

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE

No. 105 of 1988

An Act to amend—

the Bail Act 1980-1987 in certain particulars;

and

the Justices Act 1886-1988, the Traffic Act 1949-1985

and the Drugs Misuse Act 1986-1987 each in a certain particular

[ASSENTED TO 14TH DECEMBER, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Bail Act and Other Acts Amendment Act 1988*.

2. Commencement. (1) Section 1, this section and section 8 shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on a day or days to be appointed by Proclamation for the commencement of those provisions.

3. Arrangement. This Act is divided into Parts as follows:—

PART I—PRELIMINARY (ss. 1-3);

PART II—AMENDMENT OF BAIL ACT 1980-1987 (ss. 4-28);

PART III—AMENDMENT OF JUSTICES ACT 1886-1988 (ss. 29-30);

PART IV—AMENDMENT OF TRAFFIC ACT 1949-1985 (ss. 31-32);

PART V—AMENDMENT OF DRUGS MISUSE ACT 1986-1987 (ss. 33-34);

PART II—AMENDMENT OF BAIL ACT 1980-1987

4. Citation. (1) In this Part the *Bail Act 1980-1987* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Bail Act 1980-1988*.

5. Amendment of long title. The long title to the Principal Act is amended by omitting the words “bail in or in connexion with criminal proceedings” and substituting the words “the release of defendants charged with offences”.

6. Amendment of s. 6. Interpretation. Section 6 of the Principal Act is amended by—

(a) in the definition “conviction”, omitting paragraph (c) and substituting the following paragraph:—

“(c) a conviction of an offence for which an order is made—

(i) placing the defendant on probation;

(ii) requiring him to perform unpaid community service;

or

(iii) discharging him absolutely or conditionally;”;

(b) omitting the definition “Crown Solicitor”;

(c) inserting after the definition “defendant” the following definitions:—

“Deputy Director of Public Prosecutions” means, where the charge out of which a prosecution arises is a charge for an offence against the laws of the Commonwealth, the Deputy Director of Public Prosecutions in Queensland;

“Director of Prosecutions” means the Director of Prosecutions appointed under the *Director of Prosecutions Act 1984-1988*;

(d) inserting after the definition “hearing” the following definition:—

“judge” includes a District Court Judge;”;

(e) omitting the definition “surrender into custody” and substituting the following definition:—

“surrender into custody”, when used in relation to a defendant who is—

(a) on bail;

or

(b) permitted to go at large without bail,

means surrender himself into the custody of the court at the time and place for the time being appointed for him to do so;”;

(f) in the definition “undertaking” omitting the word “himself”.

7. Amendment of s. 11. Conditions of release on bail. Section 11 (2) (a) of the Principal Act is amended by omitting the word “himself”.

8. Amendment of s. 13. Bail in cases of charges of serious offences. Section 13 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:—

“(2) Notwithstanding subsection (1) and section 45 of the *Drugs Misuse Act 1986-1987*, a court or member of the police force authorized by this Act to grant bail may grant bail to a person charged with an offence specified in subsection (1) (b) if the offence is one in respect of which proceedings may be taken summarily pursuant to section 13 of the *Drugs Misuse Act 1986-1987*.

(2A) Where bail is granted to a person pursuant to subsection (2) and the stipendiary magistrate before whom proceedings with a view to summary conviction of that person are taken abstains pursuant to section 45 (4) of the *Drugs Misuse Act 1986-1987* from determining the charge that bail shall cease to have effect and thereafter in respect of that charge that person shall be granted bail only pursuant to subsection (1).”.

9. Amendment of s. 14. Release of persons apprehended on making deposit of money as security for appearance. Section 14 of the Principal Act is amended by—

(a) in subsection (2) (a), omitting the words “enter in the book kept for that purpose” and substituting the words “cause a bench charge sheet to be completed with the following particulars and lodged”;

(b) omitting subsections (3) and (4) and substituting the following subsection:—

“(3) The member of the police force who accepts a deposit of money from a person and grants bail to him at a place other than a place for holding Magistrates Courts and thereupon releases him from custody shall cause the bench charge sheet referred to in subsection (2) (a) to be forwarded to the clerk of the court at the place where that person is required to appear.”;

(c) in subsection (6), inserting after the words “(which the court or justice is” the word “hereby”.

10. New s. 14A. Magistrates Courts may grant cash bail or permit to go at large. The Principal Act is amended by inserting after section 14 the following section:—

14A. Magistrates Courts may grant cash bail or permit to go at large. (1) Where a Magistrates Court adjourns the hearing of a charge of an offence other than an indictable offence or an offence specified in the second schedule, the court (whether or not the defendant is already on bail) may—

(a) grant bail to the defendant and, in lieu of ordering him to enter into an undertaking, order that he be released from custody on his making a deposit of money with the clerk of the court as security that he will surrender into custody;

or

(b) permit him to go at large without bail on the condition that he will surrender into custody.

(2) Where—

(a) a person accepts a deposit of money from a defendant pursuant to subsection (1) (a), that person;

or

(b) a Magistrates Court permits a defendant to go at large pursuant to subsection (1) (b), the clerk of the court,

shall give to the defendant a notice in the form prescribed by the regulations setting forth the particulars so described.

(3) Where a defendant granted bail pursuant to this section and released from custody fails to surrender into custody, the court shall, subject to subsections (5) and (7), order the forfeiture of the deposit of money made by him in connexion with his bail.

(4) (a) Where a defendant granted bail pursuant to this section and released from custody surrenders into custody, the court shall order that the amount of the deposit of money paid by the defendant be refunded to him unless—

(i) it orders that the amount or a part thereof be applied in or towards payment of any penalty or costs imposed or awarded;

or

(ii) where the hearing is adjourned and the defendant is permitted to go at large without bail, the court orders that the amount or a part thereof be applied as security that the defendant will surrender into custody.

(b) In the case specified in paragraph (a) (ii), if the defendant fails to surrender into custody the court shall deal with the deposit of money in accordance with subsection (3) and that subsection shall apply and extend accordingly.

(5) (a) Where a defendant granted bail pursuant to this section and released from custody fails to surrender into custody but applies to the court by his counsel or solicitor for an adjournment of the hearing and the court grants the adjournment, the court may—

(i) in lieu of ordering the amount of the deposit of money to be forfeited, order that the amount or a part thereof be applied as security that the defendant will surrender into custody;

or

(ii) permit him to go at large without bail on the condition that he will surrender into custody.

(b) Where an order is made under paragraph (a) (i) and the defendant fails to surrender into custody the court shall deal with the deposit of money in accordance with subsection (3) and that subsection shall apply and extend accordingly.

(6) Subsections (4) and (5) apply in relation to proceedings before a Magistrates Court at all times and places to which the hearing is adjourned.

(7) Where a defendant has been granted bail and released thereon after making a deposit of money as security that he will surrender into custody and the hearing is adjourned pursuant to subsection (5) to a time and place to be determined and the defendant fails to surrender into custody the court shall not make an order forfeiting the deposit of money unless it is satisfied that reasonable notice of the time and place so determined has been given to the defendant.”.

11. Amendment of s. 15. Procedure upon application for bail. Section 15 of the Principal Act is amended by—

(a) in paragraph (c) (i) (C), omitting the word “himself”;

(b) in paragraph (d), omitting the word “may” and substituting the word “shall”.

12. Amendment of s. 16. Refusal of bail. Section 16 of the Principal Act is amended by—

(a) in subsection (1) (a) (i) omitting the word “himself”;

(b) in subsection (2) (b), omitting the words “, background and place of residence” and substituting the words “and background”;

(c) in subsection (3), omitting paragraph (b) and substituting the following paragraph:—

“(b) with an offence specified in section 13 (1) and the offence is not one in respect of which proceedings may be taken summarily pursuant to section 13 of the *Drugs Misuse Act 1986-1987*.”;

13. Amendment of s. 17. Enlargement of undertaking. Section 17 of the Principal Act is amended by—

(a) in subsection (2), omitting the second paragraph;

(b) omitting subsection (3) and substituting the following subsection:—

“(3) An enlargement pursuant to subsection (2) may include a condition that the defendant surrender into custody at the date, time and place fixed for the trial or appeal.”;

(c) in subsection (5), omitting the word “himself”;

(d) in subsection (6), omitting the words “an undertaking to the effect that it” and substituting the words “the papers relating to the defendant to the effect that the defendant’s undertaking”.

14. Amendment of s. 20. Undertaking as to bail. Section 20 of the Principal Act is amended by—

(a) omitting subsections (1) (2), (2A) and (3) and substituting the following subsections:—

“(1) A defendant to whom bail is granted in or in connexion with a criminal proceeding (other than a defendant to whom bail is granted under section 14 or 14A) shall, before being released from custody, enter into an undertaking in the form prescribed by the regulations.

(2) A defendant—

(a) who is committed for trial;

or

(b) who has been convicted and has appealed against the conviction or sentence imposed thereon,

and to whom bail is granted shall provide and the undertaking shall contain his residential address and an address for service

of notices within 25 kilometres of the court before which he is required to appear.

(3) In the case of bail granted to a defendant requiring his appearance before a Magistrates Court, Children's Court or, as the case may be, any justice or justices conducting an examination of witnesses in relation to an indictable offence the undertaking shall be subject to—

(a) conditions that the defendant—

(i) shall surrender into custody;

(ii) shall not depart from the court unless his bail is enlarged and, as often as his bail is enlarged, shall return to the court and surrender into custody;

(b) such further conditions—

(i) as are imposed in accordance with section 11 (2) or 11 (3);

and

(ii) as the court thinks fit to impose.

(3A) In the case of bail granted to a defendant following his committal for trial the undertaking shall be subject to—

(a) conditions that the defendant—

(i) shall appear or be represented by his counsel or solicitor before the court to which he is committed for trial during the sittings specified in the undertaking at the time stated in, and in accordance with, the notice given pursuant to section 27;

(ii) if the notice states that it is intended to ask the court to proceed with the trial at the time stated in the notice, shall surrender into custody and not depart from the court unless his bail is enlarged;

(iii) shall obey the directions of the court, whether given to him personally or to his counsel or solicitor, with respect to any further appearance and, if directed to appear personally, shall surrender into custody and not depart from the court unless his bail is enlarged;

(iv) shall notify the Director of Prosecutions or, as the case may be, Deputy Director of Public Prosecutions in writing forthwith of any change of address for service of notices or residential address other than that arising from his surrender into custody;

(b) such further conditions—

(i) as are imposed in accordance with section 11 (2) or 11 (3);

and

(ii) as the court thinks fit to impose.

(3B) In the case of bail granted to a defendant pursuant to section 13 (1) at a time prior to the commencement of or during the examination of witnesses in relation to the indictable offence in respect of which the defendant has been so granted bail the undertaking may be subject to the condition that if the defendant is committed for trial his bail shall be enlarged, in which case the undertaking shall be subject to the conditions set out in subsection (3A) (a).

(3C) In the case of bail granted to a defendant in circumstances not provided for in subsection (3), (3A) or (3B) the undertaking shall be subject to—

(a) the condition that he notify the Director of Prosecutions or, as the case may be, Deputy Director of Public Prosecutions in writing forthwith of any change of address for service of notices or residential address other than that arising from his surrender into custody;

(b) such further conditions as are imposed by the court granting bail.”;

(b) in subsection (6) (c) (ii), omitting the words “1987, an officer of the Department for the time being administering that Act holding the office of supervising child care officer or a higher office in that department” and substituting the words “1988 and is detained in an institution established pursuant to section 30 of that Act, a person for the time being in charge of the institution”;

(c) inserting after subsection (6) the following subsection:—

“(7) A person referred to in subsection (6) before whom an undertaking is entered into shall, forthwith after it is entered into, forward the undertaking to the proper officer of the court that granted the bail referred to in the undertaking.”.

15. Amendment of s. 21. Sureties. Section 21 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsections:—

“(1) Every surety to an undertaking must be a person who—

(a) has attained the age of 18 years;

(b) has not been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that if done or made by him in Queensland would have constituted an indictable offence;

(c) is not detained in a hospital, as a patient or otherwise, for treatment for mental illness pursuant to the *Mental*

Health Services Act 1974-1987 or is not a protected person within the meaning of the *Public Trustee Act 1978-1988*;

- (d) is not an insolvent under administration;
- (e) has not been, and is not likely to be, charged—
 - (i) with the same offence;
 - or
 - (ii) with another offence as a consequence of the commission of the offence, with which the defendant has been charged;
- and
- (f) is worth not less than the amount of bail in real or personal property.”;

(b) in subsection (3), omitting the word “may” and substituting the word “shall”;

(c) inserting after subsection (6) the following subsection:—

“(6A) Where a surety, in order to satisfy the sufficiency of his means, produces to a justice before whom he makes an affidavit of justification—

- (a) any property;
- or

- (b) any document to satisfy the justice that he owns or has an interest in any real or personal property,

the justice shall record on the affidavit details of the property or document and return the property or document to the surety.”.

16. Amendment of s. 23. Application to court by surety for discharge. Section 23 of the Principal Act is amended by—

(a) in subsection (1),

(i) omitting the words “at any time”;

(ii) inserting after the words “that granted bail” the words “at any time before a condition of his undertaking is broken or the defendant is apprehended pursuant to section 29”;

(b) omitting subsections (2), (3) and (4) and substituting the following subsections:—

“(2) The court may make such orders as it thinks fit including an order that the surety be discharged from his liability with respect to the undertaking.

(3) The court, where it discharges a surety in accordance with subsection (2), may issue a warrant for the apprehension of the defendant directing that the defendant be committed to

prison and that the keeper of the prison keep him until such time as—

(a) a further surety or other security is furnished;

or

(b) he is bound by a condition of his undertaking to appear before the court specified in his undertaking, in which case the keeper shall cause him to so appear in accordance with that condition.”.

17. Amendment of s. 24. Apprehension of defendant by surety. Section 24 of the Principal Act is amended by, in subsection (1), omitting the word “himself”.

18. Amendment of s. 26. Offence of indemnifying surety. Section 26 (1) of the Principal Act is amended by omitting the words “person charged with or convicted of or in custody for an offence” and substituting the word “defendant”.

19. Repeal of and new s. 27. Notice of date, time and place of trial or appeal. The Principal Act is amended by repealing section 27 and substituting the following section:—

“**27. Notice of trial.** (1) Where a defendant who has been committed for trial is on bail to appear at his trial and it is intended to present an indictment against him the Director of Prosecutions or, as the case may be, Deputy Director of Public Prosecutions or a person duly authorized by him in writing in that behalf, either generally or in a particular case, shall cause notice to be given to the defendant or his solicitor and to each of his sureties, if any, advising him or them of the time when and the place where the indictment will be presented.

(2) The notice shall be given a reasonable time before the date fixed for the presentation of the indictment having regard to all the circumstances and it may be oral or written save when it is given to a defendant in which case it shall be written.

(3) The notice shall state whether it is intended to ask the court to proceed with the trial upon the presentation of the indictment or adjourn the trial.

(4) Where the trial is to be adjourned the defendant need not appear personally before the court when an indictment is presented against him provided he is represented by his counsel or solicitor.”.

20. Repeal of s. 28 and new ss. 28-28B. The Principal Act is amended by repealing section 28 and substituting the following sections:—

“**28. Warrant for apprehension of defendant by Supreme or District Court.** (1) Where a defendant who has entered into an undertaking conditioned that he will appear before the Supreme Court or a District Court breaks a condition of his undertaking, or if the court is satisfied that he is likely to break any such

condition, the court before which he is required to appear, on application made by the Director of Prosecutions or, as the case may be, Deputy Director of Public Prosecutions or a person duly authorized by him in writing in that behalf, either generally or in a particular case—

(a) after notice of the intention to make the application has been given to the defendant;

or

(b) without giving notice pursuant to paragraph (a) if the defendant cannot be found, has absconded or is likely to abscond,

may issue a warrant for the apprehension of the defendant.

(2) (a) Where a defendant for whose apprehension a warrant has been issued under subsection (1) for failing to surrender into custody in accordance with his undertaking—

(i) surrenders himself into the custody of the court that issued the warrant as soon as is practicable after the time for the time being appointed for him to do so;

and

(ii) satisfies the court that his failure to surrender into custody was due to reasonable cause,

the court may withdraw and cancel the warrant.

(b) Where a defendant for whose apprehension a warrant has been issued under subsection (1) on the ground that the defendant has broken a condition of his undertaking (other than the condition that he surrender into custody) prior to the execution of the warrant satisfies the court that issued the warrant that his breaking of the condition was due to reasonable cause the court may withdraw and cancel the warrant.

(c) Where a defendant for whose apprehension a warrant has been issued under subsection (1) on the ground that the defendant is likely to break a condition of his undertaking (including the condition that he surrender into custody) prior to the execution of the warrant satisfies the court that issued the warrant that he is not likely to break that condition the court may withdraw and cancel the warrant.

(3) A warrant issued under this section—

(a) shall name or otherwise describe the defendant against whom it is issued;

(b) shall set out the reasons for the issue thereof;
and

(c) shall order the members of the police force to whom it is directed to apprehend the defendant against whom it is issued and cause him to be brought before a Magistrates Court or, as the case may be, Children's Court to be dealt with according to law.

28A. Warrant for apprehension of defendant by Magistrates Court or Children's Court. (1) Where a defendant charged with any offence has been—

- (a) released on bail by a Magistrates Court or a Children's Court or by any justice or justices conducting an examination of witnesses in relation to an indictable offence on his entering into an undertaking;
- (b) released on bail on his making a deposit of money pursuant to section 14 or 14A;
- or
- (c) permitted to go at large without bail,

fails to surrender into custody the court before which he is required to appear may issue a warrant for the apprehension of the defendant.

(2) Where a defendant for whose apprehension a warrant has been issued under subsection (1)—

- (a) surrenders himself into the custody of the court that issued the warrant as soon as is practicable after the time for the time being appointed for him to do so; and
- (b) satisfies the court that his failure to surrender into custody was due to reasonable cause,

the court may withdraw and cancel the warrant.

(3) A warrant issued under this section—

- (a) shall name or otherwise describe the defendant against whom it is issued;
- (b) shall set out the court into the custody of which the defendant failed to surrender and the time and place of that failure;
- and
- (c) shall order the members of the police force to whom it is directed to apprehend the defendant against whom it is issued and cause him to be brought before a Magistrates Court or, as the case may be, Children's Court to be dealt with according to law.

(4) A court shall not issue a warrant under subsection (1)—

- (a) where the defendant was released on bail or permitted to go at large without bail to appear at a time and place to be determined;
- or
- (b) where the hearing was adjourned in the defendant's absence and he was not represented by counsel or solicitor,

unless it is satisfied that—

- (i) the defendant cannot be found, has absconded or is likely to abscond;

or

- (ii) reasonable notice of the time and place so determined or, as the case may be, the time to which the hearing was adjourned has been given to the defendant.

28B. Warrant authority to apprehend defendant on other charges. A warrant issued under section 28 or 28A (1) (a) to apprehend a defendant for the reason that he failed to surrender into custody shall be sufficient authority for a member of the police force to whom it is directed to apprehend the defendant upon any other charge in respect of which he failed to surrender into custody at the same court, time and place or sittings as he was required to surrender into custody on the charge in respect of which the warrant was issued.”.

21. Amendment of s. 29. Apprehension by police officer of defendant on bail. Section 29 of the Principal Act is amended by—

(a) in subsection (1) (a) (i), omitting the word “other” where secondly occurring;

(b) omitting subsections (2) and (3) and substituting the following subsection:—

“(2) A defendant (other than a defendant who is a child within the meaning of the *Children’s Services Act 1965-1988*) who breaks any condition (other than the condition that he surrender into custody) of the undertaking on which he was granted bail requiring his appearance before a Magistrates Court or before any justice or justices conducting an examination of witnesses in relation to an indictable offence commits an offence against this Act.”.

22. New s. 29A. Procedure in respect of defendants apprehended pursuant to 21 (7) or 29. The Principal Act is amended by inserting after section 29 the following section:—

“29A. Procedure in respect of defendants apprehended pursuant to s. 21 (7) or 29 (1). (1) A defendant apprehended—

(a) under a warrant issued under section 21 (7);

or

(b) pursuant to section 29 (1)

shall—

(c) subject to paragraph (d), be brought forthwith before a Magistrates Court or, as the case may be, Children’s Court to be dealt with according to law;

(d) where he is apprehended within 24 hours before the time at which he is bound by a condition of his undertaking to appear before a court, be kept in custody and the person in whose custody he is shall cause the defendant to surrender himself into the custody of the court at the time and place for the time being appointed for him to do so.

(2) The court before which a defendant is brought pursuant to subsection (1)—

- (a) if it is satisfied that the defendant has broken, or is likely to break, a condition of his undertaking may—
 - (i) revoke the bail and commit him to prison with a direction to the keeper of the prison that he keep the defendant and cause him to surrender himself into the custody of the court specified in the undertaking at the time and place for the time being appointed for him to do so;
or
 - (ii) release him on his original undertaking or vary his bail;
or
- (b) if it is not satisfied that the defendant has broken, or is likely to break, a condition of his undertaking, may release him on his original undertaking or vary his bail.”.

23. Repeal of and new s. 30. Apprehension on revocation or variation of bail. The Principal Act is amended by repealing section 30 and substituting the following section:—

“**30. Apprehension on variation or revocation of bail.** (1) Bail granted to a defendant on an undertaking may be varied or revoked, upon the application of the Crown or, as the case may be, complainant by—

- (a) the court that granted the bail;
- (b) the court before which an indictment has been presented;
or
- (c) the Supreme Court,

if the court is of the opinion that it is necessary or desirable in the interests of justice to do so.

(2) An application under subsection (1) may be made *ex parte*—

- (a) after notice of intention to make the application has been given to the defendant and his surety or sureties;
or
- (b) without giving notice pursuant to paragraph (a) if the defendant—
 - (i) has absconded or if the court is satisfied that he is likely to abscond;
or
 - (ii) has broken, or if the court is satisfied that he is likely to break, a condition of his undertaking.

(3) If an application under subsection (1) is made in the manner permitted by subsection (2) (b), the court may—

(a) order that notice of the application be given to the defendant and his surety or sureties notifying that if the defendant fails to surrender into custody in accordance with the notice a warrant may issue for the apprehension of the defendant;

or

(b) forthwith issue a warrant to apprehend the defendant and bring him before the court to show cause why his bail should not be varied or revoked.

(4) If on the date and at the time and place specified in a notice given pursuant to subsection (2) (a) or (3) (a) the defendant—

(a) fails to surrender into custody, the court may issue a warrant for his apprehension;

(b) surrenders into custody and fails to satisfy the court that it is not necessary or desirable in the interests of justice that his bail be varied or revoked the court may—

(i) vary the bail in such manner as it thinks fit;

or

(ii) revoke the bail;

(c) surrenders into custody and satisfies the court that it is not necessary or desirable in the interests of justice that his bail be varied or revoked the court may order that the defendant be released from custody on his original undertaking.

(5) A surety or sureties to whom notice is given under subsection (2) (a) or (3) (a) shall be entitled to appear at the hearing of the application and give evidence and the court may if it thinks fit adjourn the hearing to enable the surety or sureties to do so.”.

24. Amendment of s. 31. Forfeiture of undertaking. Section 31 (1) of the Principal Act is amended by omitting the word “himself”.

25. Repeal of ss. 33, 33A and new ss. 33-33C. The Principal Act is amended by repealing sections 33 and 33A and substituting the following sections:—

“33. Failure to appear in accordance with undertaking. (1) A defendant who—

(a) fails to surrender into custody in accordance with his undertaking;

and

(b) is apprehended under a warrant issued pursuant to section 28 or 28A (1) (a),

commits an offence against this Act.

(2) It is a defence to an offence defined in subsection (1) if the defendant satisfies the court that he had reasonable cause—

(a) for failing to surrender into custody in accordance with his undertaking;

and

(b) for failing to appear before the court specified in his undertaking and surrender into custody as soon after the time for the time being appointed for him to do so as is reasonably practicable.

(3) Proceedings for an offence against this section—

(a) shall be instituted and taken, without the laying of a complaint;

(b) shall be taken in accordance with the following procedures:—

(i) production to the court before which a defendant apprehended under a warrant issued under section 28 or 28A (1) (a) is brought of that warrant shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the undertaking and of the failure to surrender into custody and that the issue of the warrant was duly authorized by the decision or order of the court that issued the warrant;

(ii) judicial notice shall be taken of the signature of the person who issued the warrant referred to in subparagraph (i) and that that person was duly authorized to issue the warrant.

Upon production to the court of the warrant the court shall then and there call on the defendant to prove why he should not be convicted of an offence against this section.

(4) Where a court in making an order under this section directs that a term of imprisonment (hereinafter in this subsection referred to as the firstmentioned term of imprisonment) be imposed (whether in the first instance or in default payment of a fine) upon a defendant then, notwithstanding any Act, law or practice—

(a) the firstmentioned term of imprisonment shall take effect from the expiration of the deprivation of liberty of the defendant pursuant to a term of imprisonment—

(i) imposed upon the defendant pursuant to this section or a law of the Commonwealth or the State at the same time as the firstmentioned term of imprisonment is imposed;

or

(ii) which the defendant is serving pursuant to this section or a law of the Commonwealth or the State

at the time the firstmentioned term of imprisonment is imposed;

- (b) if during the time the defendant is serving the firstmentioned term of imprisonment a further term of imprisonment is imposed upon him pursuant to a law of the Commonwealth or the State, the further term of imprisonment shall take effect from the expiration of the deprivation of liberty of the defendant pursuant to the firstmentioned term of imprisonment;
- (c) if before the defendant commences to serve the firstmentioned term of imprisonment a further term of imprisonment is imposed upon him pursuant to a law of the Commonwealth or the State, the firstmentioned term of imprisonment shall take effect from the expiration of the deprivation of liberty of the defendant pursuant to the further term of imprisonment.

33A. Certain offences may be dealt with. Where—

- (a) a defendant has been dealt with by a Magistrates Court or, as the case may be, Children's Court under section 33;
- (b) the court is informed that the defendant consents to the court dealing with—
 - (i) the offence in respect of which he failed to surrender into custody;
 - or
 - (ii) any other offence with which he has been charged and not dealt with;
- (c) the offence referred to in paragraph (b) is an offence which may be heard and determined by the court;
- (d) the court is satisfied from material produced before it by evidence on oath or otherwise that the defendant has not been dealt with for the offence referred to in paragraph (b);
and
- (e) the defendant pleads guilty to the offence referred to in paragraph (b),

the court shall then and there proceed to deal with the defendant for the offence referred to in paragraph (b).

33B. Committal or remand of certain defendants. (1) Where a defendant appears before a Magistrates Court or, as the case may be, Children's Court (hereinafter in this subsection referred to as the firstmentioned court) charged with an offence against section 33, the firstmentioned court, whether or not it convicts the defendant of that offence, without further inquiry or examination, shall commit the defendant to be dealt with according

to law by the court that issued the warrant referred to in section 33 (1) (b) for the offence in respect of which the defendant failed to surrender into custody unless the firstmentioned court deals with the defendant under section 33A for the offence.

(2) A court in exercising the jurisdiction conferred by subsection (1) may grant bail to the defendant or by its warrant commit the defendant to prison with a direction to the keeper of the prison that he cause the defendant to surrender himself into the custody of the court that issued the warrant referred to in section 33 (1) (b) in accordance with his undertaking at the time and place for the time being appointed for him to do so.

33C. Jurisdiction. (1) The powers conferred by sections 33 and 33A may be exercised by a Magistrates Court or Children's Court at a place appointed for the holding of Magistrates Courts in any district appointed for the purpose of Magistrates Courts under the *Justices Act 1886-1988* or in any division deemed to be such a district, regardless of where the offence was committed.

(2) The exercise of jurisdiction conferred by section 33B in respect of a defendant brought before a Magistrates Court or Children's Court shall be in addition to the exercise of jurisdiction conferred by section 101 of the *Justices Act 1886-1988*."

26. Repeal of and new s. 35. Proceedings for offences. The Principal Act is amended by repealing section 35 and substituting the following section:—

"35. Proceedings for offences. A prosecution for an offence against this Act shall be taken by way of summary proceedings in accordance with the provisions of the *Justices Act 1886-1988* (subject to such modifications to those provisions as are made by sections 33 and 33A), and may be taken notwithstanding that more than one year has elapsed since the commission of the offence.

A person who commits an offence against this Act shall be liable to a penalty of 40 penalty units or to imprisonment for 2 years."

27. Amendment of s. 36. Evidentiary provisions. Section 36 of the Principal Act is amended by—

(a) omitting the words "Crown Solicitor" where four times occurring and substituting the words "Director of Prosecutions or, as the case may be, Deputy Director of Public Prosecutions" in each case;

(b) inserting after paragraph (b) the following paragraph:—

"(ba) where an officer of the court does not have knowledge of the respects in which a defendant has failed to comply with his undertaking, an affidavit, or a document purporting to be a copy of an affidavit, sworn by a person having that knowledge shall be evidence, and in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;"

(c) in paragraph (d), omitting the word “book” where twice occurring and substituting the words “bench charge sheet” in each case.

28. New ss. 36A and 36B. The Principal Act is amended by inserting after section 36 the following sections:—

“**36A. Service of notices.** A written notice required to be given under this Act shall be taken to have been duly given to the person to whom it is directed if it is served on him personally or—

- (a) in the case of a defendant, if it is delivered to his address for service of notices or sent by pre-paid post to him at that address;
- (b) in the case of a defendant’s solicitor, it is delivered to his place of business or sent by pre-paid post to him at that address;
- (c) in the case of a surety, it is delivered to his address given with respect to his undertaking or sent by pre-paid post to him at that address.

36B. When bail ceases to have effect. Where the Director of Prosecutions or, as the case may be, Deputy Director of Public Prosecutions or a person duly authorized by him in writing in that behalf, either generally or in a particular case, advises the court to which a defendant has been committed for trial that he will not be presenting an indictment against the defendant the defendant is thereby discharged from complying with the conditions specified in his undertaking and to which the undertaking is subject pursuant to this Act and thereupon the undertaking shall cease to have effect.”.

PART III—AMENDMENT OF JUSTICES ACT 1886-1988

29. Citation. (1) The *Justices Act 1886-1988* as amended by this Part may be referred to as the *Justices Act 1886-1988*.

30. Repeal of and new s. 93. Procedure on non-appearance. The *Justices Act 1886-1988* is amended by repealing section 93 and substituting the following section:—

“**93. Adjournment on non-appearance.** Where any witness, defendant or other person does not appear at any time and place to which the hearing is adjourned or that has been specified in the notice referred to in section 91 or that has been determined, the justices who are then present may adjourn the hearing.”.

PART IV—AMENDMENT OF TRAFFIC ACT 1949-1985

31. Citation. The *Traffic Act 1949-1985* as amended by this Part may be cited as the *Traffic Act 1949-1988*.

32. Amendment of s. 16. Driving, etc., whilst under influence of liquor or drugs or with prescribed concentration of alcohol in blood. Section 16 of the *Traffic Act 1949-1985* is amended by omitting subsections (9) and (10) and substituting the following subsections:—

“(9) (a) Where a person charged with an offence against any provision of subsection (1) or (2) in relation to a motor vehicle does not appear personally before a Magistrates Court at any time and place when and where he is required to appear, the court shall then and there order that any and every driver’s licence held by him be from that time suspended until the time when the charge is heard and determined or otherwise disposed of.

(b) This subsection applies subject to subsection (10).

(10) A Magistrates Court has and may exercise a discretion not to make an order pursuant to subsection (9) where it is satisfied on medical or other evidence placed before the court that the person’s failure to appear before it was occasioned by any medical or other circumstance rendering him physically incapable of appearing before the court.

In this subsection “medical or other evidence placed before the court” means—

- (a) the oral testimony of at least one medical practitioner adduced before the court;
- (b) at least one certificate placed before the court purporting to be a medical certificate by a medical practitioner;
- (c) both such testimony and certificate;
- or
- (d) such other evidence as is considered by the court to be sufficient in the circumstances to satisfy the court that the person was physically incapable of appearing before the court.”.

PART V—AMENDMENT OF DRUGS MISUSE ACT 1986-1987

33. Citation. The *Drugs Misuse Act 1986-1987* as amended by this Part may be cited as the *Drugs Misuse Act 1986-1987*.

34. Amendment of s. 45. Proceedings for offences. Section 45 (3A) of the *Drugs Misuse Act 1986-1987* is amended by inserting at the end thereof the following paragraph:—

“This subsection shall not be construed to confer jurisdiction in a case to which section 139 (3) of the *Justices Act 1886-1988* or section 33A of the *Bail Act 1980-1988* applies except in accordance with whichever of those sections is applicable.”.