Proceedings Act 1957 (page 58) the word “applies”, and substitute the word “apply”.

To insert, in the item relating to the Summary Proceedings Act 1957, after the amendment substituting the new section 153 (page 58), the following item:

To insert in section 153A(6), after the expression “section 47 of this Act”, the expression “and **section 46** of the Bail Act 2000”.

To omit from the item relating to section 153A(7) of the Summary Proceedings Act 1957 (page 59) the expression “**47**”.

To omit from the amendment to section 168(1)(b)(i) of the Summary Proceedings Act 1957 (page 59) the expression “**24**”, and substitute the expression “**47**”.

To insert, after the item relating to the Summary Proceedings Amendment Act (No 2) 1991 (page 64), the following item:

Privacy Act 1993 (1993 No 28)

Add to the Fifth Schedule, after the item relating to suspended sentences, the following item:

Non-performance of bail conditions	Records relating to failure to comply with bail conditions entered under section 34(3) or section 60(3) of the Bail Act 2000.	Police
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To omit from the new section 45(6) of the Antarctica (Environmental Protection) Act 1994 (page 64) the word “applies”, and substitute the word “apply”. To omit the item relating to section 44(3) of the Extradition Act 1999 (page 67), and substitute the following item:

Repeal subsection (3) of section 44, and substitute the following subsection:

- (3) If the court remands the person on bail, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under **subsections (1) to (3) of section 27** of the Bail Act 2000.

To omit the item relating to section 46(3) of the Extradition Act 1999 (page 67), and substitute the following item:

Repeal subsection (3) of section 46, and substitute the following subsection:

- (3) If the court grants bail to the person, the court may impose any conditions of bail that the court thinks fit in addition to any conditions that the court may impose under **subsections (1) to (3) of section 27** of the Bail Act 2000 (as applied by **section 48** of that Act).

Schedule 3

To omit this schedule (page 68).

Explanatory note

This Supplementary Order Paper makes a number of amendments to the Bail Bill. The amendments—

- change the commencement date of the Bill:
- add a purpose clause to the Bill:
- add to the category of defendants who face a reversed onus of persuasion in applying for bail:
- provide a further consideration for the court to take into account when considering whether there is just cause for continued detention:
- make a number of minor or technical changes to the Bill.

Clause 1 is amended to change the commencement date of the Bill from 1 July 2000 to 1 January 2001, and to omit the provision for certain clauses in the Bill to come into force by Order in Council. These provisions, which relate to the recording of the non-performance of bail conditions, will now come into force on 1 January 2001.

New clause 3A is a purpose clause. It replaces the Long Title of the Bill, which will be omitted from the Bill when it is reprinted in accordance with the new format of legislation.

Clause 5(3) is amended to omit the reference to section 185 of the Crimes Act 1961. This provision has been repealed.

Clause 6(2) is amended to add a further consideration that the court may take into account when considering whether there is just cause for continued detention. That consideration is the likely length of time before the matter comes to hearing or trial.

Clause 10 is amended by substituting *new subclauses (1) and (1A)*. *Clause 10* imposes certain restrictions on the granting of bail to certain defendants. *Subclause (1)(b)* is new. It adds a further category of defendant to whom the restrictions in *clause 10* will apply. That category comprises any defendant who is charged with an offence that carries 3 or more years' imprisonment and who has 14 or more previous full-time custodial sentences. A defendant to whom *clause 10* applies—

- is not to be granted bail or allowed to go at large except by order of a High Court Judge or a District Court Judge;
- is not to be granted bail or allowed to go at large unless the defendant satisfies the Judge that bail or remand at large should be granted.

Subclause (1A) provides that a full-time custodial sentence is counted as 1 sentence whether or not it was served concurrently with any other 1 or more sentences.

The amendment to *clause 10A* is to make the terminology clearer.

The amendments to *clause 10B* are to ensure consistent use of terminology.

The amendment to *clause 25(a)* is to clarify that the form of warrant for remanding a defendant in custody that is to be used in relation to this clause is the form prescribed for the purposes of section 47 of the Summary Proceedings Act 1957.

The *new heading* above *clause 35* is inserted for clarity.

Clause 35 is amended to make the terminology clearer.

Clause 39 is amended by making a minor drafting change to *subclause (3)* and adding a *new subclause (4)*. The new subclause provides that a direction to record non-performance of a bail condition is not suspended merely because a notice of appeal against the direction has been lodged.

Clause 41(5) is amended by adding a reference to *clauses 34 and 39*. The effect of the amendment is that if bail is granted to an appellant who is in custody, clauses 34 and 39 apply. (Clauses 34 and 39 relate to the certifying and recording of non-performance of bail conditions.)

Clause 42 is amended by substituting a new clause heading that more accurately reflects the subject-matter of the clause.

Clause 45(1) is amended to add a reference to *clause 39*. This is to clarify that, in relation to bail during the preliminary hearing of an indictable offence, an appeal against a direction to record non-performance of a condition of bail is available to a defendant.

Clause 46(3) is omitted. This subclause is unnecessary because clauses 37 and 38 are applied by *subclause (2)*.

Clause 47 is amended by making a minor drafting change to *subclause (2)* and omitting *subclause (3)*. *Subclause (3)* is unnecessary because clauses 37 and 38 are applied by *subclause (2)*.

Clause 48(1) is amended to apply *clause 39* to a defendant who is committed for trial after a preliminary hearing and released on bail.

Clause 49(2) is amended to apply *clauses 24 and 39* to a defendant who is committed for sentence after a preliminary hearing and released on bail.

Clause 52 is amended by omitting *subclause (2)*. This subclause is not necessary and may limit the application of provisions in *Part 4* in a way that is not intended.

The *new heading* above *clause 53* is inserted for clarity.

Clause 53 is amended by omitting the words “after committal”. It is intended that this power be able to be used in any case where the High Court grants bail, before or after committal.

The *new heading* above *clause 62* is inserted for clarity.

Clause 62 is amended to make the terminology clearer and to correct a drafting error.

Clause 66 is amended by making a minor drafting change to *subclause (3)* and adding a *new subclause (4)*. The new subclause provides that a direction to record non-performance of a bail condition is not suspended merely because a notice of appeal against the direction has been lodged.

Clause 71(4) is amended to correct a cross-reference.

Schedule 1 is amended to make the equivalent changes to *clause 39* (as it applies to decisions of Community Magistrates) as are made to that clause in the main body of the Bill.

Amendments to *Schedule 2* correct minor drafting errors and make other technical changes.

Schedule 3 is omitted. The amendment to the Privacy Act 1993 contained in this schedule is moved into *Schedule 2* of the Bill. The amendment (which allows the police access to the records of the Department for Courts concerning non-performance of bail conditions) will now come into force on 1 January 2001 along with the rest of the Bill.