

Bail

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Policy statement and principles

What

Bail is release from court or police custody on conditions including that a person comes to court when next required and addressing other risks they may pose if released pending the hearing of their case.

The [Bail Act 2000](#) states the law relating to bail. It is imperative police make the right decisions based on the Bail Act, and that all decisions are based on verifiable information pertinent to the case.

After arrest for an offence, police decide whether to hold the person in police custody while waiting for them to be brought before the court, or to release the person on Police bail. Police must make the need to protect the victim of the alleged offence, and any person in a family relationship with the victim, the primary consideration in determining whether or not bail is prudent. Where someone is arrested for a breach of a protection order, the paramount consideration is the need to protect every person who is a protected person under that order (see [s21](#)).

When deciding whether to grant Police bail, Police should consider the same factors as those considered by the court for court bail, see [s8](#).

Where there is just cause for continued detention, it is the role of police to oppose court bail based on offender and offence-based criteria detailed in the Bail Act.

Why

Bail is an area that involves significant risk to Police, victims, and communities. Making appropriate decisions around bail, and providing accurate information to the court is key to ensuring public safety.

The key functions of Police are maintaining public safety, enforcing the law, preventing crime, and providing community support and reassurance.

If an arrested person poses any risk of re-offending or failing to appear in court as required, interfering with witnesses or evidence, or offending whilst on bail it is essential that if they are released on Police or court bail, that bail conditions adequately mitigate these risks.

How

Police will:

- ensure the victim's safety and protection is paramount
- ensure appropriate and relevant conditions are imposed when police bail is granted or recommended to the courts, in order to mitigate any risks an alleged offender may pose (based on [s8](#) criteria)
- ensure compliance with the Act and use NIA to assist in providing opposition to bail information for the court
- ensure charges filed comply with the [Solicitor-General's Prosecution Guidelines](#) so any bail decision is based on the correct charge

- ensure relevant staff are aware of their responsibilities when making or reviewing decisions / recommendations on Police bail, opposition to court bail and appropriate bail conditions
- respond to and take appropriate action in respect of identified bail breaches.

Related forms and documents

These forms and other documents are associated with this chapter:

- POL 128 Opposition to Bail
- POL 128Y Opposition to Bail (Youth)
- POL 2250 Police Bail Bond (Notice of Police Bail)
- POL 2260 Breach of Bail Conditions
- Bail Act 2000 - section 12(a) and (b) flowcharts

Summary

Purpose of this chapter

This chapter provides guidance for:

- officers in charge of the case (O/C case) to:
 - [decide whether to grant Police bail](#)
 - determine [appropriate bail conditions](#)
 - [decide whether to oppose bail](#) when defendants are not bailable as of right
 - [prepare effective opposition to bail applications](#)
- operational supervisors, prosecutors and other PPS staff to [review bail opposition forms](#) to ensure compliance with the legislative requirements of the [Bail Act 2000](#) and relevant case-law
- prosecutors to [oppose bail applications in the District Court](#).

The chapter also outlines:

- Police [powers of arrest](#) in relation to bail breaches
- procedures for when bailed [defendants fail to appear in court](#)
- when [warnings rather than arrest](#) may be used when responding to breaches of bail conditions
- the police role in responding to electronically monitored bail ([EM bail](#)) [alarm activations](#) (primary responsibility for EM bail is with Department of Corrections)
- how to respond to [breaches of EM bail](#) and situations where [EM bail addresses become unsuitable](#), e.g. when a [PSO is issued](#).

Limited application of Bail Act to children and young persons

Different bail regimes will apply to children and young persons depending on whether they are appearing before the Youth Court or the adult courts. Where a child or young person appears before the Youth Court, bail as provided for in the [Oranga Tamariki Act 1989](#) will apply. The OT Act provides for Police bail ([s234\(b\)](#)) and Court bail ([s238\(1\)\(b\)](#)). However, note that only [Part 3](#) of the Bail Act 2000 applies in the Youth Court and that Part applies with such modifications as are necessary (see [Schedule 1](#), [s321\(1\)](#) OT Act). Notably this includes electronic monitoring of bail. In addition to the powers to impose conditions of bail in section 30 of the Bail Act, there is a special provision regarding conditions of bail applying to children and young persons in [s240](#) of the OT Act.

There are a number of ways in which a young person may be required to appear before the adult courts. For example, a young person may be convicted in the Youth Court and transferred to the District Court for sentence under [s283\(o\)](#) of the OT Act, Alternatively, a 17 year old may be charged with an offence specified in [Schedule 1A](#) of the OT Act and, following first appearance in the Youth Court, the matter will be transferred to the District Court or High Court (see [s275\(2\)\(aa\)](#) or (ab) of the OT Act).

Once a young person has been transferred to the adult courts the OT Act will have no application and bail will be determined in view of the Bail Act 2000 and potentially the Criminal Procedure Act 2011. Thus, the 17 year old charged with a Schedule 1A offence may receive adult Court bail upon appearing in the District

Court (see s275(2) OT Act). Note that section 214B of the OT Act excludes sections214 and 214A from applying to the 17 year old once they appear on the charge in the District or High Court. In order to quickly confirm if a defendant has been transferred to the District Court, open up the defendant's active charges and check the next court hearing type on the rainbow screen. At the end of "Hearing Type" it should have "YC" or "DC" - Youth Court or District Court.

See the '[Charging and holding children and young persons in custody](#)' and '[Breaches of bail \(children and young persons\)](#)' sections of the [Youth justice](#) chapter for more information about the bail of young persons.

Contact a qualified Youth Aid officer or Youth Aid prosecutor if you are unsure about the application of any bail provisions.

References to legislation

References to sections or to 'the Act' in this chapter are to the [Bail Act 2000](#), unless otherwise specified.

Deciding whether to grant or oppose bail

Note: Where a **child or young person** has been arrested, the [Oranga Tamariki Act 1989](#) takes precedence in relation to any bail / custody decision and sections [7](#), [8](#) and [15](#) of the Bail Act do not usually apply.

However, where the young person is arrested and is 17 years and charged in the District or High Court, the Bail Act provisions take precedence once the young person has been transferred to the District or High Court and all sections, including s7, 8, and 15, will apply.

See the [Youth Justice](#) chapter for information about options for dealing with children and young persons after arrest.

Decision making (adult defendants)

This table outlines the process for an O/C case considering whether to grant Police bail and / or to oppose bail in court.

Stage	Description
1	Consider whether the person has a right to be bailed under section 7 . Note that no person is entitled to be granted Police bail as of right (s 21 (4)). However, if they are, the person can (and usually should) be bailed by Police with reasonable terms and conditions. See When should Police grant bail below.
2	<p>If there is no right to be bailed under section 7, and there are no statutory restrictions on Police granting bail (see When Police bail cannot be granted below) consider whether there is just cause for continued detention having regard to the risk test in section 8(1)(a).</p> <p>If there are:</p> <ul style="list-style-type: none"> - no identifiable risks under section 8(1)(a), (2A), or (3) the person should be granted Police bail - risks under section 8(1)(a), consider whether they can be adequately managed with appropriate bail conditions. <p>If they can, Police bail should be granted If they cannot, decline Police bail.</p>
3	If Police cannot grant bail or decide not to grant bail, consider whether bail should be opposed in court .

When should Police grant bail?

Police bail should normally be granted if the defendant has a right to be bailed under section [7](#). This is

usually only when:

- the offence is not punishable by imprisonment, or
- the defendant has no previous convictions for an offence punishable by imprisonment and is charged with an offence for which the maximum penalty is less than 3 years' imprisonment, unless that offence is against section 194 or 194A of the Crimes Act 1961 (assault on a child or by a male against a female, or assault on a person with whom the defendant is or has been in a family relationship with).

Note: there is no obligation for Police to grant Police bail to someone bailable as of right (s21(4)). The table below sets out when s7 does and does not apply:

No right to be bailed	Right to be bailed
Defendant is charged with: <ul style="list-style-type: none"> - an offence punishable by imprisonment, and has previous convictions for an offence punishable by imprisonment, or - male assaults female (s194 of the Crimes Act 1961), or - assault person in a family relationship (s194A of the Crimes Act 1961) 	Defendant is charged with: <ul style="list-style-type: none"> - an offence not punishable by imprisonment, or - an offence punishable by less than three years imprisonment and has no previous convictions for an offence punishable by imprisonment

Charges under the Family Violence Act 2018

If the defendant is charged with a family violence offence, the primary consideration in deciding whether to grant Police bail is the need to protect the victim of the alleged offence and any person in a family relationship with the victim (s21(2A)). If the defendant is charged with breach of protection order (s112 Family Violence Act) the paramount consideration when deciding whether to grant Police bail is the need to protect every person who is a protected person under that order (s21(3)).

If a person is arrested under s113 of the Family Violence Act 2018 and charged with breach of a Protection Order (s112) that person must not be released on bail during the 24 hours immediately following the arrest (s23(1) and s30 AAA Bail Act).

When Police bail cannot be granted

Police bail cannot be granted if:

- the defendant is charged with:
 - treason or espionage (s9)
 - murder (s9A)
 - a specified offence and has a previous conviction for a specified offence (s10)
 - a drug dealing offence (s16)
 - a serious Class A drug offence (s17A)

- restrictions on bail apply under section [12\(1\)\(a\)](#) or [12\(1\)\(b\)](#)
- the defendant has been arrested on a warrant ([s21\(1\)](#)).

In all of the above situations, bail can only be granted by a court.

Considering Police bail for defendants not bailable as of right

Police should consider whether there is just cause for continued detention when deciding whether to grant Police bail to a defendant who is not [bailable as of right](#).

When deciding if there is just cause for continued detention, police use the same criteria as courts. Courts:

- **must** take into account the risk test set out in section [8\(1\)\(a\)](#) and any matters that would make it unjust to detain the defendant ([s8\(1\)\(b\)](#))
- **may** take into account, in relation to section [8\(1\)\(a\)](#), factors set out in section [8\(2\)](#)
- in relation to a defendant charged with a family violence offence, the court's primary consideration is the need to protect the victim of the alleged offence and any person or people in a family relationship with the victim ([s8\(3A\)](#)), and
- in relation to a defendant charged with breaching a Protection Order the paramount consideration is the need to protect every person who is a protected person ([s8\(3C\)](#)).

(See [Consideration of just cause for detention under section 8](#) for further guidance).

Granting Police bail with conditions

There is no requirement to grant Police bail to a defendant charged with an offence punishable by imprisonment if they have previously been convicted of an offence punishable by imprisonment ([s7\(4\)](#)), but you should grant Police bail if:

- no risks are identified of them re-offending or failing to appear or interfering with witnesses or evidence ([s8\(1\)\(a\)](#)), or
- no risks are identified to the safety of a victim or persons in a family relationship with a victim of a family violence offence ([s8\(3A\)](#)), or
- no risks are identified to the safety of a protected person in relation to a breach of protection order charge ([s8\(3C\)](#)), or
- [bail conditions](#) will adequately mitigate any risks of the defendant re-offending or failing to appear or interfering with witnesses or evidence ([s8\(1\)\(a\)](#)).

In granting Police bail you may impose any condition that might be imposed by a judicial officer under section [30\(2\)](#) or (4) of the Act ([s21B\(2\)](#)), but only if:

- the date stated in the notice of Police bail for the defendant's appearance before a court is less than 7 days from the date of that notice, or
- the court that the defendant will attend will be closed for more than 7 consecutive days after the date of arrest.

Note that a person granted Police bail must attend personally before a court no later than 14 days from the date of the notice of Police bail ([s21A\(4\)](#)).

When not to oppose court bail

If you have already granted Police bail, it is unlikely that there will be good cause to oppose court bail.

If you did not grant Police bail, consider whether there is [just cause for continued detention](#). Do not oppose court bail if:

- the defendant does not present a risk of re-offending or failing to appear or interfering with witnesses or evidence (s8(1)(a)), or
- does not present a risk to a victim of family violence, a person in a family relationship with the victim, or any protected person (s8(3A) and (3C))
- [bail conditions](#) will adequately mitigate any risks of the defendant re-offending or failing to appear or interfering with witnesses or evidence (s30(4)).

Consideration of just cause for detention under section 8

What is considered by courts?

When deciding if there is just cause for continued detention, courts:

- **must** take into account the [risk test](#) set out in section 8(1)(a) and any matters that would make it unjust to detain the defendant (s8)(1)(b)
- **must** make the primary consideration in relation to family violence offending the need to protect the victim and any person in a family relationship with the victim (s8(3A))
- **must** make the paramount consideration in relation to breach of protection order offending, the need to protect every person name in the Protection Order (s8(3C)), and
- **may** take into account, in relation to section 8(1)(a), factors set out in section 8(2) of the Act.

Note: Where a child or young person who is on active criminal charges appears in the Youth Court, the [Oranga Tamariki Act](#) takes precedence in relation to any bail / custody decision, and only Part 3 of the Bail Act 2000 applies in the Youth Court. This means that when the child or young person is appearing in the Youth Court and Police are opposing bail, sections [7](#), [8](#) and [15](#) of the Bail Act do not apply. However if the young person is appearing in the District Court having been transferred (subject to section [275](#) or [283\(o\)](#) [Oranga Tamariki Act](#)) after appearing in a Youth Court, the provisions of those sections will apply and you will need to complete an opposition to bail using a POL 128.

Risk test: section 8(1)(a)

Under section [8\(1\)\(a\)](#) the court will only refuse bail if there is a risk that the defendant may:

- fail to attend court to answer bail, or
- interfere with witnesses or evidence, or
- re-offend while on bail.

Factual examples supporting section 8(1)(a) grounds

These are examples of the sort of information you must record on the POL128 Opposition to Bail form when relevant.

Failing to appear examples: s8(1)(a)(i)

Look for examples of a defendant's likely failure to appear in their [QBH](#) (Query Bail History). Examples of facts could include:

- Previously failing to attend judge alone or jury trials
- Previous failing to answer court or police bail

- Convictions for failing to answer court or police bail
- Deliberate evasion of police attempts to locate the defendant for questioning
- Lack of family ties
- Having or creating false travel documents in an attempt to leave the country
- Previous convictions or current charges relating to:
 - forgery or false identification documents; or
 - ability to access false identification
- Evidence of funds transferred out of New Zealand.

Likelihood of interfering with witnesses or evidence examples: s8(1)(a)(ii)

Examples of facts suggesting the defendant may interfere with witnesses include:

- previous convictions for attempting to pervert the course of justice or for offences involving intimidating witnesses
- the defendant's statements or informant or witness information which establish that the witness has already been approached and told not to give evidence (this could be by the defendant and/or their associates)
- the defendant may be a member of a criminal gang whose members have previous convictions for intimidating witnesses or are known to intimidate witnesses
- NIA records establishing that previous witnesses failed to appear at defended fixtures, pre-trial hearings or trial because of intimidation by, or on behalf of, the defendant.

Offend on bail examples: s8(1)(a)(iii)

Examples of facts suggesting the defendant may offend on bail include:

- the defendant's QBH (query bail history) report revealing previous offending while on bail
- any new, current alleged offending while on bail for other charges
- length of criminal history, including offending in other countries
- current criminal associations and gang connections if there is a risk of violent offending in confrontation with another gang
- mental illness if it increases the risk of future offending.

Fitting section 8(2) with section 8(1)(a)

A good description of how section 8(2) fits with section 8(1) is found in the case of *Wilson v Police* 2/5/05, Simon France J, HC Auckland, CRI2005-404-63 [at paragraphs 14 and 15](#):

"Put another way, and perhaps addressing a situation that may seldom exist, could bail be declined on s8(2) factors even though there is no real risk of flight, interference or re-offending? The competing views are set out in Hall's and I do not traverse them. On its face, s8 does not draw any distinction in pre-eminence between ss(1) and ss(2). However, for myself, I find it difficult to reconcile s24(b) of the New Zealand Bill of Rights Act 1990 and s7(5) of the Bail Act 2000 with the proposition that even though none of the s8(1) risks are present, bail could be declined.

I prefer the view that s8(2) considerations inform the primary bail risks set out in s8(1)."

Use section 8(2) to assess bail risks under section 8(1)(a)

When considering the factors in section 8(2) you must be able to tie the relevant factors back into one of the three primary grounds found in section 8(1)(a) for refusing bail. For example, to show an increased likelihood the defendant may be tempted to fail to answer bail or has an increased flight risk, use sections 8(2)(a), (b) and (c) together:

- nature and seriousness of offence
- strength of the prosecution's case
- likely penalty if convicted.

How to use section 8(2) in submissions

e.g. "The defendant has been charged with assault with intent to injure which carries a maximum penalty of 3 years. It is noted that this is a prolonged assault, involving blows to the head and kicks to the complainant's stomach whilst he was on the ground. There are three independent witnesses who have all identified the defendant as the sole assailant, as well as CCTV footage of the assault. It is submitted that due to the serious nature of the assault the defendant may be facing a sentence of imprisonment. Therefore the prosecutor submits that the defendant is not likely to answer bail and is an increased flight risk due to the knowledge that he is likely facing a term of imprisonment."

See *R v Payne & Burrett* ([2003](#)) [20 CRNZ 189 \(CA\)](#).

Factors under section 8(2)

This table lists the section 8(2) factors that **may be** taken into account, in relation to section 8(1)(a), when considering whether there is just cause for continued detention.

Factors that may be considered	Examples (Record relevant information on POL128)
Nature and seriousness of the offending (s8(2)(a))	<ul style="list-style-type: none"> - Is it a grave or less serious example of the offence type? - Does the offending involve serious violence or danger to the public? E.g. murder, GBH, aggravated robbery, sexual violation, etc? - Are there aggravating factors to the alleged offending?
Strength of evidence and likelihood of conviction (s8(2)(b))	<ul style="list-style-type: none"> - Was the defendant caught committing the offence "red-handed"? - Any admissions to the offence? - Include only admissible evidence and list the evidence, e.g. formal statements, independent eyewitness, forensic, photographic.
Seriousness of the punishment likely to be imposed for a conviction (s8(2)(C))	Note if the sentence is likely to be a long period of imprisonment as this offsets a lengthy remand in custody. Prosecutions can assist with assessing the likely length of sentence.

Factors that may be considered	Examples (Record relevant information on POL128)
Defendant's character and past conduct/criminal behaviour (s8(2)(d))	<p>See QHA for previous convictions for:</p> <ul style="list-style-type: none"> - failing to attend court/answer bail (s37) - disobedience to court orders (e.g. disqualified driving, breaching supervision/community work/home detention) <p>Previous offending against same victim/s</p> <p>Obtain this information from:</p> <ul style="list-style-type: none"> - searching NIA [QP / Victim / Details / Victimisation History or Family Violence] or [Alerts / Family Violence Involvement] <p>Defendant's character:</p> <ul style="list-style-type: none"> - criminal associations - youth offending not resulting in conviction - no fixed place of abode <p>Note: use verifiable facts only and attach documentary evidence where possible.</p>
Any history of offending on bail or breaching court orders (s8(2)(e))	<p>See <u>QBH</u> for offending history and list the charges where the defendant has actually offended while on bail, or breached court orders, e.g. disqualified driving, breach of protection order, etc.</p> <p>Note: You should not repeat this information under section <u>8(2)</u> if you have already provided it in support of section 8(1)(a).</p>
Likely length of time before trial (s8(2)(f))	This factor is not normally addressed by Police.
Other special matters relevant to the case's circumstances (s8(2)(h))	<p>'Public interest' grounds, for example:</p> <ul style="list-style-type: none"> - likelihood of retribution after confrontation between gangs - defendant's circumstances differ from co-accused who has already been granted bail.

Family violence factors - s8(3A) and (3C)

Defendants charged with family violence offences

Under s8(3A) the court's primary consideration is the need to protect the victim of the alleged offence and

any person in a family relationship with that victim, when considering whether or not to grant bail and whether or not to allow a defendant to go at large.

Examples of facts suggesting the defendant may pose a risk to the victim or any person in a family relationship with that victim include:

- previous convictions for assaulting victim or person in family relationship with victim
- threats made to the victim or to persons in a family relationship with the victim
- previous police interactions with the victim and the defendant where the defendant has been the predominant aggressor (whether or not resulting in charges)
- previous Police safety orders issued in favour of the victim against the defendant
- victim's views on the risk posed by the defendant.

Defendants charged with breach of a protection order

The court's paramount consideration when considering whether or not to grant bail to a defendant charged with breaching a protection order (s112 of the Family Violence Act 2018) is the need to protect every person who, in relation to the protection order, is a protected person.

Examples of facts suggesting the defendant may pose a risk to a protected person include:

- previous convictions for breaching a protection order (against the same or different protected person)
- number of protection orders made against the defendant
- previous Police safety orders issued in favour of the victim
- threats made towards the victim or any other person protected by the protection order
- previous family violence occurrences between the protected person and the defendant
- victim's views on the risk posed by the defendant

Note that these considerations, are a mix of the objective assessment of the risk to the victim and the victim's subjective view. If the victim does not believe they are at risk the defendant is not automatically granted bail but rather the court uses other information before it to assess the risks of granting bail to the defendant.

Opposing bail

Using the Electronic Custody Model (ECM)

Where Police oppose bail, a bail opposition flag must be sent electronically to court along with the charge/s. Police can also create bail conditions sought as part of the charge process. You should prepare the court bail conditions sought in case the defendant is granted bail. Make sure you review these before the defendant's first court appearance to ensure they are still applicable.

Bail opposition form POL128

When opposing bail, the O/C case completes Police form POL128. If O/C case is assembling their own file they must put three copies on the prosecution file (one copy each, for the judicial officer, the defence, and the prosecutor).

Record [balanced and objective evidence](#) or information on the bail opposition form to:

- address all relevant grounds in section 8(1), (2), and (3A) and (3C) (if applicable) for opposing bail
- support Police opposition to the defendant being granted bail (i.e. show a likelihood that the possible risk/s under section 8(1)(a) will eventuate)
- explain if, and why, [other sections](#) of the Act restricting access to bail apply to the case.

***Note.** Section 8(3A) relates to defendants charged with family violence offences. I.e. the POL 128 should reflect that s8(3A) only relates to the safety of the victim with respect to family violence matters.

Right to be notified about bail decisions - s29 specified offences

- If Police are opposing bail and it involves a victim of a s29 specified offence, then it is mandatory to notify the victim(s) of the outcome of the bail application hearing as soon as practicable.
- It is the O/C's responsibility to identify on the Prosecution File cover sheet when a s29 (specified offence) applies to the victim.
- The O/C must correctly populate the qualifying offence. In some situations the charging document will automatically identify the qualifying offence notification.
- Prosecutors are responsible for referring the notification of the bail application hearing outcome to the PPS Victims Advisers via the s29 Inform App.
- For weekends, after business hours (1000-1730), statutory holidays, or inability to access the s29 Inform App, prosecutors must inform the victim directly and as soon as practicable. Under these circumstances, prosecutors must also update the victim(s) contact section within NIA.
- If the prosecutor is unable to contact the victim as soon as practicable, they must task NCCC to complete this requirement.

No-contact on remand (family violence offences)

Section [168A](#) of the Criminal Procedure Act 2011 came into force 1 July 2019 and applies to defendants charged with family violence offences who are remanded in custody. This provision allows a judicial officer to impose conditions on a defendant remanded in custody to have no contact with the victim of the offence, or any other person specified by the judicial officer, or both.

Where bail is opposed and the offence is one of family violence OCs should ensure when they complete a bail opposition that they seek a non-contact condition with the victim of the offence or any other relevant person.

Note: family violence is defined in [s168A](#) as an offence against any enactment (including the Family Violence Act 2018) and involving family violence as defined by s9 of the Family Violence Act 2018 - violence (physical/sexual/psychological) inflicted against a person by any other person with whom that person is or has been in a family relationship with.

Initial questions to address on a bail opposition

These are some initial questions to address on the bail opposition form:

Question	Information to consider
Does one or more of the restrictive bail conditions apply?	You must inform the court of any applicable statutory provision that restricts a defendant's access to bail.
Does the charge involve family violence offending?	The need to protect the victim and any person in a family relationship with the victim is the primary consideration (s8 (3A)).
Does the charge involve a breach of protection order?	The need to protect the victim and any person who is a protected person in relation to the Protection Order, is the paramount consideration (s8 (3C)).
Is the charge one of sexual violation, serious assault, injury/death, or domestic violence?	You must inform the court of any fears held (on reasonable grounds) by the victim for their own or their family's safety if the defendant is released on bail (s8 (4), and (s30 Victims Rights Act 2002).

Application of restrictive Bail Act provisions

The O/C case should list or highlight the relevant previous convictions and explain for the benefit of the prosecutor and the judge, exactly why any of these sections apply to the defendant.

Section	Application
9	Defendants charged with treason or espionage (ss73, 76 or 78 of the Crimes Act 1961) may not be granted bail except by order of the Governor-General or a High Court Judge.

9A	<p>Defendants charged with murder may be granted bail only by a District or High Court judge and only if they satisfy the judge on the balance of probabilities that they will not commit any offence on bail involving violence against or danger to the safety of, any other person. The need to protect the safety of the public and, where appropriate, the safety of any particular person(s) are the court's primary considerations.</p>				
10	<p>Defendants charged with a specified offence (listed in s10(2)) and who have a previous conviction (excluding Youth Court records) for a specified offence must:</p> <ul style="list-style-type: none"> - not be granted Police bail - apply to a District or High Court judge for bail - establish they have good grounds for bail to be granted. <p>Note: The court's primary consideration is to protect public and/or victim/s' safety.</p>				
12	<p>Bail cannot be granted by Police and can only be granted by a District or High Court judge if the defendant meets criteria in either section 12(1)(a) or 12(1)(b). See the flowcharts at the end of these guidelines.</p> <table border="1" data-bbox="188 943 1505 1697"> <thead> <tr> <th data-bbox="188 943 783 1025">Section 12(1)(a) - all criteria must be met</th> <th data-bbox="783 943 1505 1025">Section 12(1)(b) - all criteria must be met</th> </tr> </thead> <tbody> <tr> <td data-bbox="188 1025 783 1697"> <ul style="list-style-type: none"> - aged 18 or over, or aged 17 years and charged in the District or High Court and - is charged with a Crimes Act offence carrying a maximum sentence of three or more years imprisonment, and - was on bail for another offence under the Crimes Act that also carries a maximum penalty of three or more years imprisonment at the time of allegedly committing the current offence, and - has received at least one previous term of imprisonment. </td> <td data-bbox="783 1025 1505 1697"> <ul style="list-style-type: none"> - aged 18 or over, or aged 17 years and charged in the District or High Court, and - is charged with any offence carrying a maximum sentence of three or more years imprisonment, and - has received 14 or more sentences of imprisonment (this does not mean 14 separate terms of imprisonment - you can include charges where concurrent terms of imprisonment were imposed, and terms of corrective training), and - has previously been convicted of any offence (punishable by three or more years imprisonment). </td> </tr> </tbody> </table>	Section 12(1)(a) - all criteria must be met	Section 12(1)(b) - all criteria must be met	<ul style="list-style-type: none"> - aged 18 or over, or aged 17 years and charged in the District or High Court and - is charged with a Crimes Act offence carrying a maximum sentence of three or more years imprisonment, and - was on bail for another offence under the Crimes Act that also carries a maximum penalty of three or more years imprisonment at the time of allegedly committing the current offence, and - has received at least one previous term of imprisonment. 	<ul style="list-style-type: none"> - aged 18 or over, or aged 17 years and charged in the District or High Court, and - is charged with any offence carrying a maximum sentence of three or more years imprisonment, and - has received 14 or more sentences of imprisonment (this does not mean 14 separate terms of imprisonment - you can include charges where concurrent terms of imprisonment were imposed, and terms of corrective training), and - has previously been convicted of any offence (punishable by three or more years imprisonment).
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16	<p>If the offence is a drug dealing offence (those under sections 6 and 12C(1)(a) Misuse of Drugs Act 1975 involving a Class A or Class B controlled drug) the defendant cannot be granted Police bail and a bail application must be heard by a District or a High Court judge.</p>				

17A	Defendants charged with a serious Class A drug offence or an attempt to commit a serious Class A drug offence (those under sections 6 and 12C(1)(a) Misuse of Drugs Act 1975 for contravention of section 6(1)(a) , (b), (c), or (f) in relation to a Class A controlled drug) may not be granted bail unless they can satisfy the judge on the balance of probabilities that they will not commit any drug dealing offence while on bail.
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Bail opposition must be balanced and objective

It is vitally important the bail opposition form is balanced and objective -

- support your submissions with facts
- do not use unduly emotive language, capital letters or underlining to emphasise information being presented to the court.

Supported submissions

Examples of submissions supported by facts (Do):	Examples of unsupported submissions (Don't):
<ul style="list-style-type: none"> - "The defendant has failed to answer court bail on three occasions and warrants to arrest had to be obtained to ensure his appearance at court" - "The defendant has previously offended while on bail on 10 occasions and there is a risk that he will do so again if granted bail." 	<ul style="list-style-type: none"> - "The defendant has no respect for the justice system" - "The defendant displays a total disregard for the interests of the courts, police and most importantly the public." <p>Note: Courts are highly critical of unsupported submissions and such comments can taint the credibility of the bail opposition.</p>

Do not use emotive language

The judgment of *Lisipa v Police* (2005) 22 CRNZ 254 per Simon France J (para 9) makes it clear emotive language and unsupported statements are unacceptable:

"...On this occasion the Court, inter alia, is advised in the opposition form that submissions by defence counsel are ridiculous, that the offender has maintained his right to silence as if that counted against bail, that the accused is "unbelievably arrogant" for re-offending, the form is LACED with capitals as if the Court needed help to understand what is important, and the officer involved displays no capacity to present material factually and objectively. Where matters are finely balanced it is difficult to give weight to police concerns expressed in these terms."

Admissible evidence

Any evidence is admissible in a POL128 form, even evidence that may not be strictly admissible in court at a judge-alone trial. For example, hearsay evidence is permitted in an opposed bail hearing ([s20](#)).

However, under section [8\(2\)\(b\)](#) evidence that supports the strength of the prosecution case and the probability of conviction against the defendant must ordinarily be admissible evidence under the Evidence Act 2006 ([s20\(2\)\(a\)](#)).

Evidence does not need to be sworn

It is not necessary to get every witness to complete a formal statement in support of an opposed bail application. Section 20(2)(b) provides that, for the purpose of a bail hearing it does not matter whether evidence is sworn or unsworn, or is in an admissible form when Police are relying the strength of the prosecution case against the defendant as being a ground in support of section [8\(2\)](#) and [8\(1\)\(a\)](#) of the Act.

Completed POL128 example

Examples of completed bail opposition forms showing how to record relevant information are located on the Police Prosecution Service section of the Police Intranet. Refer to the [Prosecutions training resources](#) page.

Advising the court when relevant Bail Act provisions apply

Sections [9A](#), [10](#), [12](#) or [17A](#) restrict a defendant's access to bail, which means the onus falls on the defendant to satisfy a judge that bail should be granted. This is called a reverse onus provision.

If one of these provisions applies it does not automatically mean that bail must be opposed, as grounds for opposition to bail must still demonstrate a connection to the risks set out in section [8\(1\)\(a\)](#). However, a connection is likely to be available in most instances, given the factors that make those provisions applicable.

Note that even if bail is not being opposed, Police still has a responsibility to draw a judge's attention to any applicable statutory provision that restricts a defendant's access to bail and to provide relevant evidence and information to establish when the onus falls on the defendant to satisfy a judge that bail should be granted.

Youth bail issues

There are special factors to consider when opposing bail for young people.

Defendants aged 18 years, or 17 years and charged with offences in the District or High Court (District/Adult Court)	Defendants aged 12-17 years (Youth Court)
<p>Section 15 of the Bail Act 2000 applies to a defendant aged 18 years who has not previously been sentenced to imprisonment. The court must grant bail unless the test in section 175 of the Criminal Procedure Act 2011 is satisfied. This section states that an 18 year old defendant can only be detained in prison "if, in the court's opinion, no other course is desirable having regard to all of the circumstances."</p> <p>There is also provision for the placement of an 18 year old in OT custody (s175(2)(a)) Criminal Procedure Act 2011.</p> <p>Section 15 also applies to a defendant aged 17 and charged in the District or High Court who has not previously been sentenced to imprisonment. The court must grant bail unless the test in s175 of the Criminal Procedure Act is satisfied. Note that the defendant may be remanded into OT custody or remanded into a youth unit in prison if the chief executive of OT and the chief executive of Department of Corrections agree that detention in a youth unit of a prison is necessary to ensure the safety of a young person in OT custody.</p> <p>Note that section 15 creates a very strong presumption in favour of bail being granted for persons aged 18 years or younger. However, this presumption does NOT apply if the defendant has previously been sentenced to imprisonment (s15(1)(b) & 15(2A)(c)).</p>	<ul style="list-style-type: none"> - Bail opposition must comply with the strict requirements of sections 283 and 239 Oranga Tamariki Act 1989. - If statutory requirements are met, the Youth Court will remand the defendant into either: <ul style="list-style-type: none"> - OT custody (s238(1)(d)), or - rarely, Police custody (s238(1)(e)), or - the youth unit of a prison (s 238(1)(f)). <p>Note: You must seek immediate guidance from an experienced Youth Aid constable if you want to oppose bail of a defendant aged 12 - 17 years.</p>

Youth Court records are not "convictions"

Previous appearances in the Youth Court are not classified as "convictions" which can count towards a "specified offence" under section [10](#) Bail Act (see [Timo v Police \[1996\] 1 NZLR 103](#)), but they can still be relevant to assessing whether or not a defendant may pose a risk of offending if bail is granted. However, a s 283(o) Youth Court order is a conviction.

See also in this chapter:

- [Consideration of just cause for detention under section 8](#)
- [Bail conditions](#)

Preparing bail opposition for children and young persons

Where a child or young person who is on active criminal charges appears in the Youth Court, the [Oranga Tamariki Act 1989](#) takes precedence in relation to any bail / custody decision and, as noted above, only Part 3 of the Bail Act 2000 applies in the Youth Court.

This means that if Police are opposing bail when the child or young person appears in the Youth Court, sections [7](#), [8](#) and [15](#) of the Bail Act do not apply. Bail opposition should be prepared using a POL 128Y following the guidance on that form. However if the young person is appearing in the District Court having been transferred there after appearing in a Youth Court (s[283\(o\)](#) or s[275\(2\)\(aa\)](#) & (ab) [Oranga Tamariki Act 1989](#)), the provisions of those sections will apply and you will need to complete an opposition to bail using a POL128.

From 1 July 2019, 17 year old defendants who are charged with a [Schedule 1A](#) offence will be appearing in the Youth Court for first appearance and then transferred to the District Court for their second appearance. In those instances where bail is opposed, both the POL 128Y and POL 128 should be completed - the OT Act will take precedence at the defendant's first appearance and if the defendant is not granted bail the Bail Act will apply at second appearance. It is very important to notify the court if any reverse onus provisions apply to under the Bail Act for these defendants. Consult your local Youth Aid and/or PPS office for assistance.

Reviewing bail opposition forms or bail variations

This section provides advice for prosecutors and other PPS staff reviewing bail opposition forms or applications to vary bail.

Review all forms before court

Ideally prosecutors or other PPS staff should review all bail opposition forms before producing them in court to ensure the form:

- is accurate
- identifies any reverse onus provisions that apply
- contains [balanced](#) and not overly emotive material
- identifies the section 8(1)(a) ground(s) relied on to oppose bail and:
 - has good quality sufficient facts to support each ground
 - shows there is a risk the defendant may fail to appear, interfere with witnesses or offend while on bail
 - records [relevant](#) section 8(2) factors
 - records [relevant](#) section 8(3A) & (3C) factors

The PPS District Prosecution Manager should make arrangements with local courts for opposed bail applications to be set down for hearing at 11.45am or 2.15pm. This gives PPS staff sufficient time to review bail forms before the hearing. If necessary seek a brief adjournment (between 2 to 4 hours) to enable PPS staff to carry out appropriate checks.

Examples of completed bail opposition forms (POL128) showing how to record relevant information are located on the Police Prosecution Service section of the Police Intranet. Refer to the [Prosecutions training resources](#) page.

Overnight arrests

After a large number of overnight arrests, there is usually insufficient time for you to thoroughly vet every individual bail opposition form. In these situations, ask other PPS staff to assist in reviewing bail forms for quality and accuracy before hearing.

Bail conditions

Using bail conditions

Section [30](#)(2) and (4) allows courts to impose any bail condition they consider reasonably necessary to ensure the defendant:

- appears in court on the date to which they were remanded, and
- does not interfere with any witness or any evidence against the defendant, and
- does not commit any offence while on bail.

When granting Police bail, Police may impose the same bail conditions as a court. Note that under s22, when granting Police bail, Police may also impose any condition that is considered reasonably necessary to protect the victim of the alleged offence and any person residing with or in a family relationship with the victim.

Bail conditions must have a rational connection to the offending that is likely to minimise the risks above. When seeking bail conditions, only seek conditions that are relevant and reasonably necessary to mitigate any of the above risks. Ensure that the conditions sought have a clear and reasonable link to the defendant's current charges and/or criminal and bail history.

Using only appropriate conditions will reduce unnecessary arrests for breaches of conditions with a questionable link to the defendant's actual risk.

Examples of appropriate bail conditions

This table provides examples of possible bail conditions to mitigate section [8](#)(1)(a) risks. These are a guide only.

Section 8(1)(a) risks	Possible bail conditions
Failure to appear/flight risk	<ul style="list-style-type: none"> - Reside at a suitable (confirmed) address - Curfew and a requirement to present at the door - Permit Police to enter the address for the purpose of monitoring compliance with bail conditions - Report to Police - Surrender passport and do not apply for travel documentation
Interference with evidence/complainant and witnesses	<ul style="list-style-type: none"> - Not to associate or have contact directly or indirectly with named victim/s, witness/es, co-offender/s - Not to associate with children aged below 16 unless in the company of (specified) adult approved by a court - Not to enter specified area or be found within stated distance of (specify crime scene, street, location, town)
Likelihood of further offending	<ul style="list-style-type: none"> - Not to drive a motor vehicle - Not to use or consume alcohol/controlled drug/psychoactive substance - Not to enter licensed premises - Not to possess or use firearms - Not to offer violence to named victim / party - Residence with curfew - to remain at (specified address) between the hours of (...)

Examples of inappropriate bail conditions

Bail conditions should always be tailored so that they are specific and relevant to the defendant's identified risks and/or alleged offending. For example, it is not appropriate to impose or request a condition:

- not to consume alcohol, if the defendant has no history of alcohol-related offending and there is no evidence that consumption of alcohol contributed to the current charges
- to comply with a curfew, unless there is reasonable cause to believe that the defendant poses a serious flight risk or has a pattern of offending outside the home at a specific time of the day or night
- not to enter or be found within a stated distance of a specified area, unless there is reasonable cause to believe that the defendant presents a risk in that area to particular persons or evidence relevant to their charges, or of committing further offences in that area
- of non-association with a witness or victim, without naming the person concerned
- of a night-time curfew for a daytime offender
- not to commit behaviours that are already an offence in their own right
- to report to a police station unless the defendant presents a genuine risk of flight.

Bail conditions listed in the Electronic Custody Module (ECM)

The bail conditions available in the ECM are one or more of the following:

- Reside at _____ on Monday Tuesday Wednesday Thursday Friday Saturday Sunday
- Curfew to remain at _____ between the hours of _____ and _____ daily on Monday Tuesday Wednesday Thursday Friday Saturday Sunday and to present self at door if called upon by Police
- Not to associate or have contact directly or indirectly with the victim/s namely _____
- Not to associate or have contact directly or indirectly with the witness/es namely _____
- Not to associate or have contact directly or indirectly with the co-offender/s namely _____
- Not to associate or have contact directly or indirectly with other person/s namely _____
- Not to consume alcohol (by consent)
- Not to use or consume controlled drugs or psychoactive substances (by consent)
- Not to enter licensed premises (other than supermarkets)
- Not to threaten or use violence against _____
- Not to possess or use firearms
- Not to drive any motor vehicle
- Not to go or be found within _____ metres / kilometres of the address of _____
- Travel to be restricted to _____
- Report to _____ Police station between the hours of _____ and _____ on Monday Tuesday Wednesday Thursday Friday Saturday Sunday
- Surrender passport to the Registrar of the _____ Court no later than _____ on and not to apply for travel documentation
- Other _____

Notes:

- The “**Other**” free text option will enable you to seek appropriate bail conditions that are not provided in the EOM menu.
- When seeking a curfew condition and requirement to present self at door, you should also seek a condition: "To permit police to enter the (above-named) address for the purpose of monitoring your compliance with your bail conditions".
- **Permission to enter an address** refers to entry onto a property **and does not authorise police to enter into the dwelling situated on that property.**

Applications to vary bail conditions

Once bail has been granted, defendants often apply to vary their bail conditions.

The District Prosecution Manager should advise their local courts and defence lawyers that applications to vary bail conditions must be served on the PPS two working days before the hearing date. This gives prosecutors time to:

- check or verify facts supporting the defendant's application to vary bail conditions
- confirm the validity of the new address or other proposed changes to bail conditions.

Where an application to vary bail conditions is made in court without sufficient prior notice, seek an adjournment so that the appropriate checks can be made (unless the variation is minor and the prosecutor is confident that checks are not required).

Electronically monitored bail (EM Bail)

See information on applications to vary EM bail addresses in the [EM bail - Breaches and unsuitable addresses](#) topic.

Opposing bail at court

Introduction

After the POL128 is reviewed by a prosecutor or another PPS employee, the form is used by a prosecutor (not always the same person who reviewed the form) to oppose bail at a court hearing.

This section provides information for a prosecutor opposing bail at a court hearing.

Procedure for checking POL128

Follow this procedure when dealing with an opposed bail hearing. While these steps will have already been taken as part of the initial POL128 review, as the Police representative opposing the bail application in court, you must be satisfied Police opposition is robust.

Step	Action
1	Check the POL128 to ensure: <ul style="list-style-type: none"> - it is completed correctly, and - does not contain errors of fact or law.
2	Check: <ul style="list-style-type: none"> - grounds for opposing bail under section 8(1) and (2) are clearly identified - factual claims are supported by some sort of evidence (whether it is admissible or not). (See Preparing bail opposition forms).
3	Check if any reverse onus provisions apply and that this has been noted on the POL128 and properly explained.

Arrest for bail condition breaches and bail opposition

When a defendant is apprehended after breaching a bail condition it is not inevitable that the breach will lead to a bail revocation. An opposition is more likely to succeed if the breach can be tied to one of the three grounds in section 8(1)(a).

Note: where a 17 year old defendant is charged in the District or High Court, sections 214 & 214A of the [Oranga Tamariki Act](#) do not apply once the defendant has been transferred to the adult jurisdiction and appears before the District or High Court, and therefore the usual powers of arrest under ss 35 & 36 of the Bail Act apply without reading in ss 214 & 214A. However it is important to note that the rights and protections in ss 215 - 232 of the OT Act that apply to children and young people will still apply to these defendants.

For more information about powers of arrest for breaches, see [Breaches of bail - Police powers and procedures](#) in this chapter.

Ensuring the court is aware when reverse onus provisions apply

The Bail Practice Note of Chief District Court Judge Carruthers, issued on 7 February 2002, charges the prosecution and defence counsel with the following responsibilities:

"(1) The prosecution should draw the Court's attention to any statutory provision which disqualifies a defendant from being granted bail, or restricts a defendant's access to bail...."

(3) Where the onus is on a defendant to satisfy a Judge that bail should be granted, where practical, detailed written grounds should be provided. These grounds should address the issues in the relevant section of the Bail Act. The grounds to be advanced should be made available to the prosecution at the earliest opportunity so that any necessary enquiries can be made. Failure to give notice to the prosecution of the grounds to be advanced may delay the bail hearing."

The prosecution may therefore:

- require the defendant's counsel to provide written grounds before a hearing where counsel will attempt to discharge an onus to satisfy the court that bail should be granted
- seek an adjournment if written grounds were not provided before the hearing.

Dealing with defence submissions during hearings

Under section [8\(1\)\(b\)](#), the court must take into account any matter that would make it unjust to detain the defendant.

If during a hearing, a defendant claims there are good reasons why they should not be detained in custody, follow this procedure to check if their claim is genuine.

Step	Action
1	Seek a brief adjournment of the hearing so police can check if the factual material put before the court as a ground justifying bail is genuine.
2	<p>During the adjournment, refer enquiries to one of these people to check the validity of the defendant's claims:</p> <ul style="list-style-type: none"> - <u>PPS</u> staff - O/C case - local Police watch-house staff - local Intel section - Police staff on duty at the court. <p>If none of these is available, request that the court wait until a Police employee becomes available.</p>

Breaches of bail - Police powers and duties

Failing to answer court bail

Section 38 of the Bail Act states that a defendant commits an offence if they were released on bail:

By the	and
<ul style="list-style-type: none"> - Supreme Court - Court of Appeal - High Court - District Court, or - a registrar 	<p>fails without reasonable excuse to:</p> <ul style="list-style-type: none"> - attend personally: <ul style="list-style-type: none"> - at the time and court specified in the notice of bail, or - at any time and place to which the hearing has been adjourned - comply with any condition imposed under section 40(3). <p>Charges for failing to answer court bail may be filed pursuant to s38.</p>

Failing to answer Police bail

A defendant commits an offence under section [24](#) if they:

- were released on Police bail under section [21](#), and
- fail without reasonable excuse, to attend personally:
 - at the time and court specified in the notice of Police bail, or
 - at the time and place to which the hearing has been adjourned under section [167\(2\)](#) of the Criminal Procedure Act 2011.

Charges for failing to answer police bail may be filed pursuant to s24.

Power to arrest without warrant (adult defendants)

You may arrest without warrant any defendant who has been released on bail...

By the...	and who you believe on reasonable grounds has...
<ul style="list-style-type: none"> - Supreme Court - Court of Appeal - High Court - District Court, or - a registrar 	<ul style="list-style-type: none"> - absconded, or is about to abscond, for the purpose of evading justice, or - contravened, or failed to comply with, any condition of bail. (s35(1))

After the defendant is arrested, no charge is filed. They are returned to court as soon as possible and the judge advised of the bail breach/es so that they can be remanded in custody or given bail with more stringent conditions. At this stage, the person is bailable only at the discretion of the court.

([s35\(2\)-\(4\)](#))

Notes:

- Section 35 does not apply if section 36 (arrest of defendant charged with a drug dealing offence) applies.
- Nothing in section 35 prevents police from seeking a warrant to arrest a defendant under section 37.

Power to enter onto premises

Note that police have no power of entry to premises under section 35, unless they are lawfully there, such as after having been invited in by an occupant.

Section 7 of the Search and Surveillance Act 2012 provides police with a power to enter a place without warrant to arrest a person unlawfully at large. Section 8 of the Act provides police with a power to enter a place without warrant to arrest a person in order to avoid loss of the offender or evidential material. These sections will have limited applications in the context of arrests for EM bail breaches.

Power to arrest a child or young person without warrant

You may arrest without warrant a child or young person who has been released on bail...

if ...	and...	Section
<p>you are satisfied on reasonable grounds that an arrest is necessary to:</p> <ul style="list-style-type: none"> - ensure the appearance of the child or young person before the court, or - prevent the child or young person from committing further offences, or - prevent the loss or destruction of evidence relating to an offence you suspect the child or young person has committed, or - prevent interference with any witness to the offence... 	<p>where proceeding by way of summons (where that is an option) would not achieve that purpose.</p>	<p>s214 (1) OT Act</p>
<p>the child or young person has been released on bail</p>	<p>you believe on reasonable grounds that the child or young person:</p> <ul style="list-style-type: none"> - has breached a condition of that bail, and - has on 2 or more previous occasions breached a condition of that bail (whether or not the same condition). 	<p>s214A OT Act</p>
<p>the person is aged 17 years; and has been charged with or convicted of any offence (except a drug dealing offence) in the District or High Court; and has been released on bail by a court, registrar or police employee</p>	<p>any of the circumstances set out in s35(1) of the Bail Act apply</p>	<p>s214B(1) OT Act</p>
<p>the person is aged 17 years; and has been charged with or convicted of a drug dealing offence in the District or High Court; and has been released on bail by a District or High Court Judge</p>	<p>any of the circumstances set out in s36(1) of the Bail Act apply</p>	<p>s214B(2) OT Act</p>

Note: Before arresting under section [214A](#), you must always obtain authority from a Youth Aid sergeant, or in their absence, from your own supervising sergeant (or above), or a qualified Youth Aid officer.

Where a defendant is aged 17 years and is charged with, or convicted of an offence in the District or High Court, ss 214 & 214A of the OT Act do not apply and they may be arrested without warrant if ss 35(1) or 36(1) of the Bail Act apply, however note that ss 215 - 232 of the OT Act still apply.

Custody of child or young person after arrest

If you arrest a young person under section 214A for breaching a bail condition, notwithstanding section [234](#)

and subject to section [244](#), you must place them in the custody of Oranga Tamariki as soon as practicable, and not later than 24 hours after the arrest. (s[235](#)(1) and (1A) [Oranga Tamariki Act 1989](#))

If you arrest a 17 year old charged in the District or High Court, the Bail Act and Criminal Procedure Act take precedence.

See [Breaches of bail \(children and young persons\)](#) in the "Youth justice" chapter for more information.

Exercising discretion when policing bail breaches

Before arresting for breaches of bail conditions, consider whether issuing a warning rather than arrest would be a more appropriate response. (See [Using warnings for breaches of bail conditions](#), or in the case of children and young persons, [Breaches of bail \(children and young persons\)](#) in the Youth justice chapter).

Power to arrest with a warrant

A warrant to arrest any defendant may be issued by a judicial officer or registrar of the relevant court (s [37](#)(1)) if:

- the judicial officer or registrar is satisfied by evidence on oath that the defendant has:
 - absconded or is about to abscond for the purpose of evading justice, or
 - contravened or failed to comply with any condition of bail, **or**
 - the defendant does not attend personally:
 - at the time and place specified in the notice of bail or the bail bond, or
 - at any time and place to which the hearing has been adjourned.
- (s[37](#)(1))

After a defendant is arrested under section [37](#) they:

- must be brought before the court as soon as possible so the judge can consider the bail breaches
 - are not bailable as of right and can only be bailed at the court's discretion.
- (s[35](#)(2)-(4))

Note: When a defendant arrested under section [37](#) for absconding or breaching a bail condition is a person charged with or convicted of a drug-dealing offence and who has been released on bail in relation to that offence, subsections (2) to (6) of section [36](#) apply as if the defendant had been arrested under section [36](#)(1).

Power to enter onto premises

You can at any time, by force if necessary, enter onto any premises to execute the warrant, if you have reasonable grounds to believe the defendant is on those premises. (s[37](#)(4))

Duties when executing the warrant

When executing a warrant issued under section [37](#), you must (s[37](#)(5)):

- have the warrant or a copy of it with you, and
- produce it on initial entry and, if requested, at any subsequent time, and

- if not in uniform, produce evidence that you are a Police employee.
(s37(5))

See also [Arresting with a warrant](#) in the 'Arrest and detention' chapter for further information.

Defendants with drug and alcohol conditions

Powers relating to drug or alcohol conditions

If a defendant has a drug or alcohol condition imposed by the Court (a condition requiring them not to use or consume alcohol, controlled drugs or psychoactive substances) you can check to see if they have complied.

Testing for alcohol

If the condition relates to alcohol, you may require a breath screening test (BST). If they fail or refuse to perform the breath screening test this can be considered as a breach of the condition, and you can consider warning or arresting accordingly.

(s30W)

The breath screening test is carried out in the same way as a roadside screening test under the Land Transport Act 1998. A result that indicates the consumption of alcohol is sufficient evidence to prove a breach of the bail condition, and the defendant can be warned or arrested accordingly. However, there is an option for an evidential breath test (EBT). Examples of why an evidential breath test may be required can be if the defendant denies consuming alcohol despite the results of the breath screening test, or the results of an evidential test would be beneficial to the Court.

If a defendant undergoes an evidential test then the standard procedure for an evidential breath test as per the Land Transport Act 1998 should be followed, including the giving of the [rights caution](#). However, there is no option of a blood test after the evidential breath test is finished and a result obtained.

(s30W)

Note: A request for the defendant to undergo a breath screening test can only be made once per day, unless you have reasonable grounds to believe that they have consumed alcohol since they were last tested.

Note: The ability to request a screening test (and proceed to an evidential test if appropriate) only applies to defendants who are released on Court bail. **It does not apply to defendants on Police bail** with a not to use / consume condition.

Alcohol detection anklets

In certain situations, a defendant on bail may be required to wear an alcohol detection anklet (ADA). At present, these are only for high risk defendants who are on EM bail, in the Northland, Auckland, Waitemata, or Counties-Manukau districts.

An alcohol detection anklet is worn on the ankle (on the other leg from the EM bracelet) and tests for alcohol consumption via sweat excretions. It is not a “real time” monitoring device, but rather the data is downloaded each day. The results can then be analysed to determine if the defendant has consumed alcohol in the prior 24 hours.

The Department of Corrections are responsible for allocating alcohol detection anklets and as part of their

assessment they will obtain the views of the OC. Several factors are taken into account, such as their risk factors, whether alcohol was a contributing factor to the offending, and if the defendant has a serious alcohol dependency.

If Corrections detect the consumption of alcohol via an alcohol detection anklet check they will advise Police, in the same manner as an EM breach.

Testing for drugs or psychoactive substances

The rules for drug and psychoactive substance testing when that is a bail condition are set out in section [73AA](#) of the Act and in the *Gazette* notice [Bail \(Drug and Alcohol Testing\) Rules 2017](#) issued by the Commissioner of Police in May 2017. However, there is not yet a standard testing procedure in place nationwide.

Until a standard testing procedure is in place, compliance with the condition should be **checked** in other ways, for example statements from witnesses, admissions from the defendant, or observations of the defendant or utensils.

Responding to breaches of bail

Note: Not all of the information in this topic applies in the case of breaches of EM Bail. See [EM bail - Breaches and unsuitable addresses](#) and then apply the information below as relevant to the circumstances of the case.

Police Bail Management Application

The Police Bail Management Application allows users to search for and update information on bail records around New Zealand and to:

- reassign bailed persons to a station to manage
- verify bail curfew addresses with a geo coded NIA address to enable coordinates to be sent to the Comms Centre when an officer selects 5K on their mobility device
- Set priority offenders to appear in a filtered bail view for frontline officers using SAM.

See the:

- [Bail Management Application User Guide](#) for information on how to use the application
- SAM Bail and OnDuty Bail tips and tricks document on the [Mobility Resources](#) intranet page.

All information relating to breaches of bail must be entered into OnDuty Bail or via the desktop Bail Management Application. There are four options for actions taken in response to a breach of bail:

Action	Comment
Arrested	Includes an option to create a 6D occurrence in NIA.
Other	Complete the Bail check notes comments field, to explain the action taken. Includes an option to create a 6D occurrence in NIA.
Person Not Located	Includes an option to create a NIA alert, and/or a 6D occurrence in NIA.
Warning	Enter meaningful notes in the Bail check notes comments field to explain any pertinent details of the warning. Includes an option to create a 6D occurrence in NIA.

Prosecution action when an adult defendant fails to appear in court

Follow these steps when an adult defendant fails to appear in court.

Step	Action
1	<p>If a defendant who has been bailed does not appear to answer a charge:</p> <ul style="list-style-type: none"> - ask the court to issue a warrant to arrest (WTA) under section 37 of the Bail Act 2000 for their arrest, and - seek a section 39 certification by the judge on the notice of bail for failing to answer bail. <p>Certification is, in the absence of proof to the contrary, sufficient evidence for the purposes of section 24 and section 38 that the defendant has failed to answer bail.</p>
2	<p>The court enters partial details of the defendant's warrant to arrest in the Justice/Police accessible computer system. This creates a Doc Loc case and person of interest (POI) entry.</p>
3	<p>Hold the file until the court delivers the warrant.</p>
4	<p>When the warrant arrives, assess the prosecution file, ensure the POI entry and Doc Loc case are updated as necessary and:</p> <ul style="list-style-type: none"> - associate the warrant Doc Loc case to the prosecution Doc Loc case - send both to the O/C case and their supervisor.
5	<p>After the defendant's arrest, inform the court of the defendant's explanation. If the explanation is not accepted by Police, you should:</p> <ul style="list-style-type: none"> - request the File Management Centre (FMC) to file an additional charge of failing to answer bail, and - consider opposing bail.

O/C case action following issue of arrest warrant (adult defendants)

If you can locate the defendant

Follow these steps if you are able to locate the defendant and execute the warrant.

Step	Action
1	Have enquiries made to locate the defendant, obtain an explanation and arrest them. Endorse the warrant as "executed, offender arrested", and sign and date it.
2	Do not grant police bail.
2	Arrange for the defendant to appear before the court. Notify the court that the defendant will be appearing and provide: <ul style="list-style-type: none"> - the defendant's name - <u>PRN</u> - the court the warrant was issued in, and - the CRN(s) that the warrant relates to.
3	Consult with the supervisor of the Police Prosecution Service centre about filing a charging document for failing to answer bail. Check and consider the defendant's explanation for failing to appear and determine if it is appropriate to accept the explanation or to request the <u>FMC</u> to file a charging document for failing to answer bail.
4	Advise the File Management Centre that the Person of Interest Alert is to be expired. The Electronic Warrant file is then filed by the <u>FMC</u> .

If you can not locate the defendant

Follow these steps if you are **not** able to locate the defendant

1	<p>If you cannot locate the defendant, make reasonable enquiries, such as:</p> <ul style="list-style-type: none"> - questioning the people at the defendant's address. Often, these are the parents. If the defendant has moved, find out whether they left a forwarding address. Note: Be mindful of privacy issues - checking <u>NIA</u> for updates - exploring avenues such as Intel section or MSD (Forms for requesting information from MSD are located in the 'MSD Forms' node in NIA. See Requests to MSD for information or for benefits to be stopped in the Arrest and detention chapter). <p>If you discover that the defendant has moved to another district, report to your supervisor and send the files to the O/C station in that district.</p>
2	Check that a Person Alert has been automatically entered in <u>NIA</u> and update as required.
3	<p>If you cannot locate the defendant, request the <u>FMC</u> to file a charging document for failing to answer bail. Once reasonable attempts to locate the defendant have been made and you have not been successful in locating the defendant, seek a warrant to arrest in lieu of the summons for failing to answer bail.</p>

Note: When a defendant is arrested for breaches of bail conditions, they are taken before the court but no charge is filed. Where a person fails to appear in court after having been bailed by police or the court, the defendant is arrested and a charge may be filed if appropriate.

Good practice

When the defendant is located and the file prepared for breach of bail, the report should include:

- that the person was arrested for breach of bail in relation to specific charge/s
- what the breach was, including details of time, date, place and circumstances
- what explanation, if any, was offered by the defendant for the breach of bail
- what evidence you will give if the defendant subsequently denies the breach of bail
- information on active charges and next court date - active files should be located if possible
- whether this is the first or subsequent breach of bail.

Charging for failing to answer bail

If a charging document is filed for failing to answer police or court bail, you must make reasonable attempts to serve a summons before the court will issue a warrant (s34 CPA). However, if attempts to serve the summons will not be made in a particular case, e.g. if attempts to locate the defendant on the original WTA have already proved to be fruitless, the prosecutor or FMC should prepare a memo for the court, requesting that:

- the charging document be placed with the other active (WTA) matter/s for which the defendant failed to appear, and
- if the defendant subsequently makes a voluntary appearance or is placed back before the court, the charge of failing to answer bail be scheduled for the same appearance as their other active (WTA) matter/s.

Note: This process lists the charge of failing to answer bail as "not served" as a final outcome in CMS, so that the charge does not show as an active charge. Therefore, the prosecutor must ensure that, when the defendant is located, the "not served" charge for failing to answer bail is reactivated, by checking in court that the judge has all the relevant charges before them - the original active charges, plus any failing to answer bail charges. Failing to reactivate the charge will cause it to sit potentially unheard in perpetuity.

Children and young persons

See the [Youth justice](#) chapter for actions to be taken following the issue of an arrest warrant for a child or young person.

When any defendant is not located in curfew checks

When **any** defendant is not located during a curfew check, enter them in the Bail Management Application as a Breach - Person Not Located. In these events, you should:

- print out a copy of the occurrence, containing sufficient details to evidence the breach event, along with the rainbow screen in NIA that shows the charge and next court date

- send the print-outs to the [PPS](#) or to Youth Aid to be attached to the prosecution file, so that the prosecutor is aware of the breach event for future court appearances.

Denial of access onto property to check bail conditions

If defendants on bail revoke the common law implied licence for police to enter onto a bail address property for the purpose of checking bail conditions, (primarily compliance with curfew), you should return the matter to court and seek a variation of bail conditions. The court will then decide whether police should be able to check curfew compliance and rule accordingly. Outcomes include:

- a condition to permit police to enter the property for the purpose of monitoring compliance with bail conditions (this does not authorise police to enter a dwelling on that property)
- a change of address to another address that police can enter
- a withdrawal of the revocation, or
- a remand in custody.

Further information

See also in this chapter:

- [Breaches of bail -Police powers and duties](#)
- [Using warnings for breaches of bail conditions](#)
- [EM bail - Breaches and unsuitable addresses](#), and
- [Breaches of bail \(children and young persons\)](#) in the "Youth justice" chapter.

Using warnings for breaches of bail conditions

Note: The guidance in this topic applies to adult offenders who breach their bail conditions. See [Breaches of bail \(children and young persons\)](#) in the “Youth justice” chapter for information on responding to bail breaches by children and young people.

Exercising discretion in bail enforcement

Better use of discretion in bail enforcement can free employees from low-priority work and make more effective use of Police and Court resources.

Achieving this requires:

- O/Cs case and Police prosecutors to seek only [appropriate bail conditions](#) in the first instance
- constables to [consider warnings](#), rather than arrest, when policing bail conditions.

Bail conditions

Bail conditions must show a clear and reasonable link to the defendant's current charges and criminal and bail histories.

Use of appropriate conditions will reduce unnecessary arrests for breaches of conditions with a questionable link to the defendant's actual risk. (See examples of appropriate and inappropriate conditions in "[Bail conditions](#)" in this chapter).

Considering warnings rather than arrest when policing bail conditions

The Bail Act says police may arrest a defendant who breaches bail conditions, not that they must. The judiciary supports police giving a warning, rather than automatically arresting, on suitable breach of bail cases.

Follow these guidelines when responding to cases involving breach of bail conditions:

- Major bail breaches related to the risks set out in sections [8\(1\)\(a\)](#) and [30\(4\)](#) should continue to be subject to arrest.
- Protecting victims is a paramount consideration in all decisions about whether to arrest for breach of bail conditions.
- Arrest only if you intend to oppose continued bail or at the very least seek a judicial certification of the bail bond under section [39\(1\)](#) and (3). Otherwise, consider a Police warning as your first option.

Persistent minor breaches of conditions

If a defendant persistently commits minor breaches of bail conditions despite police warnings:

- arrest, or
- consider whether the bail condition being breached is really linked to and required to manage the defendant's risk on bail. If not, consider whether police should seek the removal of the condition.

See also [Breaches of bail - Police powers and duties](#) in this chapter.

Approval for issuing warnings for breaches of conditions

All decisions to warn for breaches of bail conditions should be consulted with and approved by your supervisor to ensure consistency of practice.

Record warnings

Record all bail breach warnings through the [Bail Management Application](#).

EM bail - Alarm activations

What is electronically monitored bail (EM bail)

EM bail involves a court releasing on bail a defendant who has been remanded in custody, on condition they are electronically monitored by the Department of Corrections and a monitoring company. Legislation governing EM bail is found in sections [30A to 30S](#), [31\(1A\)](#), [33](#), [34](#), [34A](#) and [36A](#) of the Bail Act 2000.

EM bail enables a defendant to reside at an approved specified address, which they may leave under section [30L\(1\)](#) only as approved by the court through the notice of bail, to attend scheduled court appearances, to surrender to police custody or in an emergency. An emergency is defined in section [30L\(1\)](#) as:

- to seek urgent medical or dental treatment, or
- to avoid or minimise a serious risk of death or injury to the defendant or any other person.

Agency responsibilities for EM Bail

Corrections	Police
<p>The Department of Corrections assumed the primary responsibility for EM bail from Police on 1 February 2014, including:</p> <ul style="list-style-type: none"> - writing EM bail assessment reports for the courts - inducting defendants who have been granted EM bail - overseeing, with the assistance of a monitoring company, the electronic monitoring of defendants subject to EM bail (EM bailees), and - managing an EM bailees' curfew schedules and approving their movements. <p>More information about EM bail can be found on the Corrections Internet page.</p>	<p>Police has retained responsibility for:</p> <ul style="list-style-type: none"> - responding to any instances of non-compliance with EM Bail (e.g., breaches), as directed by the Police Communications Centre, and, - undertaking all enforcement action in relation to EM bail, including breach of bail hearings and managing all other non-electronically monitored bail conditions (e.g., non-association conditions) <p>Police may also visit or respond to tasks at an EM address (apart from responding to EM bail breaches), e.g. to conduct routine bail checks or general policing inquiries or in response to a crime reported at the address, or to check for compliance with drug and alcohol conditions.</p>

Entry powers to service or inspect monitoring equip

Under section [36A](#) an authorised person, usually a security officer, may enter an EM address to service or inspect the monitoring equipment. It is an offence, punishable by a term of imprisonment of up to 3

months, for any person, including an EM bailee, to refuse to allow, without reasonable excuse, an authorised person entry to an EM address for the purpose of servicing or inspecting equipment.

Alarm activations requiring police response

Security officers respond to and attend any alarm activations relating to the functioning of the monitoring equipment and the anklet. However, if they encounter difficulties at an EM address they may seek police assistance. When alarm activation indicates a police response is necessary, the monitoring company contacts the relevant Police Communications Centre, stating the nature of the alarm.

The following alarm activation types require an operational police response.

Type of events requiring a response	Situation	Who responds
Equipment-related alarm	Equipment failure, or minor tampering with main unit (DCU) or the transmitters (Tx)	Monitoring company initially. Then, if bailee has absconded or is not cooperating, Police to respond (Priority 2).
Left during curfew	Bailee leaves the premises without a scheduled absence	Police (Priority 2)
Double strap tamper	Strap is cut and removed	Police (Priority 2)
Failed to return	Bailee has not returned from a scheduled absence	Police (Priority 2)
Security officer needs assistance.	Bailee or occupants are not cooperating or there is other trouble	Police (Priority 2)

Attending alarm activations

Police directed to attend EM bail alarm activations receive relevant information from the Police Communications Centre, including:

- a new event number
- the nature of the activation as reported by the monitoring company
- a description of the EM bailee (police may see a person of a similar description en route)
- a description, including the registration number, of any vehicles known to be associated with the EM address.

Alarm response procedures

Follow normal investigation processes when attending the alarm activation including the following actions.

Step	Action						
1	<table border="1"> <thead> <tr> <th>If the bailee has...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>absconded</td> <td> Obtain: <ul style="list-style-type: none"> - details about anything the bailee said before they absconded, including where they intended to go or what they intended to do - a full description of the bailee, including the clothing they are wearing - information about the bailee's last known emotional state, including reasons why the bailee may have absconded - the bailee's last known direction and mode of travel, including vehicle details - information about whether the bailee has, or has access to, weapons - information about whether the bailee is with other people; and if so, their details. </td> </tr> <tr> <td>not absconded</td> <td>Interview the bailee about why the alarm has been activated, including about any equipment damage or destruction.</td> </tr> </tbody> </table>	If the bailee has...	then...	absconded	Obtain: <ul style="list-style-type: none"> - details about anything the bailee said before they absconded, including where they intended to go or what they intended to do - a full description of the bailee, including the clothing they are wearing - information about the bailee's last known emotional state, including reasons why the bailee may have absconded - the bailee's last known direction and mode of travel, including vehicle details - information about whether the bailee has, or has access to, weapons - information about whether the bailee is with other people; and if so, their details. 	not absconded	Interview the bailee about why the alarm has been activated, including about any equipment damage or destruction.
If the bailee has...	then...						
absconded	Obtain: <ul style="list-style-type: none"> - details about anything the bailee said before they absconded, including where they intended to go or what they intended to do - a full description of the bailee, including the clothing they are wearing - information about the bailee's last known emotional state, including reasons why the bailee may have absconded - the bailee's last known direction and mode of travel, including vehicle details - information about whether the bailee has, or has access to, weapons - information about whether the bailee is with other people; and if so, their details. 						
not absconded	Interview the bailee about why the alarm has been activated, including about any equipment damage or destruction.						
2	Provide a situation report to the Communications Centre.						
3	Gather, and consider seizing, evidence of a breach (for instance, photographs of unplugged or damaged or destroyed equipment).						
4	Interview other occupants of the address or associates of the bailee if they are present.						
5	Make other enquiries as appropriate.						
6	Advise the Communications Centre of the job result.						
7	Enter a bail breach alert into NIA using code '6E - EM Bail Breach' and enter breach as a bail check outcome in the Bail Management Application.						
8	Phone or email, as soon as practicable, the Corrections EM Bail Helpdesk on 0800EMBAIL or embail@corrections.govt.nz						

Attending for unrelated matters and bail checks

If police are conducting a routine bail check unrelated to an alarm or attending any other unrelated matter at the address, standard task and activity codes apply.

In these circumstances EM bail is coded '5H - EM Bail Check/Visit'.

Bail checks of non-EM conditions

When a defendant is on EM bail, police are not to conduct checks of residential or curfew conditions, unless there is good cause to suspect that a breach has occurred that has not been detected or advised by the EM monitors.

However, other bail conditions, such as non-association, not to drive, drug or alcohol conditions and others, are still the responsibility of the Police to check and monitor compliance. The EM system cannot check for compliance with these conditions.

If a breach of a non-EM condition is discovered then the appropriate action (warning or arrest) should be taken.

EM bail - Breaches and unsuitable addresses

Breaches of EM bail

It is a breach of bail if the EM bailee:

- leaves the EM address without permission (unless as authorised by s [30L\(1\)\(b\)](#))
- leaves early for or returns late from an authorised absence from the EM address
- fails to comply with any of the obligations defined in section [30L](#) or any of the conditions set out in the notice of bail.

Police must take breaches of EM bail seriously and, depending on their nature, the EM bailee is likely to be arrested and brought before the court. See info on exercising discretion in [Using warnings for breaches of bail conditions](#) for minor EM bail breaches.

The designated prosecutor must determine whether to oppose a continuation of EM bail, taking into account the breach information provided by police and any other relevant information.

Arresting the bailee

The defendant may be arrested *without warrant* only if police believe on reasonable grounds that the defendant:

- has absconded for the purpose of evading justice, or
- is about to abscond for the purpose of evading justice, or
- has contravened or failed to comply with any condition of bail.
(s35)

Note that police have no power of entry to premises under section [35](#), unless they are lawfully there, such as after having been invited in by an occupant.

See [Breaches of bail - Police powers and duties](#) in this chapter for more information on Police rights of entry to premises in relation to bail breaches.

Arresting children and young persons

Limited powers of arrest without warrant for breaches of EM bail apply in the case of children and young people. See [Power to arrest a child or young person without warrant](#) in this chapter.

Removing the bailee from the EM address

Police should follow these steps to remove the bailee from an EM address.

If bailee is...	then...
not violent and there are no risks to parties' safety	<p>StepAction</p> <ol style="list-style-type: none"> 1 Advise the Police Communications Centre of the bailee's impending removal. Comms will advise the monitoring company, so it can make an entry in the violation record not to respond until further notice. 2 After Comms has advised that the alarm has been deactivated, remove the bailee from the property.
violent or there are other risks to parties' safety	<p>StepAction</p> <ol style="list-style-type: none"> 1 Exercise discretion and remove the bailee immediately to ensure the safety of all parties. 2 If the bailee has been removed from the property before the equipment has been turned off, contact the Police Comms as soon as possible to prevent another car being dispatched to the property. <p>Comms will advise the monitoring company that the bailee has been removed from the property.</p>

In the watchhouse

Normal prisoner processes apply. (See the [People in Police detention](#) chapter)

Note: The electronic anklet must be removed prior to the detainee being placed in the watchhouse. Inform the Corrections EM Bail Helpdesk of this (0800EMBAIL or embail@corrections.govt.nz) at the earliest opportunity, so a security officer can recover it.

When an EM address becomes unsuitable or unavailable

A change of circumstances for the defendant or the address may mean that the defendant is required to leave the address. This includes where consent to reside at the EM address is withdrawn by a relevant occupant.

In this situation, an **EM assessor**, (a Corrections employee):

- may approve a temporary address under section 30N, or
- if no suitable temporary EM address is available, the EM assessor must notify the police and the defendant without delay, and:
 - the defendant must surrender to police custody
 - police must then bring the defendant before a judicial officer at the earliest opportunity.

(s34A)

Note: Police are not authorised to act as EM assessors, and can not approve a temporary EM address without the prior agreement of an authorised EM assessor.

Always obtain EM assessor's authorisation that:

- a temporary EM address is approved as suitable before assisting to relocate a defendant to that address, or
- there is no suitable temporary EM address available before taking a defendant into police custody.

In most circumstances the EM assessor's authorisations will be provided to police through the Communications Centre as part of a notification to or request for assistance from police, received from the Corrections Centralised Services Helpdesk. If police involvement was not initiated by an EM assessor, police should contact the Corrections Helpdesk on 0800EMBAIL (0800 362245) to obtain the appropriate authorisation before taking any further action.

Children and young persons

If an address of a child or young person on EM bail becomes unsuitable for any reason (where the EM bail condition has been imposed by the Youth Court), the Corrections' EM bail assessor will confer with the Oranga Tamariki social worker before authorising an alternative temporary address.

Application to vary EM address

Where a defendant is required to leave an EM address or otherwise applies to vary an EM address, an EM assessor may approve a temporary EM address. The defendant or an EM assessor must then apply to the court within five working days for a variation of the EM address. Police, (the QC Case or the relevant Intel office), should expect to be consulted with regard to any new EM address proposed, and a prosecutor will have the opportunity to review the variation application and either agree to or oppose the application.

If the prosecutor does not consent to an application to vary an EM address, the court will notify the defendant and schedule the matter for a hearing.

EM bailee served with Police Safety Order (PSO)

A Police Safety Order (PSO) issued to a defendant subject to EM bail by police attending a family violence incident, comes into effect immediately and may remain in force for up to five days. An EM bailee served with a PSO relating to their EM address will not be able to remain at that address for the duration of the PSO.

Under section [30N](#), if the defendant is able to propose an alternative address, the attending officer should contact an EM assessor at the Corrections Helpdesk on 0800EMBAIL to enquire whether the address proposed is an approved temporary address. If it is approved, police may transport the defendant to the new EM address.

If the defendant can't propose an alternative address or Police are advised by an EM assessor that a

proposed alternative is not suitable, the defendant should be taken into police custody and brought before the court as soon as possible, for reconsideration of their bail status.

Since the defendant can't return to the EM address until the expiry of the PSO, the court should be invited to revoke the grant of bail to that address, either for the duration of the PSO or permanently. An incident of family violence at an EM address is likely to bring to attention risks pertaining to continuing EM bail at that address. Consider opposing continuation of EM bail to that address in this situation.

Bail appeals

Appealing bail decisions by District Court Judges

PPS has pre-approval from the Solicitor-General to go directly to a Crown Solicitor to commence bail appeals.

Follow these steps to appeal a bail decision by a District Court Judge.

Step	Action
1	<p>The Prosecutor must urgently forward (by email) to the <u>PPS</u> Legal Adviser or Police Legal Services:</p> <ul style="list-style-type: none"> - The decision to be appealed (or, in the case of an oral decision that has not been transcribed, the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible). - A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment. - Any written submissions filed by the Police or the defendant (including any opposition to bail). - Copies of any other information that was before the court (e.g. pre-sentence reports, victim impact statements, letters of support, etc) - An outline of the importance to the Police of conducting an appeal and any risks in doing so. <p>Note: If this information is not immediately available, the prosecutor may approach the PPS Legal Adviser or Legal Services to informally assess the prospects of a potential appeal in the first instance.</p>
2	<p><u>PPS</u> Legal Adviser or Legal Services must consult with the prosecutor who appeared on the prosecution.</p>
3	<p>The PPS Legal Adviser or Legal Services lawyer must advise the prosecutor of the outcome of the request.</p>
4	<p>PPS Legal Adviser or Legal Services drafts a notice of appeal, which is filed by the prosecutor. The file is forwarded to the local Crown Solicitor to appear.</p>

Appealing bail decisions by Justices of the Peace or Community Magistrates

PPS has pre-approval from the Solicitor-General to appeal bail decisions by Justices of the Peace and Community Magistrates where the appeal is to be heard before a Judge in the District Court. A Police prosecutor may appear and represent the Police in any bail appeal made to the District Court where Police were the prosecuting agency in the decision appealed. However, these appeals must still be approved by the PPS Legal Adviser.

Follow these steps to appeal a bail decision by a Justice of the Peace or Community Magistrate:

Step	Action
1	<p>The prosecutor must urgently forward (by email) to the <u>PPS</u> Legal Adviser:</p> <ul style="list-style-type: none"> - The decision to be appealed (or, in the case of an oral decision that has not been transcribed, the prosecutor's notes of the decision, to be followed by a typed transcript of the notes as soon as possible). - A statement of the proposed ground(s) of appeal and details of the alleged errors in the judgment. - Any written submissions filed by the Police or the defendant (including any opposition to bail). - Copies of any other information that was before the court (e.g. pre-sentence reports, victim impact statements, letters of support, etc). - An outline of the importance to the Police of conducting an appeal and any risks in doing so. <p>Note: If this information is not immediately available, the prosecutor may approach the PPS Legal Adviser to informally assess the prospects of a potential appeal in the first instance.</p>
2	The <u>PPS</u> Legal Adviser must consult with the prosecutor who appeared on the prosecution.
3	Where the PPS Legal Adviser agrees an appeal is appropriate and likely to succeed, they approve the appeal.
4	The PPS Legal Adviser decides which prosecutor should appear on the appeal in consultation with the PPS Operations Manager.
5	The <u>PPS</u> Legal Adviser advises the prosecutor of the outcome of the request. If the matter is to be appealed, the PPS Legal Adviser drafts the notice of appeal or, in urgent cases, assists the prosecutor to draft the notice of appeal. The notice must be filed by the prosecutor.

Responding to bail appeals by the defendant

Follow these steps to respond to an appeal filed by a defendant in a case where the PPS could appear on the appeal (i.e. appeals to the District Court from decisions of Community Magistrates and Justices of the Peace).

Step	Action
1	Upon receiving a notice of appeal, inform the <u>PPS</u> Legal Adviser that an appeal has been filed by the defendant.
2	The PPS Legal Adviser discusses the appeal with the prosecutor who appeared for the prosecution.
3	If the <u>PPS</u> Legal Adviser considers that an opposition to the appeal is likely to succeed, they approve the opposition and decide who should appear on the appeal in consultation with the PPS Operations Manager
4	PPS Legal Adviser advises the prosecutor, as soon as practicable after receiving the notice of the appeal, whether or not the Police wish to oppose the appeal.
5	If the appeal is opposed, the PPS Legal Adviser works with the assigned prosecutor to draft submissions in reply and to prepare for any oral hearing(s).

Section 12 Flowcharts

Download the Bail Act 2000 flowcharts for s12(1)(a) and s12(1)(b) below.

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[6.s 12\(1\)\(a\) & \(b\) flowcharts \(Mar 21\)](#)

178.59 KB

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