

**Bail Amendment Bill**

**Submission of the  
New Zealand Police Association**

**Submitted to the  
Law and Order Committee**

**29 June 2012**

# **Bail Amendment Bill**

*Submission of the New Zealand Police Association*  
**29 June 2012**

## **About the New Zealand Police Association**

The New Zealand Police Association (the Association) is a voluntary service organisation representing nearly 8,700 sworn police members across all ranks. The Association also represents more than 2,500 non-sworn members, who carry out invaluable support roles across the full spectrum of policing. Members are generally very active in engaging in debate and discussion within the Association on matters relevant to policing. The high engagement level of the membership is critical to the Association's ability to speak and act credibly on behalf of members.

In putting together this submission, the Association has consulted with members who have first-hand experience in the matters addressed by this bill.

## **General comment**

1. The Police Association is supportive of the intent of this bill. While the changes might best be described as incremental improvements to bail law, this is appropriate as it is not our view that the current bail system is fundamentally flawed or in need of a major overhaul.
2. The reforms contained in this bill will be greeted positively by members. While it is in practical terms impossible to eliminate risk entirely, we believe the proposed refinements will deliver benefits to public safety through helping ensure appropriate decisions on bail are made in a greater proportion of cases. This in turn should deliver reduced victimisation, and also some efficiency gains for Police and Courts through a reduced need to intervene following breaches or offending while on bail.
3. The proposed changes to existing presumptions in favour of bail, and proposed extension of circumstances where a reversed burden of proof would be required, are generally able to demonstrate strong linkages to evidence about rates of offending while on bail. As such, these proposals speak for themselves as rational evidence-based responses to public safety risks.

## **Arrest without warrant of defendants under the age of 17**

4. From an Association point of view, the greatest potential benefit from this bill is in the ability to arrest (without warrant) a defendant aged under 17 years for breach of bail. It is a reality that many serious young offenders encountered by our members are 'schooled up' by peers and older offenders, and know in some detail the extent of police powers to deal with them. At present, a young person can only be arrested in very limited circumstances, which go to the nature of their behaviour at that point in time (e.g., further offending), rather than the fact of breach of bail. Arrest is not therefore a means of bail enforcement; and in fact currently there is no effective means of bail enforcement.

5. As such, young offenders are able to breach bail conditions with relative impunity. The purpose of bail conditions is to control and limit a defendant's behaviour, so as to manage the risk associated with their being in the community. This is even more important with young offenders, where bail conditions are intended to establish clear boundaries and accountabilities for behaviour. If compliance with conditions cannot be assured through enforcement, and defendants are able to breach without consequence, then bail conditions are rendered virtually meaningless as a means of controlling behaviour and mitigating risk to the community. The boundaries are meaningless, and there is no accountability. The messages received by the young person in that case are counterproductive.
6. The ability to arrest such offenders once they have committed a bail breach would be extremely beneficial in imposing some consequence for breach, and thus accountability for complying with the restrictions imposed by the Court as a condition of their release on bail. It would also give the Court a further opportunity to reconsider bail or the effectiveness of the bail conditions imposed.
7. However, there are some issues with the bill as drafted in this respect (**clause 26**). The first is the power to arrest without warrant is limited to a breach that is "a breach in a significant respect", or a repeated breach. It is unclear what is meant by a "significant" breach. Presumably it must be less than actual or imminent re-offending, since these are likely already to provide grounds to arrest without warrant. However, bail conditions, such as curfews or requirements not to consume alcohol (or engage in some other behaviour), are either being breached or they are not. It is difficult to see how a test of "significance" can be applied, and as such we believe the presence of this word is simply likely to lead to confusion and legal argument. Our submission is that it should be deleted. Appropriate use of arrest, versus alternative responses to bail breaches (such as that proposed in new section 240(3) – see following paragraph), should be a matter for constabulary discretion, in accordance with guidelines, and taking into account all the circumstances of the specific case.
8. Similarly, the restriction to a "repeated breach" undermines the purpose of conditions being imposed, and the intent of the amendment, in that it clearly states to a bailed young person that there is no consequence for breaching bail unless you are caught breaching twice (or more).
9. The second issue is that it is proposed (**clause 26**, new section 240(3)) that breaches of curfews be dealt with through a new power for a constable to "return" the young person to their parents or guardians. There are difficulties in introducing a new concept of "return", and it unnecessary to do so. For example, the extent of this power is not sufficiently defined to provide certainty as to what degree of force may be used in dealing with an uncooperative young person in these circumstances. In contrast the existing power in section 48, by which a constable may "take" an unaccompanied child or young person who is found in a situation where their "physical or mental health is being, or is likely to be, impaired", states that the constable may do so "using such force as may reasonably be necessary".
10. It is our submission that this power should simply be one of arrest. Arrest is clearly defined; there is no grey area; and on arrest, clear accountabilities of the arresting officer are established (including reporting processes under section 214), and the protections of the CYPF Act are triggered for the young person. Arrest does not preclude returning the young person home or to the place to which they were bailed; on the contrary, sections 234 and 236 mean that is likely to be the outcome in the vast majority of cases.

11. The Association believes the two matters above would benefit from clarification. Aside from these issues, the Association welcomes the proposals contained in this bill. Thank you for the opportunity to submit on these proposals, and we are available to appear before the committee if this would be of further assistance.

Greg O'Connor  
**PRESIDENT**