

Bail in New Zealand

Reviewing aspects of the bail system

PUBLIC CONSULTATION DOCUMENT



**Bail in New Zealand:
Reviewing aspects of the
bail system**

**Public Consultation
Document**

Published by the Ministry of
Justice in March 2011

Ministry of Justice
SX10088
Wellington

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FOREWORD

I am pleased to release this public consultation document as part of the Government's Bail Review.

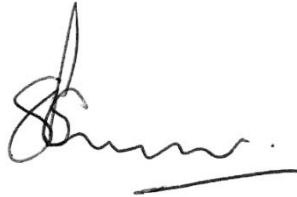
New Zealand's bail laws were comprehensively reviewed in the late 1990s and are similar to those operating in Australia, England and Canada. Broadly speaking, the bail system works well. However, there are aspects of the law on bail that we think should be reviewed to ensure they are achieving the best results for New Zealanders.

Bail can be granted in a number of different situations, both before and after trial. This document is primarily focused on bail during the period between a person being charged with an offence and the conclusion of the trial (if the matter proceeds that far).

This is a difficult issue because it involves balancing a person's right to be presumed innocent until proven guilty on one hand, and the safety of the public and integrity of Court proceedings on the other. The decision to take a person away from their family, home and work is not one that should be taken lightly, especially when the person has not been found guilty of a crime. However, there comes a point where this is necessary to protect the public and to ensure that justice is done.

Some of the matters outlined in this consultation document are ones that the Government has previously said it will investigate, such as the increase in the number of defendants failing to attend Court. Others are matters the public have brought to our attention, such as whether people charged with murder should be eligible to be considered for release on bail.

I encourage anyone with an interest in the criminal justice system to consider the matters discussed in this consultation document and to provide their views.



Hon Simon Power

Minister of Justice

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1. NOTES ON STATISTICS

The following notes are intended to help you understand what the statistics in this document mean.

The statistics count people

The statistics in this document count people, as opposed to charges or cases. A person is counted once in each year that they are charged with a new offence, regardless of the number of charges and whether they relate to one or more cases. For example:

- a person charged with two offences relating to one incident in 2007 will be counted once in the 2007 statistics; and
- a person charged with three offences in 2008, one relating to an incident in April and two relating to a separate incident in October, will be counted once in the 2008 statistics.

The statistics cover the period 2004 to 2008

With two exceptions, the statistics in this document count people charged with offences in the five year period from 2004 to 2008 (inclusive). The two exceptions are section 9 (failure to answer bail) and section 10 (legislation for electronically monitored bail).

The starting point of 2004 was chosen because the Courts' computer system was replaced in mid 2003 and the new system produces more accurate data.

The end point of 2008 was chosen because offending on bail statistics are recorded against the year that the person was charged with the original offence(s) and are delayed for two years to allow investigative and court processes to be completed. For example, a person charged with an offence in November 2008 (and counted in the 2008 statistics) may have offended on bail in July 2009 and been convicted of the offence committed on bail in February 2010.

Offending on bail statistics exclude failure to answer bail

The offending on bail statistics exclude people whose most serious (and probably only) offence committed on bail was failure to answer bail (failure to attend Court when required). Failure to answer bail is different to other kinds of offending on bail and is discussed separately in section 9.

Offences cover a range of conduct

Many of New Zealand's offences are generic and cover a range of conduct with differing degrees of seriousness. For example, the offence of wounding with intent technically covers anything from a minor cut through to injuries that nearly result in death.

Offence categories

The following offence categories are used in this document:

Violent offences: offences involving either a direct act of violence (including sexual violence) against a person or a threat of violence.

Other offences against the person: non-violent sexual offending, resisting or obstructing law enforcement officers, and intimidation.

Property offences: offences involving property, such as burglary, wilful damage, and arson.

Drug offences: offences involving restricted or prohibited drugs.

Offences against the administration of justice: offences involving failure to comply with court orders and sentences, or obstructing the course of justice.

Offences against good order: offences such as possessing an offensive weapon, disorderly behaviour, and trespassing.

Traffic offences: offences involving motor vehicles, such as careless or dangerous driving, and driving while disqualified or drunk.

Miscellaneous offences: offences that do not fit into any of the other categories, such as offences under the Arms Act 1983 or Dog Control Act 1996.

Statistics rounded to one decimal place

All of the statistics in this document are rounded to one decimal place. For example 14.578% is rounded to 14.6%. The rounding means that some percentages do not add to exactly 100%.

Statistics may not be comparable to previous statistics

The statistics in this document may not necessarily be comparable to other statistics on bail previously released by the Ministry of Justice due to:

- differences in the way the data is counted. For example, the offending on bail data in this document counts offending on bail against the year of the original charge, whereas some previous statistics have counted the offending on bail against the year it occurred.
- differences in the data. The statistics in this document come from the Courts' computer system, which is continually updated. The data can change over time for a number of reasons, such as successful appeals.

More detail is in the appendices

The most important statistics are contained in the relevant sections of this document. For people who are interested, more detailed statistics are contained in the appendices.

2. SEEKING YOUR VIEWS

This section outlines how you can make a submission and what will happen to your submission.

This public consultation document is part of the Government's Bail Review, which is looking at ways to improve New Zealand's bail system to ensure that it is as fair and effective as possible. The purpose of this document is to seek your views on if, and how, aspects of the law on bail should be changed.

This document covers six main areas:

- bail for defendants charged with serious class A drug offences;
- bail for defendants charged with serious violent and sexual offences;
- bail for young defendants under 20 years of age;
- ensuring bail is not granted in return for information;
- failure to answer bail (not attending Court when required); and
- legislation for electronically monitored bail.

To assist you in making a submission, there are questions throughout the document that you may wish to answer. A full list of the questions is set out in Appendix 7. As a starting point, the document also outlines the Government's preliminary views on each of the matters discussed.

2.1 How your views will be taken into account

The Ministry of Justice is responsible for collecting and analysing the public submissions on this consultation document. The Ministry will produce a report for the Government making recommendations on if, and how, the law should be changed, taking into account the views of submitters and any other relevant considerations, such as the potential financial impact on the justice sector.

The report will be provided to the Government by September 2011. Once the report has been considered by the Government, it will be published on the Ministry's website (www.justice.govt.nz).

2.2 How to have your say

We invite written submissions on the issues discussed in this consultation document from all interested individuals and groups. The closing date for submissions is Monday 16 May 2011.

We encourage you to give your views on the questions in this document and to provide any other comments you may have about the matters discussed.

To make things easier, a submission form setting out all the questions with spaces for your comments is available:

- on the Ministry of Justice's website:

www.justice.govt.nz/policy/criminal-justice

- by emailing bailreview@justice.govt.nz

Please send completed submissions to:

Email: bailreview@justice.govt.nz

OR

Postal address: Bail Review
Ministry of Justice
SX10088
WELLINGTON

If the Government decides to make changes to the law, it will introduce legislation to Parliament to do this. A Parliamentary Select Committee will consider any legislation after its first reading and you will have a further opportunity to make submissions at that stage.

2.3 What happens to your submission

Submissions will be publicly available

Your submission will be kept by the Ministry of Justice and will become public information. This means that a member of the public may request a copy of your submission from the Ministry under the Official Information Act 1982. The Ministry of Justice's report may also mention your submission.

Please tell us if there is any part of your submission (including your name) that you do not want to be released or included in the Ministry's report. For example, you may not want members of the public knowing about something that happened to you personally.

If you do not want all or part of your submission to be released or included in the Ministry's report, please tell us which parts and the reasons why. Your views will be taken into account:

- in deciding whether to withhold or release any information requested under the Official Information Act; and
- in deciding if, and how, to refer to your submission in the Ministry's report.

Privacy

The Privacy Act 1993 governs how the Ministry collects, holds, uses and discloses personal information provided in your submission. You have the right to access and correct this personal information.

3. INTRODUCTION

This section outlines what the Government's Bail Review is about and summarises the Government's preliminary views on the matters discussed.

3.1 The Government's Bail Review

1. The Government's Bail Review is primarily focused on ensuring that New Zealand's bail laws adequately protect the community (while remaining fair to those charged with offences) and support an effective and efficient court system. The role of victims in the bail system is not directly considered by the Review, as this is being considered as part of the *Enhancing Victims' Rights* review being undertaken by the Ministry of Justice.¹
2. The Bail Review was originally intended to give effect to the National Party's election commitments leading up to the 2008 general election. As part of its 2008 law and order policy, the National Party stated that it would:
 - investigate whether known methamphetamine dealers and manufacturers should be excluded from electronically monitored bail;
 - ensure that bail is not granted in return for information; and
 - review the Bail Act to improve compliance with bail conditions.
3. Since being elected, the Government has broadened the scope of the Review to include:
 - bail for defendants charged with serious class A drug offending (including methamphetamine) more generally;
 - bail for people charged with serious violent and sexual offences, with a particular emphasis on people charged with murder;
 - bail for young defendants under the age of 20;
 - monetary bail bonds and sureties; and
 - legislation for electronically monitored bail.
4. The wider justice sector currently faces a number of fiscal pressures. It is important to ensure that any proposals to change bail laws that arise from this review do not unduly add to the fiscal pressures facing the sector in future years. The proposals discussed in this document are preliminary. Final policy proposals will be developed taking into account the information obtained through the public consultation process, as well as other relevant considerations including the potential financial impact on the justice sector.

¹ More information about the *Enhancing Victims' Rights* review is available from www.justice.govt.nz.

3.2 Summary of the Government's preliminary views

5. This section briefly summarises the Government's preliminary views on the matters discussed in this consultation document and the reasons for those views. More detail is contained in the body of the document.

Bail for defendants charged with serious class A drug offences

Reversing the burden of proof for defendants charged with serious class A offences

6. At present, there are no circumstances in which a reverse burden of proof applies to a defendant charged solely with serious drug offending (supply and possession for supply, manufacture, and importing or exporting). A reverse burden of proof means that the defendant has to prove that he or she should be granted bail rather than the prosecution having to prove that the defendant should not be granted bail.
7. The Government's preliminary view is that the burden of proof should be reversed for defendants charged with serious class A offences because defendants on bail for these offences offend at a comparatively high rate.

EM bail for defendants charged with serious methamphetamine offences

8. Experience to date suggests that EM bail is a reasonably effective way of managing defendants charged with serious methamphetamine offending in the community. The Government's preliminary view is that defendants charged with serious methamphetamine offences should continue to be able to be released on EM bail at the discretion of the Court.

Bail for defendants charged with serious violent and sexual offences

Bail for defendants charged with murder

9. The Government notes that:
 - between 2004 and 2008:
 - the majority of defendants charged with murder were remanded in custody and very few of those released on bail offended while on bail;
 - almost 40% of defendants charged with murder were not convicted of that offence or any other offence relating to the same case;
 - defendants charged with murder that have a history of serious offending will, in most cases, already be subject to a reverse burden of proof.

10. The Government's preliminary view is that defendants charged with murder should be subject to a reverse burden of proof in bail proceedings.

Extension of one of the situations where a reverse burden of proof applies

11. A reverse burden of proof applies if a defendant is charged with one of a list of specified offences and has a previous conviction for one of those offences (the two offences do not have to be the same). The Government is considering whether to add new serious violent and sexual offences to the list of specified offences.
12. The Government's preliminary view is that the following criteria will be relevant when considering which offences should be included in the list of specified offences:
 - rate of offending on bail;
 - rate of imprisonment for offending on bail; and
 - length of sentences of imprisonment imposed for offending on bail.

EM bail for defendants charged with serious violent and sexual offences

13. The Government's preliminary view is that these defendants should continue to be able to be released on EM bail at the discretion of the Court. The relatively low rate of offending on EM bail by defendants charged with serious violent and sexual offending suggests that EM bail is a reasonably effective way of managing these defendants in the community.

Bail for young defendants under 20 years of age

The presumption of bail for defendants aged 17 to 19

14. The Bail Act 2000 contains a strong presumption in favour of bail for defendants aged 17 to 19 inclusive. A Court may only remand a defendant of this age in custody if it is satisfied that no other course of action is acceptable in the circumstances, or if a reverse burden of proof applies.
15. The Government's preliminary view is that the presumption in favour of bail should not apply to defendants aged 17 to 19 who have previously served a prison sentence as these defendants offend on bail at a comparatively high rate.

Arresting defendants under 17 years of age for breach of bail conditions

16. At present, if a defendant under 17 years of age breaches his or her bail conditions, Police can only arrest the defendant without a warrant if this is considered necessary to ensure that the defendant does not abscond, interfere with witnesses or evidence, or offend.

17. The Government's preliminary view is that Police should be able to arrest defendants under the age of 17 without a warrant for any breach of bail conditions. This will allow Police to stop the breach continuing and to consider ways to address the defendant's behaviour. However, given the relative immaturity and vulnerability of defendants of this age, the Government considers that this power needs to be subject to appropriate safeguards.

Ensuring bail is not granted in return for information

18. As a matter of policy, the Government considers it inappropriate and contrary to public safety for a defendant, who would otherwise be remanded in custody, to be released on bail simply because he or she has provided information to authorities.
19. On the basis of the advice from Police, the Government's preliminary view is that the current policies and practices applying to decisions on whether to oppose bail are sufficient to prevent bail being granted inappropriately in return for information. However, to make it absolutely clear that bail is not to be granted in return for information, the Government's preliminary view is that a legislative provision to that effect should be inserted into the Bail Act 2000.

Failure to answer bail

20. A defendant 'fails to answer bail' if he or she does not appear in Court at the scheduled time. There has been a significant increase in the number of people failing to answer bail over the last decade, especially in major centres.

Initiatives to address failure to answer bail

21. The Government's preliminary view is that, when viewed in conjunction with the package of initiatives planned under the Criminal Procedure (Simplification) Project, and the Police review of arrest warrants, the existing maximum penalty for failure to answer Court bail is appropriate to address the issues caused by a defendant failing to turn up to Court. However, the Government considers the existing penalty for Police bail to be inadequate.
22. The Government's preliminary view is that failure to answer Police bail should be punishable by up to three months imprisonment, as an alternative to the existing \$1000 maximum fine. This would also give the Courts the option of imposing a community-based sentence (such as community work) or a sentence of home detention, or increasing one of these sentences imposed for other offending.

Monetary bonds and sureties in the District Court

23. A monetary bond is a guarantee from the defendant that he or she will attend Court. A surety is a guarantee from someone other than the defendant - such as a parent or friend - that he or she will pay a specified amount if the defendant does not attend Court.
24. In 1987, monetary bonds and sureties were abolished in the District Court (and replaced with the offence of failure to answer bail) for a

range of reasons, including that their effectiveness had not been established and that they potentially discriminated against the poor.

25. The Government's preliminary view is that many of the issues that underpinned the abolition of monetary bonds and sureties in the District Court in 1987 remain relevant today and that the offence of failure to answer bail is a better method of encouraging defendants to attend Court and sanctioning non-compliance.

Legislation for electronically monitored bail

26. Electronically monitored bail (EM bail) is a bail condition that requires a defendant to stay at a particular residence at all times unless absent for an approved purpose, such as work. Compliance is monitored through an electronic bracelet attached to the defendant's ankle.
27. EM bail is not specifically covered in legislation; it is imposed under the Courts' generic power to impose bail conditions. The risk of continuing to use the generic power to impose EM bail is that inconsistent practices may develop in different parts of the country. For example, different Courts may develop different practices around when it is appropriate to grant EM bail.
28. The Government's preliminary view is that there is value in putting the EM bail regime in legislation because this would make the processes for EM bail more consistent and transparent, and would ensure that EM bail is only used in appropriate cases.
29. The Government's preliminary view is that the following matters should be set out in any legislation for EM bail:
 - when the Court can impose EM bail;
 - the standard conditions of EM bail;
 - that breach of EM bail is not an offence (but is a ground for the defendant to be arrested and bail reconsidered);
 - how the Courts should take time spent on EM bail into account when sentencing the defendant.

4. BACKGROUND: THE BAIL SYSTEM

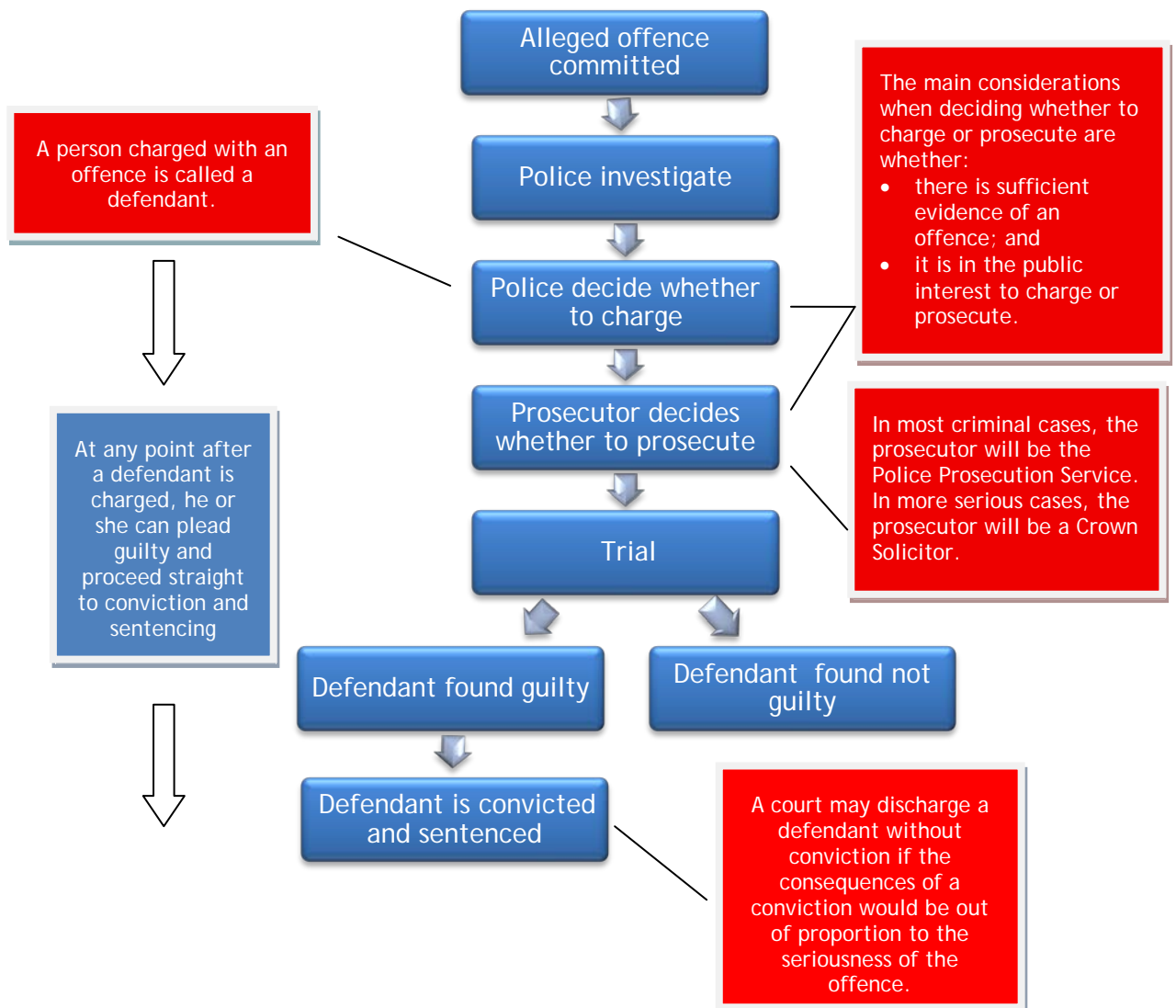
This section provides background information about:

- how a case proceeds through the criminal justice system;
- what the bail system is and the reasons why we have it;
- how New Zealand's bail system works; and
- recent trends in the use of bail and offending on bail.

4.1 The criminal justice system

30. Figure 1 is a simplified outline of how a case proceeds from the commission of an offence through to conviction and sentencing.

Figure 1. How a case proceeds through the criminal justice system



31. It can take a significant amount of time for a case to go through this process, especially if the charges are serious and the case is to be tried by a jury. There may also be a number of Court hearings on different matters before the trial can begin, such as legal arguments about whether certain pieces of evidence can be used at the trial.

4.2 What is the bail system?

32. A person charged with a criminal offence is called a defendant. The bail system is concerned with what should happen to a defendant while their case goes through the criminal justice system.
33. Around two thirds (68%) of prosecutions require a decision on bail. The one third of prosecutions that do not require a decision on bail involve defendants charged with relatively minor offending (e.g. disorderly behaviour), who are issued with a summons to attend Court on a particular day and whose case is resolved on that day.
34. If a decision on bail is required, the basic decision is whether the defendant should be imprisoned or allowed to remain in the community until their case is resolved. There are three options:
- **Release at large:** the defendant is released without any conditions, except a requirement that they attend their scheduled Court hearings.
 - **Release on bail:** the defendant is released but must comply with specified conditions in addition to the requirement that they attend their scheduled Court hearings. Paragraphs 53 to 58 contain further information on bail conditions.
 - **Remand in custody:** the defendant is detained in a prison.

For the purposes of this document, we have combined release at large and release on bail into one category called "bail". Throughout the rest of this document, we only refer to bail and remand in custody.

35. A defendant's bail status may change as the case progresses. For example, a defendant may initially be remanded in custody while an application for bail is prepared, and then released on bail by the Court once it has all the relevant information. Alternatively, a person released on bail may subsequently be remanded in custody if they breach their bail conditions.

4.3 Why do we have a bail system?

36. We have a bail system because, in many cases, it is not fair or practical to hold a defendant in custody until their case is resolved.
37. New Zealand's criminal justice system, like many others, is based on the principle that a person is innocent until proven guilty. This means that a person charged with a criminal offence should not be detained without good reason.

38. Prosecutions can take a significant amount of time and around 90% involve relatively minor offending that is not serious enough to justify imprisonment if the defendant is convicted. If the alleged offending is not serious enough to justify imprisonment if the person is found guilty, it will generally be unfair to imprison the person while their guilt is being decided.
39. Finally, from a purely practical perspective, it would not be possible to detain every person prosecuted for a criminal offence. In 2008, 126,673 people were prosecuted in New Zealand. This is more than 60 times the number of defendants currently remanded in custody and over 14 times the total number of people in prison.

4.4 New Zealand's bail system

The general law on bail

40. In most cases, the starting point is that the defendant should be released on reasonable conditions unless there is a good reason to remand him or her in custody. Bail is not automatically denied for any offence.
41. The main factors the Court must consider in deciding whether there is a good reason to remand a defendant in custody are the risk that the defendant may:
 - fail to appear in Court;
 - interfere with witnesses or evidence; or
 - offend while on bail.²
42. The Court must also consider any matters that would make it unfair to remand the defendant in custody. For example, it may be unfair to remand the defendant in custody if he or she is unlikely to be sentenced to imprisonment if convicted and the trial will not take place for several months.
43. In making a decision on bail, the Court is not bound by the rules of evidence that apply at trial. The Court can take into account any information that it considers relevant, including the defendant's criminal history, the strength of the evidence against the defendant, and the sentence likely to be imposed if the defendant is convicted.

Police bail

44. Decisions on bail are generally made by the Courts. However, Police may grant "Police bail" for up to seven days if a person who has been arrested and charged cannot be brought before a Court immediately. A typical example is where a person is arrested on Friday night and the

² In 2007, the previous Government changed the threshold from "a risk" that the defendant may fail to appear in Court, interfere with witnesses or evidence, or offend on bail, to "a real and significant risk" that the defendant may do one of those things. In December 2008, the Government reversed this change through the Bail Amendment Act 2008 because it considered that the 2007 amendment put the threshold for remand in custody too high and compromised public safety.

local Court will not be sitting until Monday morning. Police bail is an option for all but the most serious charges, such as wounding with intent, rape and murder.

Role of the prosecutor

45. In most criminal cases, the prosecutor will be the Police Prosecution Service, which is an independent service within Police. In more serious cases, where trial is by jury rather than by a judge alone, the prosecutor will be the Crown Solicitor's Office for that region.
46. The prosecutor must decide whether to oppose bail. In making this decision, the prosecutor considers the same matters that the Court would consider when making a decision on bail, namely, whether there is a risk that the defendant may fail to appear in Court, interfere with witnesses or evidence, or offend on bail.
47. Some defendants charged with minor offending cannot be remanded in custody. Under the Bail Act 2000, a defendant charged with a relatively minor offence who has no previous convictions, or only very minor convictions, must be released on bail. In this situation, the prosecutor cannot oppose bail, but can seek to have bail conditions imposed on the defendant.

What happens when bail is not opposed

48. If bail is not opposed, the prosecution and the defendant's lawyer will usually discuss bail and agree on the conditions (if any) that should apply. The Registrar of the Court may then release the defendant on bail subject to those conditions or any other conditions that the Registrar thinks appropriate. When bail is not opposed, the matter does not usually go before the Court unless there is disagreement about the conditions that should apply.³

Who has to prove what at a bail hearing

49. In most cases where bail is opposed, it is up to the prosecutor to prove to the Court that the defendant should not be granted bail. However, in some situations where the defendant has a history of serious offending, especially a history of offending while on bail, the defendant must prove that he or she should be granted bail. This is called a reverse burden of proof. Reverse burdens of proof are discussed further in sections 5 and 6.

Reverse burden of proof

A reverse burden of proof is where a defendant must prove to the Court that he or she should be released on bail, rather than the prosecutor having to prove to the Court that the defendant should not be released on bail.

³ In the High Court, bail is always granted by a Judge, regardless of whether bail is opposed.

Victims' views on bail and protection of victims

50. In some cases, particularly those involving serious violence, the views of the victim (or the victim's parents or legal guardians) are given particular importance. The prosecution must make reasonable efforts to obtain and inform the Court of the victims' views on bail if a defendant is charged with:
- sexual violation or other serious assault;
 - an offence that resulted in serious injury or death; or
 - an offence that has led to the victim reasonably having ongoing fears for his or her physical safety or security, or that of his or her immediate family.
51. The Court must take these views into account in making its decision, and registered victims must be notified if the defendant is released on bail and of any bail conditions relating to the victim or their immediate family.⁴
52. In some cases, the need to protect the victim of the alleged offence is given primary importance. If a defendant is charged with breach of a protection order under the Domestic Violence Act 1995, the Bail Act states that the Court's paramount consideration is the need to protect the victim of the alleged offence. In addition, where a reverse burden of proof applies, the Bail Act provides that the need to protect the safety of the public and the victim(s) of the alleged offence are primary considerations.

Bail Conditions

53. It is a mandatory condition of Police or Court bail that the defendant attends his or her scheduled Court appearances. In addition, Police or the Court (whichever is granting bail) may impose any other conditions considered reasonably necessary to ensure that the defendant attends Court, does not interfere with witnesses or evidence, and does not offend while on bail.
54. Common conditions include curfews, non-association conditions, and conditions not to consume alcohol. It is also common for foreign nationals to be required to surrender their passport.
55. Electronically monitored bail (EM bail) is a bail condition that requires a defendant to stay at a particular residence at all times unless absent for an approved purpose, such as work. Compliance is monitored through an electronic bracelet attached to the defendant's ankle.

⁴ Certain victims are able to register on the Victim Notification system and receive notifications relating to bail and release from custody. As part of its *Enhancing Victims' Rights* review, the Ministry of Justice is considering whether to extend the range of circumstances where these requirements apply. The Ministry will provide recommendations to the Government in early 2011 and any amendments will be contained in a Victims of Crime Reform Bill, to be introduced to Parliament in early 2011. More information on the review can be found at www.justice.govt.nz.

56. EM bail is intended to be an alternative to remand in custody. To ensure that it is only used in cases where standard bail is not sufficient, the general policy is that only defendants who have already been remanded in custody can apply for EM bail (although there is no legislative restriction to this effect). More information about EM bail is contained in section 10.
57. Breach of any bail condition, except the requirement to attend Court, is not a criminal offence. As a matter of principle, it is considered unfair to punish a person for breach of a bail condition when they have not been found guilty of the original charge for which they were on bail. However, breach of a bail condition may result in the defendant being arrested and brought before the Court to have bail reconsidered. Breaches can also be recorded on the defendant's criminal record to assist the Court in deciding whether to grant bail at a later stage or in future cases.
58. If a defendant fails to attend Court, he or she commits the offence of failure to answer bail. Failure to answer Police bail is punishable by a fine of up to \$1000. Failure to answer Court bail is punishable by up to one year's imprisonment or a fine of up to \$2000.

Offending on bail

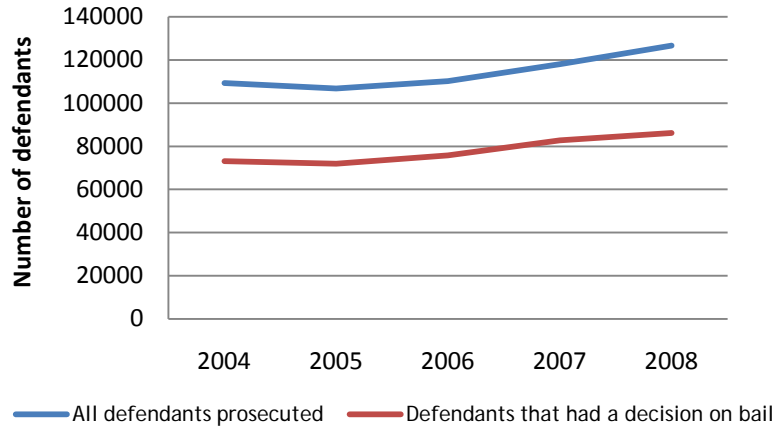
59. If a defendant who is on bail is charged with further offending, the Court will reconsider whether they should remain in the community on bail or be remanded in custody.
60. If a defendant is convicted of an offence committed while on bail, the fact that the defendant was on bail when he or she committed the offence is already taken into account as an aggravating factor in sentencing. An aggravating factor is something that increases the seriousness of the offending or the blameworthiness of the offender, and generally results in an increase in the sentence imposed.

4.5 Bail in practice 2004 - 2008

Decisions on bail

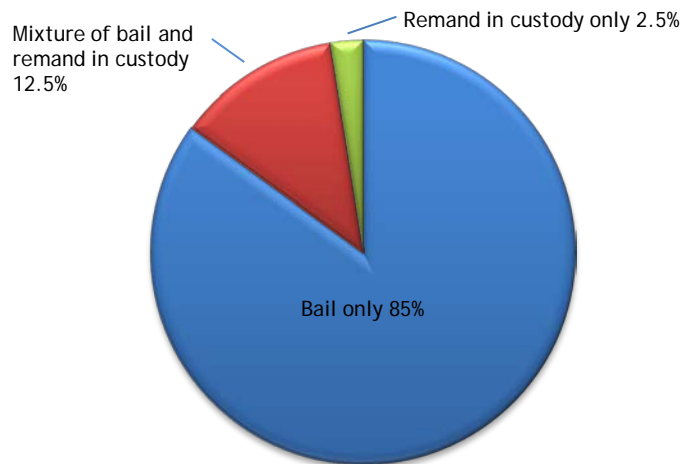
61. There was a significant increase in the number of defendants prosecuted per year between 2005 and 2008 (see blue line in Figure 2). This had the flow on effect of increasing the number of defendants that had a decision on bail in those years (red line in Figure 2). In 2005, 106,697 defendants were prosecuted and 71,862 (67.4%) of these had a decision on bail. In 2008, 126,673 defendants were prosecuted and 86,216 (68.1%) had a decision on bail.

Figure 2. Total number of defendants prosecuted and number that had a decision on bail in the five year period 2004 - 2008



62. The majority of prosecutions are for relatively minor offending, which is reflected in the proportion of defendants that are released on bail and remanded in custody. Of the 68% of defendants charged with an offence between 2004 and 2008 that had a decision on bail, 85% were released on bail for the whole period until their case was resolved, 2.5% were remanded in custody for the whole period, and 12.5% spent some time in custody and some time on bail (see Figure 3). There was very little fluctuation in these proportions from year to year during the period.

Figure 3. Proportion of defendants released on bail or remanded in custody in the five year period 2004 - 2008



63. Looking at individual types of offence, defendants charged with serious violent and sexual offences were remanded in custody far more often than defendants charged with less serious offences. For example, 30.6% of defendants charged with aggravated robbery were remanded in custody for the whole period until their case was resolved, 33.4% spent some time in custody and some time on bail, and 36% were on bail for the whole period.

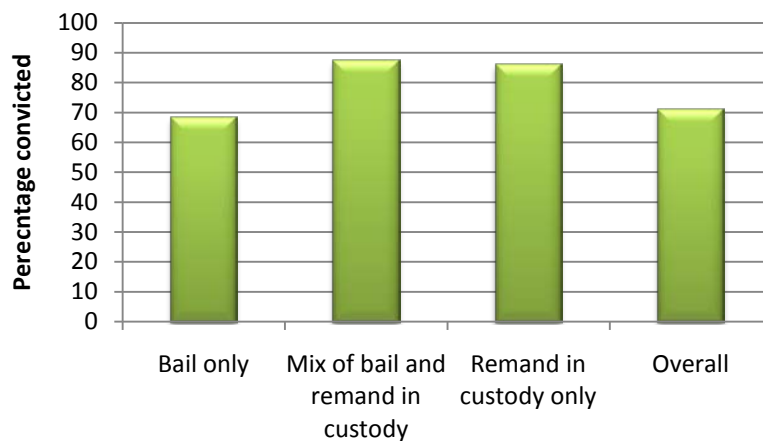
64. Appendix 1 contains a breakdown of bail and remand in custody for defendants charged with the most serious violent and sexual offences between 2004 and 2008 (excluding low volume offences where less than 200 people in total were charged between 2004 and 2008).

Rate of conviction

65. Figure 4 shows the rate of conviction for defendants by their bail status between 2004 and 2008 (each is out of 100%). For the purposes of this section, a defendant charged with two or more offences is counted as convicted if they were convicted of at least one of the offences. Defendants found guilty but discharged without conviction on all charges are not counted as convicted.

66. Overall, 71.1% of defendants charged with an offence between 2004 and 2008 were convicted. Breaking this down by bail status: 68.2% of those on bail for the whole period until their case was resolved were convicted; 86.1% of those remanded in custody for the whole period were convicted; and 87.5% of those who spent some time in custody and some time on bail were convicted.

Figure 4. Proportion of defendants convicted by bail status 2004 - 2008



Offending on bail

67. There is no fool-proof way to predict who will offend. An effective bail system is one that minimises the amount of offending, especially serious offending, which is committed by people facing criminal charges.

Number and proportion of defendants that offended on bail

68. Between 2004 and 2008, the number of defendants that offended on bail increased as the number of people that spent time on bail increased. However, the number of defendants that offended on bail increased at a slightly faster rate than the number of people that spent time on bail (see Table 1).

69. The percentage of defendants that offended on bail increased from 15.7% in 2004 to 17.5% in 2006. Between 2006 and 2008 the

percentage increased slightly from 17.5% to 17.9%. Overall, an average of 17.0% of defendants charged with an offence between 2004 and 2008 that spent time on bail were convicted of committing an offence on bail (note that the defendant was not necessarily convicted of the original offence for which they were on bail).

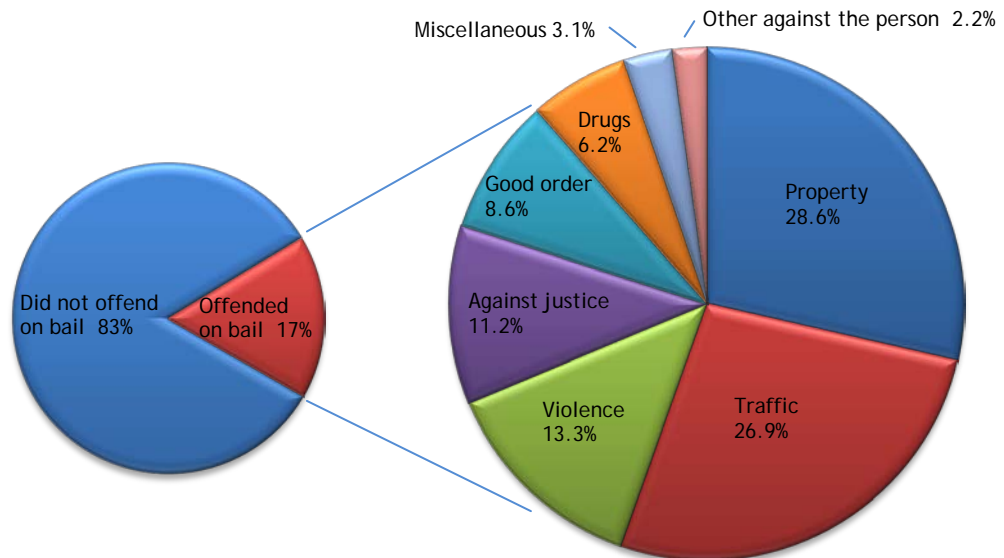
Table 1. Number of defendants that spent time on bail and number that were convicted of offending on bail in the five year period 2004 - 2008

Year	Number of defendants that spent time on bail	Number of defendants convicted of offending on bail	Proportion of defendants that spent time on bail convicted of offending on bail
2004	71183	11145	15.7%
2005	69853	11230	16.1%
2006	73786	12904	17.5%
2007	80797	14260	17.6%
2008	84295	15120	17.9%
Total	379914	64659	17.0%

Type and seriousness of offending on bail

70. A property or traffic offence was the most serious offence committed by more than half of the defendants that offended on bail. A violent offence was the most serious offence committed by 13.3% of defendants that offended on bail (see Figure 5 and Table A2.1 in Appendix 2).

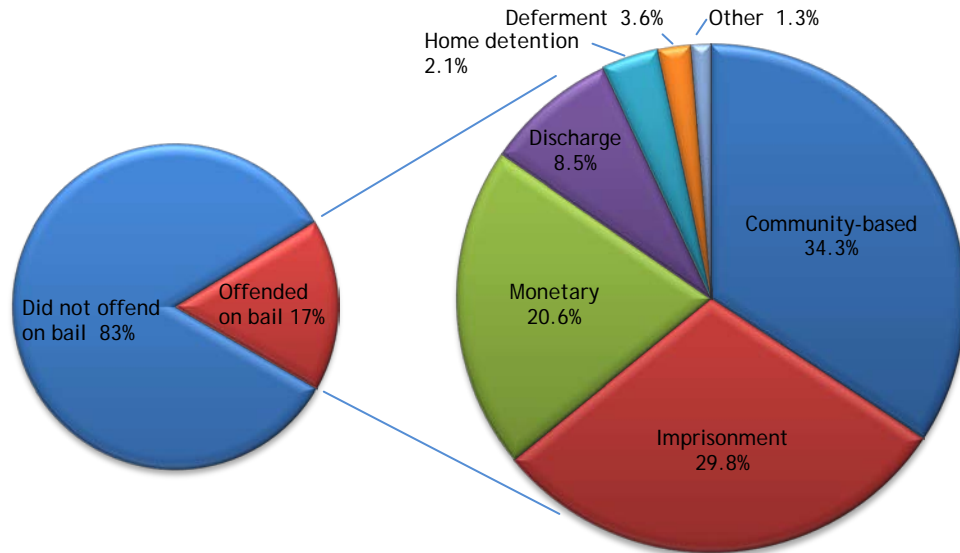
Figure 5. Offending on bail in the five year period 2004 - 2008 by most serious offence committed on bail



71. Figure 6 shows a breakdown of the most serious sentence imposed for offences committed on bail (see also Table A2.1 in Appendix 2). The sentence is generally the best indicator of the seriousness of offending.

72. For 34.3% of defendants that offended on bail, the most serious sentence imposed for that offending was a community-based sentence (community work, community detention, supervision or intensive supervision). For 29.8% of defendants that offended on bail, the most serious sentence was imprisonment, and for 20.6% the most serious sentence was a monetary penalty (a fine and/or reparation).

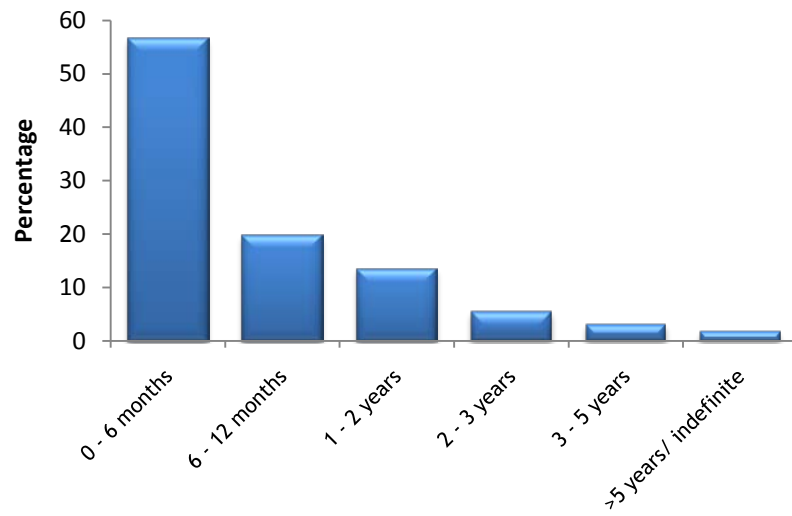
Figure 6. Offending on bail in the five year period 2004 - 2008: Most serious sentence imposed for offence committed on bail



73. Figure 7 shows a breakdown by length of the sentences of imprisonment imposed for offences committed on bail (see also Table A2.2 in Appendix 2). More than half were for six months or less and more than three quarters were for 12 months or less. A number of these shorter sentences of imprisonment will have been imposed because the offender was sentenced to imprisonment on the original charge; the Court has limited sentencing options other than imprisonment when a defendant is already serving a sentence of imprisonment or is being sentenced to imprisonment on other charges.

74. A sentence of more than two years generally indicates that the offending is serious. Ten percent of defendants sentenced to imprisonment for offences committed on bail were sentenced to more than two years. Looking at the bigger picture, this equates to 3% of all defendants that offended on bail between 2004 and 2008, and 0.5% of all defendants that spent time on bail between 2004 and 2008.

Figure 7. Offending on bail in the five year period 2004 - 2008: Sentences of imprisonment imposed for offences committed on bail by length



75. Appendix 2 contains a more detailed breakdown of the offences committed by defendants on bail between 2004 and 2008.

5. BAIL FOR DEFENDANTS CHARGED WITH SERIOUS CLASS A DRUG OFFENCES

This section looks at serious class A drug offences and whether:

- a reverse burden of proof should apply to defendants charged with these offences;
- electronically monitored bail should be an option for defendants charged with serious methamphetamine offences.

Background

76. Class A drugs are the most harmful illegal drugs. Serious class A drug offences (supply and possession for supply, manufacture, and importing or exporting) are punishable by a maximum penalty of life imprisonment on conviction.
77. The Government is committed to addressing the problem of class A drugs in New Zealand, particularly methamphetamine. In October 2009, the Government announced its Action Plan on Methamphetamine.⁵ The Action Plan aims to:
- reduce the supply of methamphetamine by controlling precursors and breaking supply chains;
 - reduce the demand for methamphetamine through enhanced support for families and communities to resist the drug, and through helping users into treatment and supporting communities to help users into treatment.

Current limitations on bail for drug dealing charges

78. Under New Zealand's law, bail decisions are made on the basis of a defendant's risk of absconding, interfering with witnesses or evidence, or offending. Bail is not automatically denied for any offence. However, the seriousness of the charges and a defendant's criminal record are factors that the Court will take into account in deciding whether to grant bail.
79. In some situations, a defendant charged with serious offending must prove that he or she should be granted bail, rather than the prosecutor having to prove that he or she should not. This is called a reverse burden of proof.
80. At present, there are no circumstances in which a reverse burden of proof applies to a defendant charged solely with serious drug offending. However, a reverse burden may apply because of other charges the defendant is facing at the same time.

⁵ More information about the Action Plan is available from www.beehive.govt.nz and www.dpmc.govt.nz.

81. The initial decisions on bail in serious cases are usually made by a District Court Judge. However, when a defendant is charged with a drug dealing offence, the general rule is that bail may only be granted by a High Court Judge.

5.1 Reversing the burden of proof for defendants charged with serious class A offences

82. In addition to its other initiatives targeting serious drug offending, the Government is considering whether a reverse burden of proof should apply to defendants charged with serious class A drug offences, regardless of the defendant's prior history. A reverse burden would require the defendant to prove to the Court that he or she should be granted bail, instead of the prosecution having to prove that the defendant should not be granted bail.
83. A defendant has the right to be presumed innocent until proven guilty and not to be detained without good reason. Therefore, reversing the burden of proof on the basis of the type of charge alone (i.e. regardless of the defendant's criminal history) can only be justified if there is clear evidence that the benefits to the community outweigh the disadvantage to defendants.

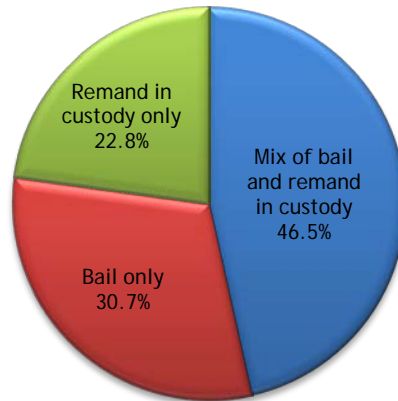
Bail for defendants charged with serious class A drug offences 2004 - 2008

Decisions on bail

84. Between 2004 and 2008, 2546 defendants were charged with serious class A offences, at an average of just over 500 per year. The vast majority faced charges relating to methamphetamine or amphetamine.⁶
85. Of the 2546 defendants, 581 (22.8%) were remanded in custody for the entire period until their case was resolved, 781 (30.7%) were on bail for the entire period, and 1184 (46.5%) spent part of the period remanded in custody and part on bail (see Figure 8).

⁶ Methamphetamine is a class A drug and amphetamine is a class B drug. However, for historical reasons, both are recorded in a single category in the Courts' computer system and cannot be separated. The figures in this section include a small number of amphetamine charges.

Figure 8. Proportion of defendants charged with serious class A drug offences released on bail or remanded in custody in the five year period 2004 - 2008



Rate of conviction

86. Of the 2546 defendants charged with a serious class A drug offence between 2004 and 2008, 65.4% were convicted of that offence or another offence relating to the same case (52.7% were convicted of the serious class A offence and a further 12.7% were convicted of another offence).

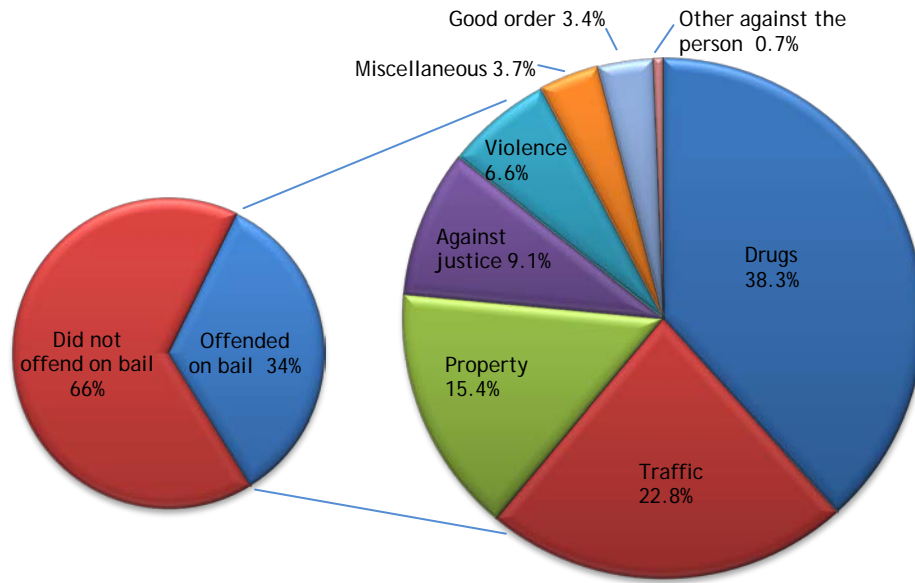
Offending on bail

87. Just over a third (34%) of the defendants charged with a serious class A drug offence that spent time on bail were convicted of offending on bail. This was twice the overall rate of offending on bail during the same period, which was around 17% (see paragraph 69). It was also higher than the rate of offending on bail by defendants charged with serious violent and sexual offences (see Appendix 3).

88. A drug offence was the most serious offence committed by 38.3% of the defendants that offended on bail. Traffic and property offences were the most serious offence committed by 22.8% and 15.4% of defendants that offended on bail respectively (see Figure 9 and Table A.4.1 in Appendix 4). This differs to the overall offending profile for defendants on bail. Where no distinction is made based on charge, the most serious offending while on bail tends to be property offending, and drug offending is relatively low.⁷

⁷ For defendants who offended on bail in the five year period 2004-2008, property (28.6%) and traffic (26.9%) offences were the most serious offence committed. A drug offence was the most serious offence committed on bail by 6.2% of the defendants who offended on bail. See paragraph 70 and compare Figure 5 with Figure 9.

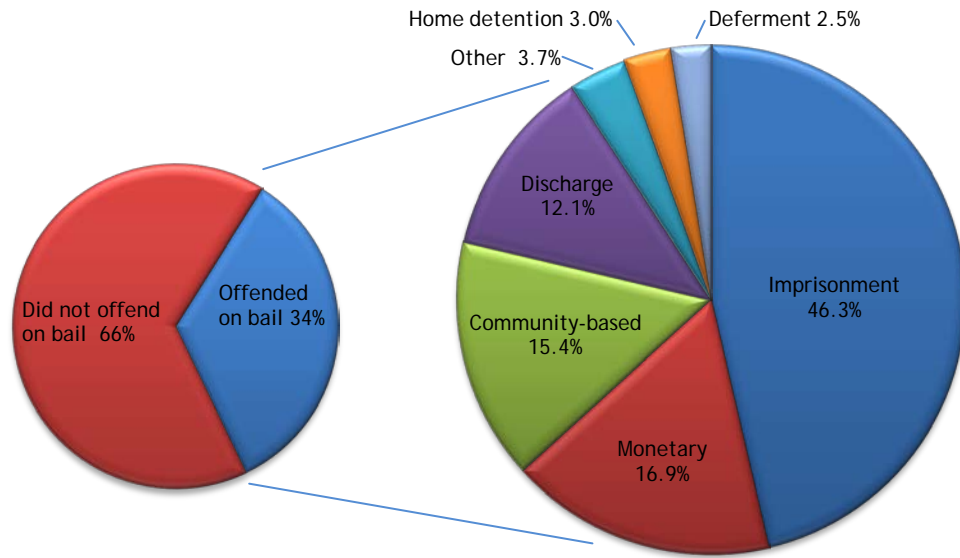
Figure 9. Offending on bail by defendants charged with serious class A drug offences in the five year period 2004 - 2008: Most serious type of offence committed on bail



89. Figure 10 shows a breakdown of the most serious sentence imposed for offences committed on bail by defendants charged with serious class A drug offences (see also Table A.4.1 in Appendix 4). The sentence is generally the best indicator of the seriousness of offending.
90. Almost half (46.3%) of the defendants that offended on bail were sentenced to imprisonment for that offending. This is higher than the rate of imprisonment for offending on bail generally (29.8%).⁸
91. A monetary penalty (a fine and/or reparation) was the most serious sentence imposed on 16.9% of defendants, and a community-based sentence (community work, supervision, intensive supervision, or community detention) was the most serious sentence imposed on 15.4% of defendants.

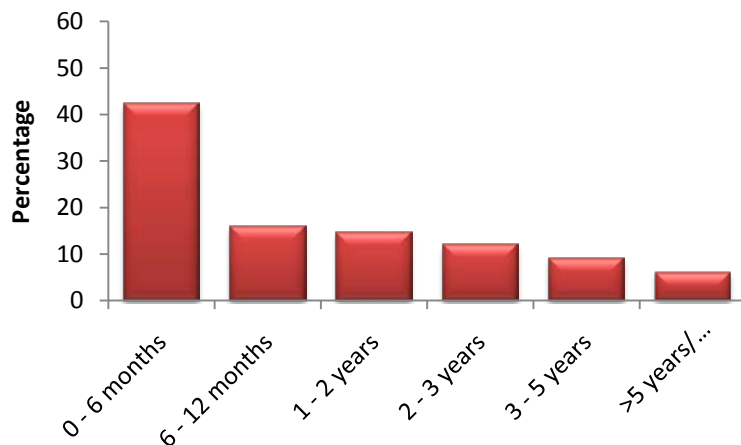
⁸ In most cases, the most serious sentence imposed for offending on bail for all defendants (regardless of the nature of their original charge) was a community-based sentence (34.3%). In contrast, 29.8% of defendants convicted of offending on bail were sentenced to imprisonment (see paragraph 72, and compare Figure 6 with Figure 10).

Figure 10. Offending on bail by defendants charged with serious class A drug offences in the five year period 2004 - 2008: Most serious sentence imposed for offence committed on bail



92. Figure 11 shows a breakdown by length of the sentences of imprisonment imposed for offences committed on bail by defendants charged with serious class A offences (see also Table A.4.2 in Appendix 4). Over one third (42.4%) were for six months or less and just under 60% were for 12 months or less. A number of these shorter sentences will have been imposed because the offender was sentenced to imprisonment on the original charge; the Court has limited sentencing options other than imprisonment when a defendant is already serving a sentence of imprisonment or is being sentenced to imprisonment on other charges.

Figure 11. Offending on bail by defendants charged with serious class A drug offences in the five year period 2004 - 2008: Sentences of imprisonment imposed for offences committed on bail by length



93. A sentence of more than two years generally indicates that the offending is serious. Over a quarter (27.2%) of defendants charged with a serious class A offence that were sentenced to imprisonment for offences committed on bail were sentenced to more than two years, including 6.1% that were sentenced to more than five years or to an indefinite sentence. This was a much higher proportion than for defendants charged with serious violent and sexual offences that offended on bail (see Appendix 3).
94. Appendix 4 contains a more detailed breakdown of offending on bail by defendants charged with serious class A offences.

Preliminary view

95. The Government's preliminary view is that the burden of proof should be reversed for defendants charged with serious class A offences because of:
- the relatively high rate of offending by these defendants while they are on bail; and
 - the type and seriousness of the offences they commit on bail.
96. Reversing the burden of proof is likely to result in a small increase in the number of defendants charged with serious class A offences that are remanded in custody, either for part or all of the time until their case is resolved. This will involve some additional cost and there is no guarantee that the defendants affected would have offended on bail (as there is no foolproof way of identifying who will offend).
97. If the burden of proof is reversed, the Ministry of Justice will monitor the effect that this has on the rate of offending on bail for defendants charged with serious class A offences.

- Q1. What is your view on whether there should be a reverse burden of proof for defendants charged with serious class A drug offences (i.e. should they have to prove that they should be granted bail instead of the prosecution having to prove that they should not)?

5.2 EM bail for defendants charged with serious methamphetamine offences

98. Methamphetamine is a highly addictive and harmful drug. One of the Government's 2008 election commitments was to investigate whether to ban defendants charged with serious methamphetamine offences from being released on electronically monitored bail (EM bail) if they would otherwise be remanded in custody. Serious methamphetamine offences are supply and possession for supply, manufacture, and importing or exporting methamphetamine.
99. There are two main concerns with releasing defendants charged with serious methamphetamine offences on EM bail instead of keeping them in custody. First, this kind of offending can be organised and

committed from a bail residence and there is a risk that bailing the defendant will allow them to offend. Secondly, defendants charged with serious methamphetamine offences are considered a high flight risk because the sentences on conviction are severe.

EM bail for defendants charged with serious methamphetamine offences 2006 - 2010

100. Between 25 September 2006 (when EM bail became available as a condition of bail) and 31 December 2010, the Courts heard 254 applications for EM bail from 226 defendants charged with serious methamphetamine offences. EM bail was granted in 123 of the 254 cases (48.4%), to 117 defendants.
101. The rate of offending on bail by the 117 defendants charged with serious methamphetamine granted EM bail was relatively low (although some are still on EM bail), especially when compared with the high overall rate of offending on bail by defendants charged with serious Class A drug offences (34%). At the time this document was finalised, 12 defendants (10.3% of defendants charged with serious methamphetamine offences granted EM bail) had been convicted of offences committed while on EM bail and another seven (6.0%) were facing charges for offences allegedly committed while on EM bail. When considered together, the rate of convictions and charges for offending on EM bail by methamphetamine defendant is comparable to the general rate of offending on bail by defendants charged with any offence (17%).
102. For the 12 defendants convicted of offences committed on EM bail, Table 2 (on the next page) outlines the most serious offence and the most serious sentence imposed for that offence.⁹ Two were convicted of serious methamphetamine offences and the other ten were convicted of driving, low level violence, and drug possession offences.
103. Of the seven defendants currently facing charges, four are facing serious drug charges, one of whom is also facing serious violence charges. One defendant is facing low level drug charges and the remaining two are facing low level violence charges.

⁹ A number of the shorter sentences of imprisonment may have been imposed because the offender was sentenced to imprisonment on the original charge; the Court has limited sentencing options other than imprisonment when a defendant is already serving a sentence of imprisonment or is being sentenced to imprisonment on other charges.

Table 2. Most serious offence committed on EM bail by defendants charged with serious methamphetamine offending 2006 - 2010

	Offence on EM bail (most serious)	Sentence (most serious) for offence committed on EM bail
1	Import/export methamphetamine	8 years imprisonment
2	Supply methamphetamine	2 years 6 months imprisonment
3	Criminal nuisance (driving offence)	8 months imprisonment
7	Drove while disqualified	8 months imprisonment
5	Drove while disqualified	8 months imprisonment
6	Male assaults female	3 months imprisonment
7	Possession of methamphetamine	2 months imprisonment
8	Possession of cannabis and other drugs	1 month imprisonment
9	Threatens to kill	6 months home detention
10	Threatens to kill	100 hours community work
11	Male assaults female	Deferment
12	Resisting arrest	Convicted and discharged

Preliminary view

104. Based on experience to date, the Government's preliminary view is that defendants charged with serious methamphetamine offences should be able to be released on EM bail at the discretion of the Court. In fact, experience to date suggests that EM bail is a reasonably effective way of managing defendants charged with serious methamphetamine offending in the community.
105. As outlined in the previous section, the Government's preliminary view is that there should be a reverse burden of proof for defendants charged with serious class A offending. This will mean more of these defendants will be remanded in custody. In turn, this is likely to mean that more defendants will apply for, and be granted, EM bail.
106. If EM bail remains an option for defendants charged with serious methamphetamine offences, Police and the Ministry of Justice will continue to monitor the level of breaches and offending on bail by these defendants.

Q2. What is your view on whether electronically monitored bail should continue to be an option for defendants charged with serious methamphetamine offences?

6. BAIL FOR DEFENDANTS CHARGED WITH SERIOUS VIOLENT AND SEXUAL OFFENCES

This section looks at bail for defendants charged with serious violent and sexual offences and whether:

- the Courts should be able to release defendants charged with murder on bail;
- a reverse burden of proof should apply to defendants charged with murder;
- there should be an extension to one of the situations where a history of serious sexual or violent offending will mean that a reverse burden of proof applies.

Background

107. There are three situations where a reverse burden of proof will apply to a defendant charged with serious violent or sexual offending. First, a reverse burden of proof will apply if a defendant is charged with one of a list of specified offences and has a previous conviction for one of those offences (the two offences do not have to be the same). The specified offences are:
- murder or attempted murder;
 - manslaughter;
 - sexual violation (rape or unlawful sexual connection);
 - wounding with intent or injuring with intent;
 - aggravated wounding or injury;
 - commission of a crime with a firearm or using a firearm against a law enforcement officer; and
 - robbery or aggravated robbery.
108. Second, a reverse burden of proof will apply if a defendant, who has previously been sentenced to imprisonment, is charged with a serious violent or sexual offence that was allegedly committed while the defendant was on bail for an offence under the Crimes Act 1961 with a maximum penalty of three years imprisonment or more. For example, a reverse burden of proof will apply if a defendant is charged with an indecent assault allegedly committed while the defendant was on bail for burglary.
109. Third, a reverse burden of proof will apply if a defendant charged with a serious violent or sexual offence has 14 or more previous sentences of imprisonment (whether imposed on the same or different

occasions),¹⁰ and has previously been convicted of an offence committed on bail that has a maximum penalty of three years imprisonment or more.

6.1 Bail for defendants charged with murder

110. Murder is the most serious offence in New Zealand law. This is recognised by the fact that there is a presumption of life imprisonment if a defendant is convicted of murder.
111. In recent years, several high profile cases have ignited public debate about the way murder trials are conducted and the support available to the victims' families. The Government has considered these issues and has made a number of changes, including:
- repealing the partial defence of provocation (which, if successful, reduced murder to manslaughter);
 - providing additional financial support for families of homicide victims to help with funeral expenses and the cost of attending any subsequent trial; and
 - establishing a homicide support service to provide practical and emotional support to families, from discovery of the homicide, through the Court process and beyond.
112. Bail for defendants charged with murder is another issue that has attracted public attention. This section looks at whether the Courts should be able to release defendants charged with murder on bail and if so, whether a reverse burden of proof should apply.
113. A defendant has the right to be considered innocent until proven guilty and the right not to be detained without good reason. These rights must be kept in mind when considering proposals that limit bail eligibility for a certain class of defendants.

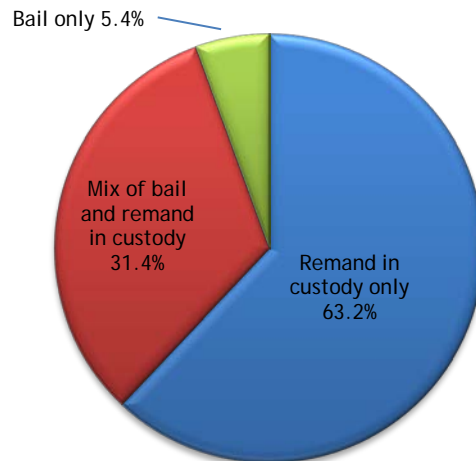
Bail for defendants charged with murder 2004 - 2008

Decisions on bail

114. Most defendants charged with murder in New Zealand are remanded in custody. Of the 334 people charged with murder between 2004 and 2008, 211 (63.2%) were remanded in custody for the entire period until their case was resolved, 18 (5.4%) were on bail for the entire period, and 105 (31.4%) spent part of the period remanded in custody and part on bail (see Figure 12).

¹⁰ This requirement is based on Ministry of Justice research that showed that defendants with 14 or more previous prison sentences were significantly more likely to offend on bail than those with 13 or less. A copy of the research, *Those on Bail in New Zealand in 1994 and Their Offending* (published in 1998), is available from www.justice.govt.nz.

Figure 12. Proportion of defendants charged with murder released on bail or remanded in custody in the five year period 2004 - 2008



Offending on bail

115. Of the 123 defendants charged with murder who spent at least some time on bail, 14 (11.4%) were convicted of at least one offence committed while on bail. Table 3 outlines the most serious offence committed on bail by these defendants, the sentence imposed for that offence, and whether the defendant was convicted of the original murder charge or manslaughter.¹¹

Table 3. Most serious offence committed on bail by defendants charged with murder in the five year period 2004 - 2008

	Offence on bail (most serious)	Sentence (most serious) imposed for offence on bail	Convicted of original murder charge?
1	Murder	Life imprisonment with 20.5 years minimum non-parole	Convicted of manslaughter
2	Aggravated robbery	2 years imprisonment	Convicted of manslaughter
3	Burglary	1.25 years imprisonment	No
4	Serious assault	5.5 months imprisonment	No
5	Drunk driving	2 months imprisonment	No
6	Drunk driving	1.5 months imprisonment	Yes
7	Theft	1 month imprisonment	Yes
8	Theft	9 months supervision	No
9	Breach of a non-molestation/protection order	100 hours community work	Yes
10	Drunk driving	Fine	Convicted of manslaughter
11	Traffic (miscellaneous)	Fine	No
12	Offensive language	Fine	Convicted of manslaughter
13	Possession of cannabis for personal use	Conviction and discharge	Yes
14	Traffic (miscellaneous)	Conviction and discharge	Convicted of manslaughter

¹¹ Note that if the defendant was not convicted of murder or manslaughter, he or she may have been convicted of another offence relating to the incident.

Rate of conviction

116. Of the 334 defendants charged with murder between 2004 and 2008, 60.8% were convicted of that offence or another offence relating to the same case (47.3% were convicted of murder and a further 13.5% were convicted of another offence, some of which will have been manslaughter).

UK's review of bail for defendants charged with murder

117. In 2008, the United Kingdom's Ministry of Justice undertook a review of bail for defendants charged with murder.¹² The review arose out of a high profile case in which Garry Weddell, a policeman, killed his mother-in-law and then himself, while on bail for his wife's murder.
118. The final report concluded that the United Kingdom's law on bail for defendants charged with murder generally strikes the right balance between protecting the rights of defendants on the one hand, and maintaining public safety and promoting the efficient administration of justice on the other. The United Kingdom's law on bail is similar to New Zealand's.

Preliminary view

119. The Government notes that:
- between 2004 and 2008:
 - the majority of defendants charged with murder were remanded in custody and few of those released on bail offended while on bail;
 - almost 40% of defendants charged with murder were not convicted of that offence or any other offence relating to the same case; and
 - defendants charged with murder that have a history of serious offending may already be subject to a reverse burden of proof.
120. The Government's preliminary view is that the Court is best placed to appropriately weigh the important considerations of public safety, and the defendant's criminal process rights in cases where the defendant is charged with murder. Rather than imposing an outright ban on bail for defendants charged with murder, the Government's preliminary view is that a reverse burden of proof should apply, regardless of previous offending history. A reverse burden of proof recognises the very serious nature of a murder charge and the impact on the victims' family and friends if the defendant is released on bail.
121. The majority of defendants charged with murder are already remanded in custody, and many will already be subject to a reverse burden of proof. However, reversing the burden of proof for all defendants

¹² Information about the review is available from www.justice.gov.uk/consultations/cp1108.htm

facing a murder charge may result in a small increase in the number of defendants that are remanded in custody, either for part or all of the time until their case is resolved. This may involve some additional cost.

- Q3. What is your view on whether the Courts should be able to release defendants charged with murder on bail?
- Q4. What is your view on whether there should be a reverse burden of proof for defendants charged with murder (i.e. should they have to prove that they should be granted bail instead of the prosecution having to prove that they should not)?

6.2 Extension to one of the situations where a history of serious sexual or violent offending will mean a reverse burden of proof applies

122. As outlined in paragraphs 107 to 109, there are three different situations where defendants charged with serious violent or sexual offences will be subject to a reverse burden of proof and will have to prove to the Court that they should be released on bail.
123. The Government is considering whether to extend the first of these situations - where a defendant charged with one of a list of specified offences has a previous conviction for one of those offences - by adding to the list of specified offences. There are a number of serious violent and sexual offences that are not currently on the list of specified offences.
124. In the period 2004 to 2008, 1420 defendants qualified for the reverse burden of proof. Of these, 851 (59.9%) were remanded in custody for the entire period until their case was resolved, 160 (11.3%) were on bail for the entire period, and 409 (28.8%) spent part of the period remanded in custody and part on bail (see Figure 13).

Figure 13. Proportion of defendants subject to reverse burden of proof released on bail or remanded in custody in the five year period 2004 - 2008



Offending on bail by defendants charged with non-specified violent and sexual offences 2004 - 2008

125. Table 4 (on the next page) is a high level summary of the rate and seriousness of offending on bail by defendants charged, between 2004 and 2008, with serious violent and sexual offences that are not currently on the list of specified offences.¹³ For each offence, the table outlines the number of defendants between 2004 and 2008 (and percentage of all defendants that spent time on bail for the particular offence) that:

- offended on bail (the table is sorted, from highest to lowest, by the percentage of defendants that offended on bail);
- offended on bail and were sentenced to imprisonment for that offending; and
- offended on bail and were sentenced to at least two years imprisonment for that offending (which indicates serious offending).¹⁴

¹³ The table excludes offences with a maximum penalty of less than five years and low volume offences where less than 200 people in total were charged between 2004 and 2008.

¹⁴ To make it easier to compare the data for the different offences, Table 4 presents the data on sentences imposed for offending on bail as a percentage of defendants that spent time on bail for that offence. This is different to the way the same kind of data is presented in section 4.5 and some other sections.

Table 4. Offending on bail by defendants charged with non-specified violent and sexual offences in the five year period 2004 -2008

Offence	Total number of defendants that spent time on bail in the five year period 2004 - 2008	Number (and %) of defendants that offended on bail	Number (and %) of defendants sentenced to imprisonment for offending on bail	Number (and %) of defendants sentenced to more than 2 years imprisonment for offending on bail
Demanding with intent to steal	650	191 (29.4%)	81 (12.5%)	6 (0.9%)
Aggravated burglary	711	197 (27.7%)	72 (10.1%)	12 (1.7%)
Kidnapping (including abduction for sex or marriage)	849	219 (25.8%)	91 (10.7%)	17(2.0%)
Assault with intent to rob	666	161 (24.2%)	67 (10.1%)	8 (1.2%)
Threaten to kill or cause grievous bodily harm	6697	1478 (22.1%)	521 (7.8%)	60 (0.9%)
Assault with a weapon	8180	1709 (20.9%)	549 (6.7%)	57 (0.7%)
Sexual conduct with youth under16	751	129 (15.2%)	56 (6.6%)	8 (0.9%)
Attempted sexual violation	374	56 (15.0%)	16 (4.3%)	1 (0.3%)
Indecent assault	3273	385 (11.8%)	113 (3.5%)	13 (0.4%)
Sexual conduct with child under 12	618	48 (7.8%)	19 (3.7%)	3 (0.5%)

126. Appendix 3 contains a more detailed summary, including a comparison with offences that are currently on the list of specified offences and information on conviction rates.

Preliminary view

127. The Government is considering whether to add new serious violent and sexual offences to the list of specified offences, and is interested in your views about the types of offences that should be added, and the criteria that should be used to identify the new offences. Adding new offences to the list will mean that a reverse burden of proof will apply if a defendant is charged with one of the original or new specified offences and has a previous conviction for one of those offences.

128. The Government's preliminary view is that the following criteria will be relevant when considering which offences should be included in the list of specified offences:

- rate of offending on bail (for example, at least 20% of defendants charged offend on bail);
- rate of imprisonment for offending on bail; and
- length of sentences of imprisonment imposed for offending on bail.

129. Adding to the list of specified offences is likely to result in a small increase in the number of defendants charged with specified offences that are remanded in custody, either for part or all of the time until their case is resolved. This will involve some additional cost and there is no guarantee that the defendants affected would have offended on

bail (as there is no foolproof way of identifying who will offend). The more offences that are added, the higher this cost will be.

Q5. What is your view on whether new offences should be added to the list of specified offences that qualify for a reverse burden of proof (if the defendant has a previous conviction for one of those offences)? What criteria should be used to assess which offences to add to the list of specified offences?

6.3 EM bail for defendants charged with serious violent and sexual offences

130. The Government is committed to improving public safety, and ensuring the criminal justice system addresses the needs of victims. Understandably, a victim of serious violent or sexual offending may be concerned for his or her safety where a defendant, who has been deemed enough of a risk to be remanded in custody, is released on EM bail. The Government wants to ensure that EM bail does not create an opportunity for a defendant charged with a serious violent or sexual offence to jeopardise the safety of others. This section looks at whether EM bail should continue to be an option for defendants charged with serious violent and sexual offences.¹⁵

EM bail for defendants charged with serious violent and sexual offences 2006 - 2010

131. Between 25 September 2006 (when EM bail was formally introduced as a condition of bail) and 31 December 2010, the Courts heard 1085 applications for EM bail from 984 defendants charged with serious violent and sexual offences. EM bail was granted in 537 of the 1085 cases (49.5%), to 514 defendants.

132. The rate of offending on bail by the 514 defendants granted EM bail was low (although some are still on EM bail). At the time this document was finalised, 30 defendants (5.8% of the defendants charged with serious violent and sexual offences that were granted EM bail) had been convicted of offences committed while on EM bail, and another 18 (3.5%) were facing charges for offences allegedly committed while on EM bail. The overall rate of offending on all types of bail by defendants charged with the same serious violent and sexual offences is 22.7%.¹⁶

133. The most common type of offending on EM bail by defendants charged with serious violent or sexual offences was property offending (a

¹⁵ In this section, a serious violent or sexual offence includes all offences in the list of specified offences discussed in paragraph 107, as well as all other violent and sexual offences in the Crimes Act 1961 that have a maximum penalty of five years imprisonment or more, and there have been 200 or more people charged between 2004 and 2008.

¹⁶ Between 2004 and 2008, 26,036 defendants charged with at least one serious violent or sexual offence spent at least some time on bail or at large. Of those, 5923 were convicted of an offence committed while on bail.

property offence was the most serious offence committed by 12 of the defendants), followed by low level violent offending (the most serious offence committed on EM bail by seven of the defendants).

134. Where a specific sentence was recorded for the offending on EM bail, only one of the sentences imposed was for two years imprisonment or more, indicating that the offending was serious.¹⁷ Table 5 outlines the ten most serious offences committed on EM bail, where a specific sentence for the offending on EM bail was recorded.¹⁸

Table 5. Ten most serious offences committed on EM bail by defendants charged with serious violent and sexual offending 2006 - 2010, where a specific sentence is recorded for the offending on EM bail

	Offence on EM bail (most serious)	Sentence (most serious) for offence committed on EM bail
1	Aggravated robbery	2 years 6 months imprisonment
2	Burglary	1 year 4 months imprisonment
3	Burglary	1 year imprisonment
4	Threatens to kill	10 months imprisonment
5	Theft of a motor vehicle	8 months imprisonment
6	Criminal nuisance (driving)	8 months imprisonment
7	Burglary	6 months imprisonment
8	Common assault	4 months imprisonment
9	Common assault	3 months imprisonment
10	Wilful damage	3 months imprisonment

135. Of the 18 defendants currently facing charges for offending on EM bail, three are facing serious violence charges and five face low level violence charges. Six defendants are facing charges for property offending, two face serious drugs charges, and two face low level drugs charges.

Preliminary view

136. Based on the relatively low rate of offending on EM bail by defendants charged with serious violent and sexual offending (5.8%), the Government's preliminary view is that these defendants should continue to be able to be released on EM bail at the discretion of the Court. Experience to date suggests that EM bail is a reasonably effective way of managing these defendants in the community.

¹⁷ A number of the shorter sentences of imprisonment may have been imposed because the offender was sentenced to imprisonment on the original charge; the Court has limited sentencing options other than imprisonment when a defendant is already serving a sentence of imprisonment or is being sentenced to imprisonment on other charges.

¹⁸ For 21 of the 30 defendants convicted of offending on EM bail, information is available about the specific sentence imposed for the offending on EM bail. For the remaining nine, an overall sentence may have been recorded for both the original offence and the offending on bail, rather than specified separate and discrete sentences for each offending event.

137. As discussed in section 6.2, the Government is considering adding to the list of specified offences that qualify for a reverse burden of proof (if the defendant has a previous conviction for one of those offences). This may mean that more defendants will be remanded in custody. In turn, this would likely result in more defendants applying for, and being granted EM bail.
138. If EM bail remains an option for defendants charged with serious violent and sexual offences, Police and the Ministry of Justice will continue to monitor the level of breaches and offending on bail by these defendants.

Q6. What is your view on whether electronically monitored bail should continue to be an option for defendants charged with serious violent and sexual offences?

7. BAIL FOR YOUNG DEFENDANTS UNDER 20 YEARS OF AGE

This section is about bail for young defendants and looks at whether:

- the presumption of bail for defendants under 20 should apply to those who have previously been sentenced to imprisonment;
- Police should be able to arrest young defendants for any breach of bail conditions (as they can with adults).

Background

139. For many years New Zealand's criminal justice system has required children and young people to be dealt with differently from adults because of their relative immaturity and vulnerability. This is an approach that is adopted internationally, and is recognised in the United Nations Convention on the Rights of the Child, to which New Zealand is a party.
140. Defendants under 17 at the time of the offence, and under 18 at the time the charges are laid, are generally dealt with by the Youth Court under the youth justice provisions of the Children, Young Persons, and Their Families Act 1989. One of the fundamental principles guiding Youth Court decisions, including bail decisions, is that children and young people should be kept in the community as far as this is practical and in keeping with public safety.
141. Defendants aged 17 or over at the time of the offence, or who were under 17 at the time of the offence and turn 18 before the charges are laid, are tried in the adult jurisdiction and bail decisions are made under the Bail Act. The Bail Act continues the protection of young defendants through a strong presumption in favour of bail for defendants aged 17 to 19 inclusive. A Court may only remand a defendant of this age in custody if it is satisfied that no other course of action is acceptable in the circumstances, or if a reverse burden of proof applies (see paragraphs 107 to 109).

7.1 The presumption of bail for defendants aged 17 to 19

142. The effect of the presumption in favour of bail for defendants aged 17 to 19 is that some are granted bail in circumstances where they would have been remanded in custody if they had been older. This includes defendants with a history of serious offending who may have served a prison sentence for prior offending.
143. The presumption is intended to prevent young defendants from being held in custody, both for their own safety and to prevent them from being exposed to more hardened criminals. However, it can be argued that these considerations carry less weight if a young defendant has

previously served a sentence of imprisonment. In addition, as the Courts generally try to avoid imprisoning young people, a sentence of imprisonment indicates that the previous offending was serious.

144. The proportion of young defendants with previous prison sentences is small. On average, between 2004 and 2008, this group made up less than 3% of all defendants aged 17 to 19 who had a decision on bail. 86% of these defendants spent at least some time on bail.
145. Table 6 outlines the rate and seriousness of offending on bail by young defendants aged 17 -19 that had a previous prison sentence, compared with those that did not (note that the figures cover a 5 year period). Almost half (48.6%) of the young defendants with a previous prison sentence were convicted of offending on bail, compared with less than a quarter (21.4%) of those with no previous prison sentence.
146. The offending on bail by young defendants with a previous prison sentence was also generally more serious than for those with no previous prison sentence. This is demonstrated by the much higher rate of imprisonment, including sentences of more than two years (which indicates serious offending) for offending on bail by young defendants with a previous prison sentence.

Table 6. Offending on bail by young defendants aged 17 -19 with or without a previous prison sentence, in the five year period 2004 - 2008

	No previous prison sentence	Previous prison sentence
Number that had a decision on bail	45625	1340
Number (and % of those that had a decision on bail) that spent time on bail	45327 (99.3%)	1153 (86.0%)
Number (and % of those that had a decision on bail) that were convicted of the original offence	32398 (71.5%) ¹⁹	1080 (93.7%)
Number (and % of those that spent time on bail) convicted of offending on bail	9707 (21.4%)	560 (48.6%)
Number (and % of those that spent time on bail) sentenced to imprisonment for offending on bail	2010 (4.4%)	354 (30.7%)
Number (and % of those that spent time on bail) sentenced to more than 2 years imprisonment for offending on bail	196 (0.4%)	25 (2.2%)

147. Appendix 5 contains a more detailed breakdown of the offences committed on bail by young defendants aged 17 to 19 between 2004 and 2008.

¹⁹ The much lower rate of conviction for young defendants without a previous prison sentence is likely to be due, in part, to those defendants being more likely to be discharged without conviction or to have minor charges withdrawn.

Preliminary view

148. Given the significantly higher rate of offending on bail by the small group of defendants aged 17 to 19 who have previously served a prison sentence, and the seriousness of that offending, the Government's preliminary view is that the presumption in favour of bail should not apply to these defendants.
149. If the presumption is removed for these defendants, the standard (adult) test for bail will apply (see section 4.5). It is likely that this will result in a small increase in the number of these defendants that are remanded in custody, either for part or all of the time until their case is resolved. This will involve some additional cost and there is no guarantee that the particular defendants affected would have gone on to offend on bail (as there is no foolproof way of identifying who will offend).

Q7. What is your view on whether the presumption in favour of bail for 17 to 19 year olds should apply to defendants who have previously served a prison sentence?

7.2 Arresting defendants under 17 years of age for breach of bail conditions

150. At present, if a defendant under 17 years of age breaches his or her bail conditions, Police can only arrest the defendant without a warrant if this is considered necessary to ensure that the defendant does not abscond, interfere with witnesses or evidence, or offend. Police can arrest an adult defendant without a warrant for any breach of a bail condition.
151. Arrest without a warrant (and the possibility of being remanded in custody) will usually be an option for a serious breach of bail conditions by a defendant under 17. However, for less serious breaches, there is little Police can do to address the breach.
152. The Government is considering whether to allow Police the option of arresting defendants under 17 without a warrant for *any* breach of conditions. In less serious cases, where Police are not currently able to arrest, this will allow Police to immediately stop the breach continuing and to consider whether to seek different or more stringent conditions from the Youth Court. It is important to note that this proposal does not affect the threshold for remanding young defendants in custody.

Preliminary view

153. The Government's preliminary view is that Police should be able to arrest defendants under the age of 17 without a warrant for any breach of bail conditions. This will allow Police to stop the breach continuing and to consider ways to address the defendant's behaviour.

154. However, given the relative immaturity and vulnerability of defendants of this age, the Government considers that this power needs to be subject to appropriate safeguards. The Government's preliminary view is that defendants under the age of 17 that are arrested without a warrant should be released as soon as practicable, and no more than 24 hours after arrest, unless a longer period is required to apply to the Youth Court:

- for different bail conditions for the purpose of preventing the young person absconding, interfering with witnesses or evidence, or offending on bail; or
- to have the defendant detained or remanded in custody.

This is consistent with other restrictions on detention of young people.

Q8. What is your view on whether breach of *any* condition of bail should be a ground for arresting a defendant under 17 years of age without a warrant?

8. ENSURING BAIL IS NOT GRANTED IN RETURN FOR INFORMATION

This section looks at whether the current policies and practices applying to decisions on whether to oppose bail are sufficient to prevent bail being granted inappropriately in return for information.

Background

155. In January 2008, a defendant in custody provided information to Police about the high profile theft of war medals from the Waiouru Army Museum. The defendant was subsequently released on bail, prompting speculation that Police had agreed to the defendant's release on bail in return for the information.
156. As a matter of policy, the Government considers it inappropriate and contrary to public safety for a defendant, who would otherwise be remanded in custody, to be released on bail simply because he or she had provided information to authorities. As part of its law and order policy leading up to the 2008 election, the Government stated that it would look into this issue and ensure that it did not happen.

Current policies and practices

157. Police advise that bail is not offered in return for information. However, in the normal course of Police considering whether to oppose bail, co-operation with authorities, especially in relation to the defendant's own case, will often be relevant. If a defendant is co-operative, this may indicate a lower risk that he or she will fail to appear in Court, interfere with witnesses or evidence, or offend while on bail. However, this must be considered in the context of all the relevant information about the defendant, such as his or her criminal history (if any).
158. Police also advise that there are operational safeguards to ensure that co-operation with authorities does not inappropriately influence decisions on whether to oppose bail. An important safeguard is the independent Police prosecutor's review of the investigating officer's decision on whether to oppose bail.
159. The investigating officer is responsible for making the initial decision on whether to oppose bail. If the investigating officer considers that bail should be opposed, he or she fills out Police's standard 'Grounds for Opposing Bail' form. Whether or not bail is opposed, the file is then forwarded to the Police prosecutor, who is independent of the investigation. The prosecutor makes the final decision on whether to oppose bail, sometimes taking into account discussions with the defendant's lawyer.
160. If bail is opposed, there is a further safeguard in that the Court will decide whether the defendant should be released on bail or remanded in custody (see section 4.4 for more information about how the Courts make decisions on bail).

Preliminary view

161. On the basis of the advice from Police, the Government's preliminary view is that the current policies and practices applying to decisions on whether to oppose bail are sufficient to prevent bail being granted inappropriately in return for information. However, to ensure that this continues to be the case, and to make it absolutely clear that bail is not to be granted in return for information, the Government's preliminary view is that a legislative provision to that effect should be inserted into the Bail Act 2000.

Q9. Do you think that any further requirements or safeguards are needed to prevent bail being granted inappropriately in return for information? If so, do you agree with the Government's proposal to insert a legislative provision into the Bail Act 2000 and are any other requirements or safeguards needed?

9. FAILURE TO ANSWER BAIL

This section is about defendants failing to answer bail (attend Court) and whether:

- the maximum penalty for failure to answer bail should be increased;
- monetary bonds and sureties should be reintroduced in the District Court.

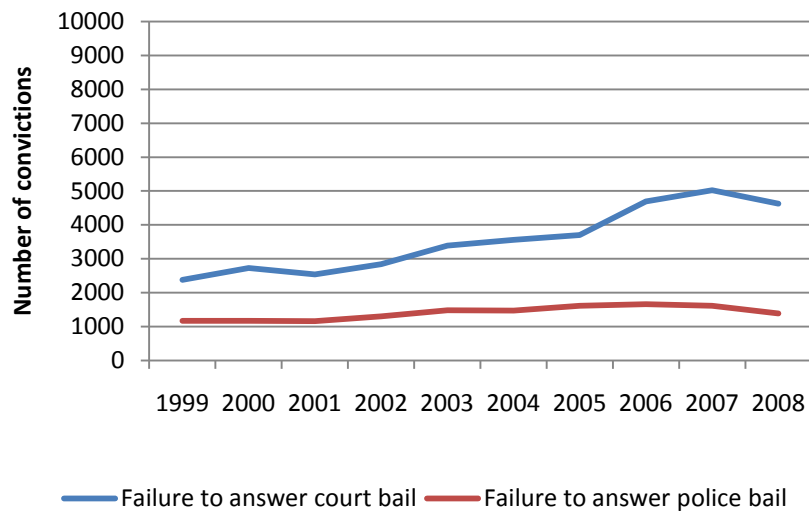
Background

162. A defendant 'fails to answer bail' if he or she does not appear in Court at the scheduled time. Failing to answer Police or Court bail is a criminal offence punishable by a fine of up to \$1000 for Police bail, or up to one year's imprisonment or a fine of up to \$2000 for Court bail. If a defendant fails to answer bail, a warrant is immediately issued for his or her arrest.
163. Many instances of failure to answer bail, especially early in the case, are not intentional or due to the defendant absconding. For example, a defendant might fail to attend Court because he or she is sick, forgets, is unable to arrange childcare on the day, or has not understood what is required of them (possibly because English is not their first language).
164. When a defendant fails to answer bail, he or she may make a 'voluntary appearance' at the Court at a later date. Voluntary appearances are intended to encourage defendants who miss their Court appearance to get in touch with the Court to get their case back on track. The general policy is that if a defendant makes a voluntary appearance, the Registrar will try to fit the defendant into the list Court for that day. If the list Court list is full, or has finished sitting for the day, the defendant will be told to return to the Court on the next available day, but is advised that the warrant to arrest still stands and that they may be arrested before that date.
165. Where failure to answer bail is not considered to be intentional, the defendant will be spoken to by Police and/or the Court. The defendant is not usually charged with failing to answer bail and, in most cases, will be released on bail again with a new hearing date. When a defendant absconds or repeatedly fails to attend Court, he or she will usually be charged with failure to answer bail and be remanded in custody.
166. The Government is concerned about the increase in the number of defendants failing to answer bail in the last decade. Failure to answer bail disrupts Court schedules and wastes judicial, Police and prosecution time and resources. In some situations, especially at the trial stage, a defendant's failure to attend Court will also significantly inconvenience victims, witnesses and jurors.

Failure to answer bail 1999 - 2008

167. The Ministry of Justice is responsible for the day to day running of the Courts. The Ministry has observed a significant increase in the number of people failing to answer bail over the last decade, especially in major centres. However, the extent of the increase cannot be quantified except in relation to those convicted of failure to answer bail, which only represent a small percentage of those that fail to answer bail.
168. Figure 14 shows that the number of people convicted of failure to answer Court bail (blue line) doubled over the decade 1999 to 2008. The number rose from 2384 in 1999 to a high of 5028 in 2007.
169. The number of people convicted of failure to answer Police bail (red line) also increased by about 40% over the decade, from 1170 in 1999 to 1615 in 2007.
170. The number of convictions for failure to answer bail dropped in 2008, but it remains to be seen whether this trend will continue.

Figure 14. Number of people convicted of failure to answer bail in the ten year period 1999 - 2008



171. Part of the increase in the number of people that fail to answer bail is simply due to more people being prosecuted. However, the Ministry of Justice and Police, who are responsible for monitoring defendants on bail, consider that part of the increase may also be due to:
- **The policy on voluntary appearances:** the general policy is that if a defendant makes a voluntary appearance, the Registrar will try to fit the defendant into the list Court for that day. Over time, this policy may have resulted in a small group of defendants adopting a casual attitude to attending Court hearings.
 - **Sentences for failure to answer bail:** failure to answer bail often results in a conviction and discharge with no additional penalty being added to the sentence for the primary offending. In many cases, this is likely to be due to the Court treating failure to

answer bail as an aggravating factor in sentencing for the primary offence, rather than as a separate offence. However, this may create a perception that there are no consequences for failing to answer bail.

- **Longer Court waiting times:** longer daily Court lists in large Courts may have resulted in some defendants leaving before their case is heard.

172. In addition, Police consider that part of the increase in the number of people being convicted of failure to answer bail may be due to changes in Police practice. Police are now more likely to charge a defendant for failing to answer bail because the Bail Act (which came into force on 1 January 2001) allows this to be recorded on the defendant's bail history for use at future bail hearings. Police consider that the figures in recent years probably more closely reflect the real size of the problem.

9.1 Initiatives to address failure to answer bail

173. There are several current and planned initiatives that may directly or indirectly reduce the number of defendants who fail to answer bail, or may reduce the waste and inconvenience that this causes.

Criminal Procedure (Simplification) Project

174. The Ministry of Justice and the Law Commission have been working on a range of comprehensive reforms to criminal procedure through the Criminal Procedure (Simplification) Project. Ultimately, these reforms are intended to make Court processes more efficient and to remove unnecessary hearings, complexity and delay. The Criminal Procedure (Reform and Modernisation) Bill, which gives effect to many of these reforms, was introduced to Parliament on 15 November 2010.²⁰

175. A faster, less complex system may indirectly reduce the number of defendants that fail to answer bail. For example, the fewer hearings a defendant has to attend, the fewer opportunities they have to fail to answer bail. In addition, the following proposals will help lessen the inconvenience and waste caused by a defendant failing to answer bail.

Proceeding in the absence of the defendant

176. One of the Project's proposals is to create a presumption that the Court will continue with a case when the defendant is not present (because, for example, he or she has absconded). Some Courts already do this.

177. The proposal is that once a defendant has entered a plea, the Court will continue proceedings (but not sentencing) in the defendant's

²⁰ More information about the Criminal Procedure (Simplification) Project is available from www.justice.govt.nz and www.lawcom.govt.nz, and more information about the Criminal Procedure (Reform and Modernisation) Bill is available from www.beehive.govt.nz and www.parliament.nz.

absence unless this would be contrary to the interests of justice. This will lessen the inconvenience and waste caused by a defendant failing to answer bail because the case will continue in the defendant's absence.

Registrars' powers to withdraw warrants to arrest

178. Another of the Project's proposals is to clarify Registrars' power to withdraw a warrant to arrest, issued after a defendant has failed to appear at Court on less serious charges, if the defendant subsequently makes a voluntary appearance at a Courthouse.
179. At present the legislation is unclear about Registrars' power to withdraw warrants and so Registrars seldom use the power. Clarifying Registrars' powers to withdraw warrants so that they do use them would lessen the inconvenience and waste caused by a defendant failing to answer bail by allowing the case to be re-scheduled to another date without the defendant having to go before the list Court.

Incentives and sanctions to promote compliance with procedural obligations

180. The Project also includes proposals to provide incentives and sanctions for parties that continually or unreasonably fail to do what is required of them or needlessly prolong criminal proceedings. Proposals include:
- cost orders if the Court is satisfied that a person has not complied with a procedural requirement without a good excuse;
 - bail conditions that require the defendant to take the steps necessary to progress their case in a reasonable timeframe which, if breached, will enable the Court to reconsider bail, vary conditions, or remand the defendant in custody;
 - enabling a Court to take into account an offenders' repeated and/or unreasonable non-compliance with procedural matters as an aggravating factor in sentencing, and any positive steps taken by the offender to expedite or avoid any undue costs in their case as a mitigating factor.

Police review of warrants to arrest

181. New Zealand Police has undertaken a review of how it deals with warrants to arrest. As a result of the review, by mid 2011 Police intends to introduce a number of improvements, including an electronic case management system, updated procedural guidelines, and a process that prioritises warrants to arrest on the basis of the defendant's risk.
182. The new systems and processes will mean that warrants for higher risk defendants, including those who have failed to answer bail, will receive a faster and more intense response. This is expected to reduce the ability and incentive to abscond.

Maximum penalties for failure to answer bail

183. Failure to answer Court bail is punishable by up to one year's imprisonment or a fine of up to \$2000. Failure to answer Police bail is currently punishable by a fine of up to \$1000. The maximum penalty for failure to answer Court bail is higher because failure to comply with a direction of a Court is considered to be more serious than failure to comply with a direction of a member of the Police. In addition, Police bail is only intended to be a short term measure until the person can be brought before a Court.
184. The Government is considering whether to increase the maximum penalty for failure to answer bail to deter non-compliance.

Preliminary view

185. The Government's preliminary view is that, when viewed in conjunction with the initiatives discussed above, the existing maximum penalty for failure to answer Court bail is appropriate to address the issues caused by a defendant failing to turn up to Court.²¹ However, the Government considers the existing penalty for Police bail to be inadequate.
186. Failure to answer Police bail is currently a fine only offence (i.e. no other kind of sentence can be imposed). The Government does not consider that this provides a sufficient deterrent, or is a sufficient sanction in the most serious cases, which will usually be where the defendant has absconded.
187. The Government's preliminary view is that failure to answer Police bail should be punishable by up to three months imprisonment, as an alternative to the existing \$1000 maximum fine. This would also give the Courts the option of imposing a community-based sentence (such as community work) or a sentence of home detention, or increasing one of these sentences imposed for other offending.
188. In reality, this proposal may simply bring the law into step with existing practice. In some cases, it appears that the courts are taking failure to answer Police bail into account in setting community-based sentences or sentences of imprisonment for other offending (which the maximum penalty for failure to answer Police bail technically prohibits the Courts from doing). In the sentencing information for failure to answer Police bail between 1999 and 2008, 11.7% of defendants are recorded as receiving a community-based sentence and 5.5% are recorded as receiving a sentence of imprisonment or a sentence of home detention. Proportions of this size are unlikely to be due to data entry error.

²¹ The existing maximum penalty is also in line with penalties for similar offences. For example, it is identical to the maximum penalty for breach of parole conditions.

- Q10. Are there any other non-legislative measures that could be used to reduce the number of defendants that fail to answer bail?
- Q11. What is your view on whether the maximum penalty for failure to answer Court bail should be increased? If you think it should be increased, what should it be increased to?
- Q12. What is your view on whether the maximum penalty for failure to answer Police bail should be increased? If you think it should be increased, what should it be increased to?

9.2 Monetary bonds and sureties in the District Court

189. The reintroduction of monetary bonds and sureties in the District Court is sometimes suggested as a method for reducing failure to answer bail.
190. A monetary bond is a guarantee from the defendant that he or she will attend Court. The defendant usually deposits money with the Court but in some cases the defendant's bond is a promise to pay a certain amount if he or she does not attend Court.
191. A surety is a guarantee from someone other than the defendant - such as a parent or friend - that he or she will pay a specified amount if the defendant does not attend Court. The person who gives the guarantee is also referred to as a "surety".
192. Monetary bonds and sureties are currently available for Police bail and bail granted by the High Court. Police advise that monetary bonds and sureties are seldom, if ever, imposed for Police bail because they are difficult to enforce. The High Court occasionally imposes monetary bonds and sureties, but these are often for significant sums (usually at least \$1000 and often \$10,000 or more) and are usually part of a wider package of conditions.
193. Monetary bonds and sureties are not available in the District Court, which makes the vast majority of bail decisions. In 1987, monetary bonds and sureties were abolished in the District Court for the following reasons:
- **Effectiveness not established:** No research in New Zealand at the time indicated that monetary bonds or sureties reduced failure to answer bail or offending on bail.
 - **Potentially discriminatory:** Monetary bonds and sureties potentially discriminate against those on a low income and those with few community links, or whose friends or relatives have little money. It also gives the perception that justice can be bought if a person who can arrange a bond or surety is released on bail when an identical person who cannot is remanded in custody.

- **Undesirable lending practices:** There was (and is) international evidence that monetary bonds and sureties can lead to undesirable lending practices involving organised criminal groups. For example, a person who cannot obtain a loan for a bond or surety from a legitimate lender may turn to an organised criminal group for help. This may mean the person has to pay an excessive amount of interest or is forced to engage in illegal activities in return for the loan.
 - **Difficult to enforce:** The defendant or surety may not actually have sufficient funds to satisfy the monetary bond or surety if the defendant fails to attend Court. In addition, monetary bonds and sureties are very costly to administer and enforce. Under the current law (which also applied prior to 1987), Court proceedings are required to determine what proportion of the bond or surety should be forfeited to the Crown. The decision must be made having regard to “equity and good conscience and the merits of the case” including, in the case of sureties, the surety’s efforts to ensure the defendant did not abscond. Monetary bonds and sureties imposed in the District Court were seldom enforced because the amounts of money involved were generally small.
194. At the same time that monetary bonds and sureties were abolished in the District Court, it became a criminal offence for a defendant to fail to answer bail.
195. When the District Court declines bail in a case where a monetary bond or surety may have tipped the decision in favour of bail, the defendant can appeal to the High Court, which can impose a bond or surety.

Preliminary view

196. The Government’s preliminary view is that many of the issues that underpinned the abolition of monetary bonds and sureties in the District Court in 1987 remain relevant today, although it would welcome any evidence suggesting that this is not the case.
197. Overall, the Government considers that the offence of failure to answer bail is a better method of encouraging defendants to attend Court and sanctioning non-compliance than monetary bonds and sureties. However, the Government acknowledges the benefit of having those options available in the High Court in appropriate cases. In addition, the Government is mindful of the need to supplement the offence of failure to answer bail with other initiatives, such as those in paragraphs 174 to 182.
198. If monetary bonds and sureties are not to be reintroduced in the District Court, the Government also considers that they should be abolished for Police bail. From a constitutional perspective, the Government considers it inappropriate for Police to be able to require a monetary bond or surety in a situation where the District Court cannot. In addition, monetary bonds and sureties are seldom, if ever, imposed for Police bail.

Q13. What is your view on whether monetary bonds and sureties should be reintroduced in the District Court?

Q14. What is your view on whether monetary bonds and sureties should be abolished for Police bail?

10. LEGISLATION FOR ELECTRONICALLY MONITORED BAIL

This section looks at electronically monitored bail and whether there should be legislation governing its use and, if so, what the legislation should contain.

Background

199. Electronically monitored bail (EM bail) is a bail condition that requires a defendant to stay at a particular residence at all times unless absent for an approved purpose, such as work. Compliance is monitored through an electronic bracelet attached to the defendant's ankle.
200. EM bail is intended to be an alternative to remand in custody. It is a particularly useful option in cases where there is a long time between when the charge is laid and when the matter comes to trial. In these situations EM bail can help to ensure a more appropriate balance between maintaining public safety and giving effect to the defendant's rights to be presumed innocent until proven guilty and not be arbitrarily detained.
201. EM bail can be a very restrictive condition. It is significantly more expensive to run than standard bail, but less expensive than remand in custody. To ensure that EM bail is used as an alternative to remand in custody, rather than in cases where standard bail is sufficient, the general policy is that only defendants who have already been remanded in custody can apply for EM bail (although there is no legislative restriction to this effect).
202. Police employees called EM Bail Assessors are responsible for running EM bail. They assess the feasibility of applications for EM bail (e.g. whether the equipment will work at the proposed residence), provide reports to the Court, and monitor defendants on EM bail. EM Bail Assessors are in regular contact with defendants on EM bail to monitor compliance with conditions, including attendance at Court.

EM Bail in practice 2006 - 2010

203. Between 25 September 2006 (when EM bail was formally introduced as a condition of bail) and 31 December 2010, the Courts heard 2254 applications for EM bail from 2039 defendants. EM bail was granted in 1135 of the 2254 cases (50%), to 1079 defendants.
204. As at 31 December 2010, there were 175 people on EM bail across the country and the average period that defendants spent on EM bail was just over 132 days (around four and a half months).

Offending on EM bail

205. At the time this consultation document was finalised, 75 (7.0%) of the 1079 defendants released on EM bail between 25 September 2006 and 31 December 2010 had been convicted of offending on EM bail (some

are still on EM bail). This is significantly lower than the average rate of offending on all types of bail in the period 2004 - 2008, which was 17.0% (see paragraph 69).

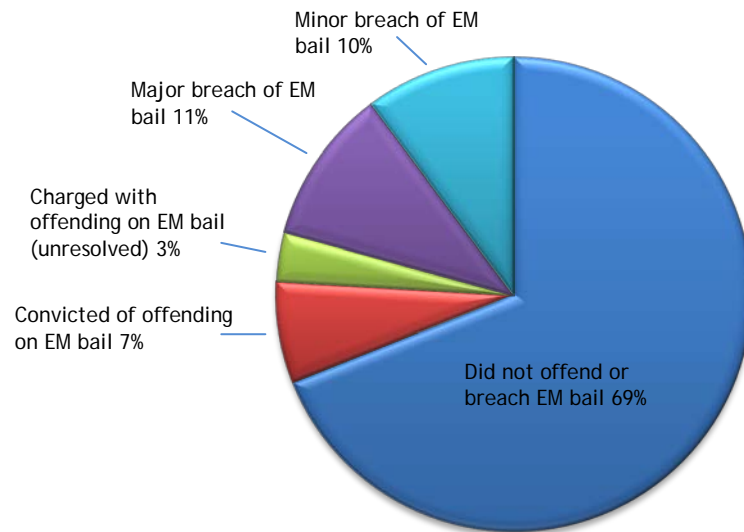
206. Another 36 defendants (3.3%) were facing charges for offending alleged to have been committed while they were on EM bail. One defendant with an existing conviction for offending on EM bail was also facing further charges for alleged offending on EM bail.
207. Of the 75 defendants convicted of offending on EM bail, 53 (70.6%) were sentenced to imprisonment.²² The majority of the prison sentences (67.9%) were for one year or less and many were cumulative on, or concurrent with, a prison sentence imposed for the original offending for which the defendant was on bail.

Breaches of EM bail

208. Police classify breaches of EM bail into two categories; major and minor breaches. Major breaches are those that are likely to result in the defendant being remanded in custody and generally involve absconding, actual or attempted interference with witnesses or evidence, or alleged offending. Aside from those charged or convicted for offending committed while on EM bail (see previous section), between 25 September 2006 and 31 December 2010, 114 defendants committed at least one major breach of EM bail.
209. Minor breaches are those that are more likely to result in a warning than remand in custody, such as breach of a condition not to consume alcohol. Between 25 September 2006 and 31 December 2010, 110 defendants committed at least one minor breach of EM bail (and were not charged with, or convicted of offending on EM bail, and did not also commit a major breach).

²² A number of the shorter sentences of imprisonment may have been imposed because the offender was sentenced to imprisonment on the original charge; the Court has limited sentencing options other than imprisonment when a defendant is already serving a sentence of imprisonment or is being sentenced to imprisonment on other charges.

Figure 15. Proportion of defendants who offended on, or breached EM bail 25 September 2006 - 31 December 2010 (by most serious action)



Should there be a legislative regime for EM bail?

210. EM bail is not specifically covered in legislation. The Bail Act 2000 gives the Courts a generic power to impose bail conditions and EM bail is imposed as a condition under that power. The risk of continuing to use the generic power to impose EM bail is that inconsistent practices may develop in different parts of the country. For example, different Courts may develop different practices around when it is appropriate to grant EM bail.

Preliminary view

211. The Government's preliminary view is that there is value in putting the EM bail regime in legislation because this would make the processes for EM bail more consistent and transparent, and would ensure that EM bail is only used in appropriate cases.

Q15. What is your view on whether the EM bail regime should be set out in legislation?

What should legislation for EM bail cover?

212. The Government's preliminary views on the main matters to be set out in any legislation for EM bail are outlined below. These views reflect the way EM bail currently works in practice and draw from the legislative regime for the sentence of home detention, which is similar to EM bail in many ways.

Preliminary view

When the Court can impose EM bail

213. The Government considers that legislation should specify the circumstances in which a Court may impose EM bail. The

Government's preliminary view is that a Court should be able to impose EM bail if:

- the defendant has been remanded in custody. This is to ensure that EM bail is not imposed in cases where standard bail is sufficient;
- EM bail will adequately address the concerns that led to the defendant being remanded in custody. For example, EM bail may reduce the risk that the defendant will abscond to an acceptable level; and
- the Court is satisfied that:
 - the proposed residence is suitable, including being close enough to a 24 hour Police station and having adequate signal for the monitoring equipment;
 - the other people living at the residence understand what EM bail involves, consent to the defendant living at the residence, and have been informed that they may withdraw consent at any time; and
 - the defendant has been made aware of, understands, and agrees to comply with the requirements of EM bail.

Standard conditions of EM bail

214. Police have developed a set of standard conditions for EM bail. When a Court releases a defendant on EM bail, it usually imposes these conditions at the request of the prosecutor. The standard conditions include a requirement that the defendant not leave the EM bail residence at any time except:

- as authorised by the Court (for example, to go to work or to a treatment programme);
- to attend scheduled Court appearances;
- to seek urgent medical or dental treatment;
- to avoid or minimise a serious risk of death or injury to him or herself or any other person; or
- to surrender him or herself to Police custody.

215. A full list of the standard conditions of EM bail is attached as Appendix 6. The Court may also impose any other bail conditions sought by the prosecutor or that the Court itself considers necessary. The Government's preliminary view is that the standard conditions of EM bail should be in legislation.

Breach of EM bail not an offence

216. EM bail is a condition of bail. With the exception of failing to answer bail, breach of a condition of bail is not a criminal offence, although breach is a ground for arresting the defendant and bringing him or her back before the Court for bail to be reconsidered. As outlined in paragraph 57, this is because it is considered unfair to punish a person for breach of a bail condition when they have not been found guilty of the original charge for which they were on bail.

217. The Government considers that breach of EM bail should continue to be dealt with in the same way as breach of any other condition of bail, and that this should be made clear in any legislation.

Q16. What is your view on whether breach of EM bail should be an offence in addition to being a ground for arrest and reconsideration of bail?

Taking EM bail into account at sentencing

Should the Court reduce a defendant's sentence for time spent on EM bail?

218. In most cases, the Courts do not take time spent on bail into account at sentencing. However, the Courts have given sentence reductions in cases where the defendant has been subject to very restrictive bail conditions in the time leading up to trial. Sentence reductions are often given for time spent on EM bail because it can be more restrictive than any other form of bail and in some cases, is similar to the sentence of home detention.²³

Preliminary view

219. The Government's preliminary view is that, because EM bail can be so restrictive, legislation should outline whether and how the Courts should take time spent on EM bail into account when sentencing the defendant.

Q17. What is your view on whether time spent on EM bail should be taken into account in sentencing?

How should time spent on EM bail be taken into account?

220. Where an offender has spent time remanded in custody prior to being sentenced to a period of imprisonment, the days spent on remand are automatically counted as time served on the sentence. The Court does not discount the sentence imposed; instead the time served is calculated by the Department of Corrections when the offender is committed to prison at the beginning of their sentence.
221. The restrictiveness of EM bail conditions will vary from case to case. In one situation the defendant could be subject to 24 hour detention in the home, while in another, the defendant may continue working and be subject to what is essentially an evening curfew. For this reason, the approach in cases where the defendant is remanded in custody will generally not be appropriate in cases involving EM bail.
222. The Sentencing Act 2002 contains the principles and purposes of sentencing, which guide the Court during sentencing decisions. While

²³ In *R v Keown* [2010] NZCA 492 (29 October 2010), the Court noted that the EM bail will not necessarily always be more restrictive than any other form of bail, or akin to home detention. The principles that apply to determining whether or not a discount should be allowed for time spent on restrictive EM bail have also been applied where the offender has been subject to restrictive bail conditions outside of the EM bail regime, such as a 24 hour curfew.

sentences must be consistent with these principles and purposes, the Courts generally have discretion to adjust a sentence to the circumstances of the particular offence and offender. The weight attributed to each relevant factor in sentencing (and the corresponding amount by which a sentence should be increased or decreased) is not quantified in legislation.

223. While it is a well-established principle that time spent on a restrictive bail regime may warrant a discount, the Courts have resisted any mathematical or formulaic approach. An evaluative approach has been preferred, where the Court assesses the actual restrictions in a given case and the degree of compliance with them.
224. The Ministry of Justice has reviewed the available High Court and Court of Appeal decisions in cases where the offender spent a period of time on EM bail. In some cases, significant periods of time on EM bail were relevant to the Court's decision to impose a non-custodial sentence rather than imprisonment. In cases where the offender was sentenced to imprisonment and a specific discount was given for time spent on EM bail, the discount was usually between half and two-thirds of the time spent on EM bail.²⁴
225. An example of a case where the Court gave a specific discount for time spent on EM bail is *R v Potoru*.²⁵ In that case, the offender pleaded guilty to charges of supplying class A drugs, and possessing class A and B drugs for supply. The offending was of a commercial nature, but was low level and undertaken to fund the offender's own habit. From a starting point of three years, the judge deducted six months for the offender's guilty plea and a further six months for almost ten months spent on EM bail during which the offender had "meticulously observed" his conditions.
226. Since November 2008, the United Kingdom has had a legislative regime for crediting time spent on EM bail against a prison sentence.²⁶ When sentencing an offender, the Court must give the offender a half day credit for every day that the offender was on EM bail and required to be at the residence for at least nine hours. This does not apply where:
- the Court considers that the offender should not receive credit for some or all of the days spent on EM bail; in particular, the Court must take into account whether or not the offender breached his or her conditions; or
 - the Secretary of State for Justice makes a rule to that effect.²⁷

²⁴ In some cases the Court gave a global discount for all mitigating factors and did not specify the amount that was due to time spent on EM bail.

²⁵ 14 September 2007, Auckland High Court, Rodney Hansen J.

²⁶ See section 240A of the Criminal Justice Act 2003 (UK), as inserted by the Criminal Justice and Immigration Act 2008 (UK).

²⁷ The Secretary of State for Justice is the equivalent of New Zealand's Minister of Justice.

Preliminary view

227. The Government's preliminary view is that some guidance should be provided in legislation to assist the Court in exercising its discretion to decide on the amount of the discount (if any) for time spent on EM bail. For example, the Court could be required to consider the following factors:

- the length of time the defendant spent on EM bail;
- the relative severity of the conditions imposed; and
- the defendant's compliance with the conditions.

228. The Government prefers this approach to providing a set formula, such as one day on EM bail equalling half a day in custody. A set formula may provide further consistency but can also lead to unjust results. For example, a defendant who complies with all bail conditions could receive the same discount as another defendant who has seriously breached their conditions.

Q18. If time spent on EM bail is taken into account in sentencing, should there be some legislative guidance to assist the Courts in determining the appropriate discount (e.g. a set formula or guidelines specifying the types of factors relevant to deciding how time spent on EM bail should be taken into account)?

Appendix 1: Bail and remand in custody of defendants charged with serious violent or sexual offences 2004 - 2008

The following table contains a breakdown of bail and custody by offence for defendants charged with the most serious violent and sexual offences (excluding low volume offences for which less than 200 people were charged between 2004 and 2008). The table is sorted by the proportion remanded in custody only, from highest to lowest.

Table A.1. Proportion of defendants charged with serious violent or sexual released on bail or remanded in custody by offence 2004 - 2008

Offence	Total charged	Proportion of defendants released on bail or remanded in custody		
		Custody only	Bail and custody	Bail only
Murder	334	211 (63.2%)	105 (31.4%)	18 (5.4%)
Attempted murder	257	141 (54.9%)	68 (26.5%)	48 (18.7%)
Aggravated wounding or injury	222	120 (54.1%)	48 (21.6%)	54 (24.3%)
Use firearm in crime/ against a law enforcement officer	247	124 (50.2%)	92 (37.2%)	31 (12.6%)
Kidnapping (including abduction for sex/marriage)	1451	602 (41.5%)	540 (37.2%)	309 (21.3%)
Manslaughter	226	92 (40.7%)	52 (23.0%)	82 (36.3%)
Aggravated burglary	1050	339 (32.3%)	338 (32.2%)	373 (35.5%)
Attempted sexual violation	559	185 (33.1%)	170 (30.4%)	204 (36.5%)
Aggravated robbery	4049	1238 (30.6%)	1352 (33.4%)	1459 (36.0%)
Assault with intent to rob	906	240 (26.5%)	290 (32.0%)	376 (41.5%)
Robbery	1765	456 (25.8%)	521 (29.5%)	788 (44.6%)
Wounding with intent	3532	898 (25.4%)	1158 (32.8%)	1476 (41.8%)
Demanding with intent to steal	849	199 (23.4%)	246 (29.0%)	404 (47.6%)
Injuring with intent	5310	1090 (20.5%)	1385 (26.1%)	2835 (53.4%)
Sexual violation	3150	620 (19.7%)	1188 (37.7%)	1342 (42.6%)
Threaten to kill or cause grievous bodily harm	8235	1538 (18.7%)	1924 (23.4%)	4773 (58.0%)
Sexual conduct with a child under 12	736	118 (16.0%)	198 (26.9%)	420 (57.1%)
Indecent assault	3796	523 (13.8%)	954 (25.1%)	2319 (61.1%)
Assault with a weapon	9448	1268 (13.4%)	1855 (19.6%)	6325 (66.9%)
Sexual conduct with a young person under 16	969	118 (12.2%)	262 (27.0%)	589 (60.8%)

Appendix 2: Offending on bail 2004 - 2008: All defendants

Table A2.1 Offending on bail 2004 - 2008 by category of most serious offence and most serious sentence

Most serious offence committed on bail	Total defendants convicted of offending on bail	Most serious sentence imposed for offending on bail						
		Imprisonment	Home detention	Community based	Monetary	Deferment	Discharge	Other
Violent offences	8581	4063	193	3134	502	409	277	3
Other offences against the person	1400	265	8	542	229	181	175	-
Property offences	18470	7230	472	7094	2335	592	740	7
Drug offences	4032	1241	132	1405	786	115	353	-
Offences against the administration of justice	7258	2271	136	2452	193	364	1842	-
Offences against good order	5552	638	26	1324	2025	609	929	1
Traffic offences	17365	3347	354	6081	5884	32	869	798
Miscellaneous offences	1986	201	13	133	1326	35	278	-
Unknown	15	-	-	-	10	-	2	3
Total	64659	19256	1334	22165	13290	2337	5465	812

Table A2.2 Sentences of imprisonment imposed for offending on bail 2004 - 2008 by category of most serious offence committed on bail and length of imprisonment

Most serious offence committed on bail	Total sentenced to imprisonment	Length of imprisonment					
		0 - 6mths	6 - 12mths	1 - 2 yrs	2 - 3 yrs	3 - 5 yrs	>5 yrs or indefinite
Violent offences	4063	1655	818	651	395	303	241
Other offences against the person	265	196	30	23	3	12	1
Property offences	7230	3541	1741	1316	460	152	20
Drug offences	1241	589	152	191	138	113	58
Offences against the administration of justice	2271	2076	144	39	10	2	-
Offences against good order	638	575	43	18	2	-	-
Traffic offences	3347	2178	833	316	17	3	-
Miscellaneous offences	201	89	49	47	12	4	-
Total	19256	10899	3810	2601	1037	589	320

Appendix 3: Offending on bail 2004 - 2008: Defendants charged with specified and non-specified offences

Table A3.1 Offending on bail by defendants charged with specified serious violent and sexual offences 2004 - 2008

Offence	Prosecutions and convictions				Offending on bail				
	Total prosecuted	Number (and %) convicted of offence	Number (and %) convicted of any offence (same case)	Number (and % of total prosecuted) that spent time on bail	Number (and % of total that spent time on bail) that offended on bail	Number (and % of total that spent time on bail) sentenced to imprisonment for offending on bail	Number (and % of total that spent time on bail) sentenced to more than 2 years' imprisonment		
							2 - 3 yrs	3 - 5 yrs	>5 or indef
Murder	334	158 (47.3%)	203 (60.8%)	123 (36.8%)	14 (11.4%)	7 (5.7%)	-	-	1 (0.8%)
Attempted murder	257	48 (18.7%)	118 (45.9%)	116 (45.1%)	20 (17.2%)	6 (5.2%)	-	-	1 (0.9%)
Manslaughter	226	152 (67.3%)	175 (77.4%)	134 (59.3%)	12 (9.0%)	3 (2.2%)	-	-	-
Sexual violation	3150	1291 (41.0%)	1660 (52.7%)	2530 (80.3%)	408 (16.1%)	129 (5.1%)	6 (0.2%)	4 (0.2%)	9 (0.4%)
Aggravated robbery	4049	1747 (43.1%)	2029 (50.1%)	2811 (69.4%)	669 (23.8%)	263 (9.4%)	14 (0.5%)	11 (0.4%)	4 (0.1%)
Robbery	1765	855 (48.4%)	995 (56.4%)	1309 (74.2%)	366 (28.0%)	132 (10.1%)	6 (0.5%)	7 (0.5%)	4 (0.3%)
Wounding with intent	3532	1473 (41.7%)	1858 (52.6%)	2634 (74.6%)	604 (22.9%)	212 (8.0%)	13 (0.5%)	5 (0.2%)	5 (0.2%)
Injuring with intent	5310	2465 (46.4%)	3152 (59.4%)	4220 (79.5%)	942 (22.3%)	354 (8.4%)	16 (0.4%)	12 (0.3%)	9 (0.2%)
Aggravated wounding/injury	222	93 (41.9%)	145(65.3%)	102 (45.9%)	26 (25.5%)	13 (12.7%)	1 (1.0%)	-	-
Use firearm in crime	247	68 (27.5%)	155 (62.8%)	123 (49.8%)	31 (25.2%)	17 (13.8%)	1 (0.8%)	2 (1.6%)	1 (0.8%)

Table A3.2 Offending on bail by defendants charged with non-specified serious violent and sexual offences 2004 - 2008

Offence	Prosecutions and convictions				Offending on bail				
	Total prosecuted	Number (and %) convicted of offence	Number (and %) convicted of any offence (same case)	Number (and % of total prosecuted) that spent time on bail	Number (and % of total that spent time on bail) that offended on bail	Number (and % of total that spent time on bail) sentenced to imprisonment for offending on bail	Number (and % of total that spent time on bail) sentenced to more than 2 years' imprisonment		
							2 - 3 yrs	3 - 5 yrs	>5 or indef
Attempted sexual violation	559	199 (35.6%)	338 (60.5%)	374 (66.9%)	56 (15.0%)	16 (4.3%)	1 (0.3%)	-	-
Sexual conduct with child <12	736	382 (51.9%)	460 (62.5%)	618 (84.0%)	48 (7.8%)	19 (3.1%)	-	1 (0.2%)	2 (0.3%)
Sexual conduct with youth <16	969	593 (61.2%)	679 (70.1%)	851 (87.8%)	129 (15.2%)	56 (6.6%)	3 (0.4%)	2 (0.2%)	3 (0.4%)
Indecent assault	3796	2015 (53.1%)	2298 (60.5%)	3273 (86.2%)	385 (11.8%)	113 (3.5%)	4 (0.1%)	6 (0.2%)	3 (0.1%)
Assault with intent to rob	906	370 (40.8%)	465 (51.3%)	666 (73.5%)	161 (24.2%)	67 (10.1%)	2 (0.3%)	3 (0.5%)	3 (0.5%)
Aggravated burglary	1050	369 (35.1%)	587 (55.9%)	711 (67.7%)	197 (27.7%)	72 (10.1%)	8 (1.1%)	1(0.1%)	3 (0.4%)
Demanding with intent to steal	849	423 (49.8%)	509 (60.0%)	650 (76.6%)	191 (29.4%)	81 (12.5%)	6 (0.9%)	-	-
Kidnapping (including abduction for sex or marriage)	1451	503 (34.7%)	853 (58.8%)	849 (58.5%)	219 (25.8%)	91 (10.7%)	12(1.4%)	3(0.4%)	2(0.2%)
Threaten to kill/GBH	8235	3282 (39.9%)	5399 (65.6%)	6697 (81.3%)	1478 (22.1%)	521 (7.8%)	32 (0.5%)	17(0.3%)	11 (0.2%)
Assault with a weapon	9448	4022 (42.6%)	5764 (61.0%)	8180 (86.6%)	1709 (20.9%)	549 (6.7%)	29 (0.4%)	21(0.3%)	7 (0.1%)

Appendix 4: Offending on bail 2004 - 2008: Defendants charged with serious class A drug offences*

*Serious class A drug offences are supply and possession for supply, manufacture, and importing or exporting.

Table A.4.1 Offending on bail by defendants charged with serious class A drug offences 2004 - 2008 by category of most serious offence and most serious sentence

Most serious offence committed on bail	Total class A defendants convicted of offending on bail	Most serious sentence imposed for offending on bail						
		Imprisonment	Home detention	Community based	Monetary	Deferment	Discharge	Other
Violent offence	44	20	-	12	5	3	4	-
Other offence against the person	4	-	-	-	1	3	-	-
Property offence	103	48	5	26	15	5	4	-
Drug offence	256	166	10	25	32	1	22	-
Offence against the administration of justice	61	19	-	10	3	2	27	-
Offence against good order	23	7	-	2	6	2	6	-
Traffic offence	152	36	4	25	49	-	14	24
Miscellaneous offence	23	13	1	3	2	1	3	-
Unknown	2	-	-	-	-	-	1	1
Total (and percentage of total convicted of offending on bail)	668 (100%)	309 (46.3%)	20 (3.0%)	103 (15.4%)	113 (16.9%)	17 (2.5%)	81 (12.1%)	25 (3.7%)

Table A.4.2 Sentences of imprisonment imposed for offending on bail by defendant charged with serious class A drug offences 2004 - 2008 by category of most serious offence committed on bail and length of imprisonment

Most serious offence committed on bail	Total sentenced to imprisonment	Length of imprisonment					
		0 - 6mths	6 - 12mths	1 - 2 yrs	2 - 3 yrs	3 - 5 yrs	>5 yrs or indefinite
Violent offence	20	8	3	4	1	2	2
Property offence	48	23	12	7	6	-	-
Drug offence	166	49	18	28	28	26	17
Offence against the administration of justice	18	11	4	3	-	-	-
Offence against good order	7	6	1	-	-	-	-
Traffic offence	36	30	2	2	2	-	-
Miscellaneous offence	14	4	9	1	-	-	-
Total (and percentage of total sentenced to imprisonment)	309 (100%)	131 (42.4%)	49 (15.9%)	45 (14.6%)	37 (12.0%)	28 (9.1%)	19 (6.1%)

Appendix 5: Offending on bail 2004 - 2008: Defendants aged 17 - 19 with and without a previous prison sentence

Table A.5.1 Offending on bail by young defendants aged 17 - 19, 2004 - 2008, by category of most serious offence and most serious sentence, and by whether or not they had a previous prison sentence (PPS = previous prison sentence)

Most serious offence committed on bail	Total young defendants convicted of offending on bail		Most serious sentence imposed for offending on bail													
			Imprisonment		Home detention		Community based		Monetary		Deferment		Discharge		Other	
			No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS
Violent offence	1593	101	590	80	61	1	726	17	97	1	66	-	2	-	51	2
Other offence against the person	249	10	26	5	-	-	106	2	48	2	27	-	-	-	42	1
Property offence	3824	256	1007	198	100	5	1946	36	506	1	118	8	10	-	137	8
Drug offence	491	22	74	9	18	-	210	8	94	2	21	2	9	1	65	-
Offence against the administration of justice	582	57	130	27	6	-	221	15	12	1	13	2	1	-	199	12
Offence against good order	834	43	52	14	6	-	242	9	294	11	82	-	12	-	146	9
Traffic offence	1837	60	118	20	23	-	676	16	751	10	1	-	171	10	97	4
Miscellaneous offence	291	11	13	1	-	-	14	1	210	6	2	-	3	-	49	3
Unknown	6	-	-	-	-	-	2	-	2	-	2	-	-	-	-	-
Total	9707	560	2010	354	214	6	4143	104	2014	34	332	12	208	11	786	39

Table A.5.2 Sentences of imprisonment imposed for offending on bail by young defendants aged 17 - 19, 2004 - 2008, by category of most serious offence committed on bail and length of imprisonment, and by whether or not they had a previous prison sentence (PPS = previous prison sentence)

Most serious offence committed on bail	Total sentenced to imprisonment		Length of imprisonment											
			0 - 6mths		6 - 12mths		1 - 2 yrs		2 - 3 yrs		3 - 5 yrs		>5 yrs or indefinite	
			No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS	No PPS	PPS
Violent offence	590	80	231	28	103	17	98	17	81	4	58	9	19	4
Other offence against the person	26	5	24	5	-	-	1	-	1	-	-	-	-	-
Property offence	1007	198	617	95	228	65	134	30	27	7	1	1	-	-
Drug offence	74	9	48	9	8	-	9	-	8	-	1	-	-	-
Offence against the administration of justice	130	27	123	18	7	8	-	1	-	-	-	-	-	-
Offence against good order	52	14	50	14	2	-	-	-	-	-	-	-	-	-
Traffic offence	118	20	109	16	9	3	-	1	-	-	-	-	-	-
Miscellaneous offence	13	1	9	1	4	-	-	-	-	-	-	-	-	-
Total	2010	354	1,211	186	361	93	242	49	117	11	60	10	19	4

Appendix 6: Standard conditions of electronically monitored bail

The standard conditions of electronically monitored bail (EM bail) are that the defendant must:

- give a security guard from the monitoring company access to the bail residence on request to check the monitoring equipment, respond to alarm alerts, and to remove the equipment;
- present him or herself at the door when required by any member of the Police;
- co-operate with the security guard in fitting the electronic bracelet to his or her body;
- not tamper with or damage the electronic monitoring equipment;
- not refuse an EM Bail Assessor access to the EM bail residence to speak to another occupant if the occupant has requested to speak with an EM Bail Assessor;
- surrender him or herself to Police custody if, for any reason, he or she is unable to remain at the bail residence; and
- not leave the bail residence at any time except-
 - as authorised by the Court;
 - to attend scheduled Court appearances;
 - to seek urgent medical or dental treatment;
 - to avoid or minimise a serious risk of death or injury to him or herself or any other person; or
 - to surrender him or herself to Police custody.

Appendix 7: Questions

Bail for defendants charged with serious class A drug offences

- Q1. What is your view on whether there should be a reverse burden of proof for defendants charged with serious class A drug offences (i.e. should they have to prove that they should be granted bail instead of the prosecution having to prove that they should not)?
- Q2. What is your view on whether electronically monitored bail should continue to be an option for defendants charged with serious methamphetamine offences?

Bail for defendants charged with serious violent and sexual offences

- Q3. What is your view on whether the Courts should be able to release defendants charged with murder on bail?
- Q4. What is your view on whether there should be a reverse burden of proof for defendants charged with murder (i.e. should they have to prove that they should be granted bail instead of the prosecution having to prove that they should not)?
- Q5. What is your view on whether new offences should be added to the list of specified offences that qualify for a reverse burden of proof (if the defendant has a previous conviction for one of those offences)? What criteria should be used to assess which offences to add to the list of specified offences?
- Q6. What is your view on whether electronically monitored bail should continue to be an option for defendants charged with serious violent and sexual offences?

Bail for young defendants under 20 years of age

- Q7. What is your view on whether the presumption in favour of bail for 17 to 19 year olds should apply to defendants who have previously served a prison sentence?
- Q8. What is your view on whether breach of *any* condition of bail should be a ground for arresting a defendant under 17 years of age without a warrant?

Ensuring bail is not granted in return for information

- Q9. Do you think that any further requirements or safeguards are needed to prevent bail being granted inappropriately in return for information? If so, do you agree with the Government's proposal to insert a legislative provision into the Bail Act 2000 and are any other requirements or safeguards needed?

Failure to answer bail

- Q10. Are there any other non-legislative measures that could be used to reduce the number of defendants that fail to answer bail?
- Q11. What is your view on whether the maximum penalty for failure to answer Police bail should be increased? If you think it should be increased, what should it be increased to?

- Q12. What is your view on whether the maximum penalty for failure to answer Court bail should be increased? If you think it should be increased, what should it be increased to?
- Q13. What is your view on whether monetary bonds and sureties should be reintroduced in the District Court?
- Q14. What is your view on whether monetary bonds and sureties should be abolished for Police bail?

Legislation for electronically monitored bail

- Q15. What is your view on whether the EM bail regime should be set out in legislation?
- Q16. What is your view on whether breach of EM bail should be an offence in addition to being a ground for arrest and reconsideration of bail?
- Q17. What is your view on whether time spent on EM bail should be taken into account in sentencing?
- Q18. If time spent on EM bail is taken into account in sentencing, should there be some legislative guidance to assist the Courts in determining the appropriate discount (e.g. a set formula or guidelines specifying the types of factors relevant to deciding how time spent on EM bail should be taken into account)?